



FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

JOINT ADMINISTRATIVE/CIP COMMITTEE

8:15 A.M. WEDNESDAY, JULY 2, 2013

920 2nd Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

AGENDA

1. CALL TO ORDER AT 8:15 AM

2. PLEDGE OF ALLEGIANCE

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

4. PUBLIC COMMENT PERIOD:

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

5. APPROVAL OF MEETING MINUTES

a. June 19, 2013 Administrative Committee Minutes

ACTION

6. JUNE 21, 2013 BOARD MEETING FOLLOW-UP

INFORMATION/ACTION

a. FY 2013-14 Capital Improvement Program (CIP)

- i. Post-FORA Implications
- ii. CIP Funding and Project Placement
- iii. Building Removal Credits
- iv. CIP Narrative

7. JULY 12, 2013 BOARD MEETING AGENDA REVIEW

INFORMATION/ACTION

8. OLD BUSINESS

a. HCP Update

- i. Draft Implementing Agreement
- ii. Draft Implementing Ordinance/Policy
- iii. Draft JPA Agreement

9. ITEMS FROM MEMBERS

10. ADJOURNMENT

NEXT SCHEDULED MEETING: JULY 17, 2013

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FORT ORD REUSE AUTHORITY

ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m. - Wednesday, June 19, 2013

920 2nd Avenue, Suite A, Marina, CA 93933 (FORA Conference Room)

1. CALL TO ORDER AND ROLL CALL

Chair Dawson called the meeting to order at 8:20 a.m. The following were present, as indicated by signatures on the roll sheet:

Daniel Dawson, City of Del Rey Oaks*
Carl Holm, County of Monterey*
Layne Long, City of Marina*
John Dunn, City of Seaside*
Diana Ingersoll, City of Seaside
Graham Bice, UCSC
Lyle Shurtleff, BRAC
Todd Muck, MST
Anya Spear, CSUMB
Vicki Nakamura, MPC

Tim O'Halloran, City of Seaside
Mike Zeller, TAMC
Patrick Breen, MCWD
Kathleen Lee, Sup. Potter's Office
Doug Yount
Bob Schaffer
Sid Williams, UVC
Scott Hilk, MCP
Chuck Lande, Marina Heights
Crisand Giles, BIA

FORA Staff:
Michael Houlemard
Jim Arnold
Crissy Maras
Jonathan Garcia
Lena Spilman

* Voting Members

2. PLEDGE OF ALLEGIANCE

John Dunn led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Executive Officer Houlemard stated that both proposed initiatives had submitted petition signatures to FORA, which were currently being validated by the Monterey County Elections Department. He noted that the Court was scheduled to rule on the Bogan vs. Houlemard case on Friday, June 21, 2013. Mr. Houlemard also discussed the FORA delegation's recent trip to Washington, D.C. for the Annual Federal Legislative Mission and ADC National Summit.

4. PUBLIC COMMENT PERIOD

The Committee received comments from members of the public.

5. APPROVAL OF MEETING MINUTES

a. June 5, 2013 Administrative Committee Minutes

MOTION: John Dunn moved, seconded by Carl Holm, to accept the June 5, 2013 minutes as presented.

MOTION PASSED: unanimous.

6. OLD BUSINESS

a. Capital Improvement Program

i. Annual Re-programming

- . Jurisdiction Forecasts
- . Indexing
- . Revenue against Expenditures

ii. CIP Elements

iii. Contingencies

iv. Tables and Appendices

v. Reimbursement Agreements

vi. Post-FORA

Senior Planner Jonathan Garcia led a review of the Capital Improvement Program elements, as agendaized. The Committee received comments from members of the development community, who requested that the Committee postpone a Board recommendation on the item to allow for further review/discussion.

MOTION: Carl Holm moved, seconded by John Dunn, to recommend that the Board postpone consideration of the FY 2013/14 Capital Improvement Program for one month to allow further Administrative Committee review.

MOTION PASSED: unanimous.

The Committee provided direction to staff regarding areas for further clarification and modification of the item in preparation for the July 2, 2013 Administrative Committee meeting.

7. ITEMS FROM MEMBERS

None.

8. ADJOURNMENT

Chair Dawson adjourned the meeting at 9:36 a.m.

Minutes prepared by Lena Spilman, Deputy Clerk

-START-

**DRAFT
BOARD PACKET**



FORT ORD REUSE AUTHORITY

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Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

BOARD OF DIRECTORS SPECIAL MEETING

Friday, July 12, 2013 at (TBD) p.m.

910 2nd Avenue, Marina, CA 93933 (Carpenter's Union Hall)

AGENDA

1. CALL TO ORDER AND ROLL CALL

2. CLOSED SESSION

- a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – Five Cases
 - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority, Case Numbers: M114961, M116438, M119217
 - ii. Bogan v. Houlemard, Case Number: M122980
 - iii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M118566
- b. Public Employee Performance Evaluation – Executive Officer (Gov Code 54957)

3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

4. PLEDGE OF ALLEGIANCE

5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

6. CONSENT AGENDA

- a. Approval of the June 21, 2013 Board Meeting Minutes ACTION
- b. Resolution Fixing FORA's Contribution Under the Public Employees' Medical and Hospital Care Act ACTION

7. NEW BUSINESS

- a. Board Workshop – Prevailing Wage INFORMATION

8. OLD BUSINESS

- a. Environmental Services Cooperative Agreement (ESCA) - Update INFORMATION
 - i. Presentation/Update
 - ii. Property Transfer/Risk Management
- b. FY 2013/14 Capital Improvement Program INFORMATION/ACTION
- c. Preston Park Fiscal Year 2013/2014 Budget (2nd Vote) ACTION
- d. Base Reuse Plan (BRP) Post-Reassessment Follow-Up
 - i. Receive Report from Post-Reassessment Advisory Committee (PRAC) INFORMATION
 - ii. Consider PRAC "Category IV" Approach Recommendations ACTION
- e. FORA Initiatives Status Report and Recommendations INFORMATION/ACTION
 - i. California Central Coast Veterans Cemetery, Open Space Preservation, and Economic Revitalization Initiative
 - ii. Protect Fort Ord Open Space Initiative

9. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Fort Ord Reuse Authority (FORA) Executive Committee on matters that are not on this agenda, but are within FORA's jurisdiction, may comment for up to three minutes during this period. Public comments on specific agenda items are heard under that item.

10. EXECUTIVE OFFICER'S REPORT

- a. Outstanding Receivables INFORMATION
- b. Habitat Conservation Plan Update INFORMATION
- c. Administrative Committee INFORMATION
- d. Veterans Issues Advisory Committee INFORMATION
- e. Administrative Consistency Determination for Entitlement:
City of Seaside's Chartwell School Kiln and Clay Storage Shed INFORMATION/ACTION
- f. Capital Improvement Program Review – Phase II Study Final Report INFORMATION
- g. Public Correspondence to the Board INFORMATION

11. ITEMS FROM MEMBERS

12. ADJOURNMENT

DRAFT

NEXT REGULAR BOARD MEETING: AUGUST 9, 2013

Persons seeking disability related accommodations should contact FORA 24 hours prior to the meeting.
This meeting is recorded by Access Monterey Peninsula (AMP) and is televised Sundays at 9:00 a.m. and 1:00 p.m. on Marina/Peninsula Chanel 25. The video and full Agenda packet are available online at www.fora.org.

Placeholder for Item 6a

**Approval of the June 21, 2013 Board
Meeting Minutes**

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

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Resolution fixing the Employer's Contribution under the Public Employee's Medical and Hospital Care Act	
Meeting Date:	July 12, 2013	ACTION
Agenda Number:	6b	

RECOMMENDATION(S):

Adopt Resolution No. 13-X titled "Fixing the Employer's Contribution under the Public Employee's Medical and Hospital Care Act (PEMHCA)" updating the Fort Ord Reuse Authority's (FORA) contribution to employees' health premium (**Attachment A**) as approved June 21, 2013.

BACKGROUND/DISCUSSION:

PEMHCA requires that contracting agencies adopt a resolution when modifying the employer contribution to employees' health premium. This provides the California Public Employees' Retirement System (CalPERS) proper authority to process the modification. On June 21, 2013, the FORA Board approved the annual FY 13-14 budget incorporating an adjustment in contributions to employees' health premium effective July 1, 2013. Therefore, Resolution No. 13-X is required to replace Resolution No. 10-13 currently on file with CalPERS.

	Expiring contributions Res. No. 10-13 <u>FY 09-10</u>	New Contributions Res. No. 13-X <u>FY 13-14</u>
1 party (employee)	\$ 508.74	\$ 666.74
2-party (employee+1 dependent)	\$ 1,017.48	\$ 1,175.48
Family (employee+ 2 or more dependents)	\$ 1,322.72	\$ 1,480.72

FISCAL IMPACT:

Annual cost of this adjustment is \$24,693 based on current health insurance coverage/enrollment and was identified in the draft FY 13-14, now included in the approved FY 13-14 budget.

COORDINATION:

Executive Committee

Prepared by _____ Approved by _____
Ivana Bednarik Michael A. Houlemard, Jr.

Placeholder for Attachment A to Item 6b

PERS Resolution

The resolution will be included in the final Board packet.

Placeholder for Item 8b

FY 2013/14 Capital Improvement Program

This item is contingent on discussions scheduled for the July 2nd Administrative Committee and will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Preston Park Fiscal Year 2013/2014 Budget (2nd Vote)

Meeting Date: July 12, 2013

Agenda Number: 8c

ACTION

RECOMMENDATION(S):

1. Approve FY 2013/2014 Preston Park Housing Operating (**Attachment B**) and Capital Expenditure Budgets (**Attachment F**) to include funds for Capital Improvements and a 2.4% rent increase.
2. Approve FY 2013/2014 Preston Park Housing Operating (**Attachment C**) and Capital Expenditure Budgets to include funds for Capital Improvements without a rent increase.

BACKGROUND/DISCUSSION:

At the June 21, 2013 FORA Board Meeting this item received a majority vote to approve the FY 2013/2014 Preston Park Housing Operating and Capital Expenditure Budgets and a 2.4% rent increase. It is returned for a second vote because the approval was not unanimous.

The staff has reviewed the Alliance Management Budget memo (**Attachment A**) on the Preston Park FY 2013/14 Operating Budget and Capital Improvement Program (CIP) Assessment and twice met with representatives of the Preston Park Abrams Tenants Association to receive their input on the proposed budget. FORA staff recommends approval of the Capital Replacement Program Budget and a rent increase, to restore sufficient Capital Reserves for the size and age of Preston Park. In the current year a number of Life and Safety Issues have occurred that will require unplanned use of funding from the property reserves averaging \$2,200 unit or \$800,000 (**Attachment G**). Previously approved projects have been rescheduled in order to perform the emergency assessments and will be scheduled to have the least impact on the residents of the units.

The proposed 2.4 % rental increase has been derived from using the Consumer Price Index applied to the current and prospective Preston Park residents. The adopted formulae are: 1) **Move-ins** - establishing market rents on an on-going basis according to a market survey, and 2) **Existing tenants** - increase rent once a year by the lesser of 3% or the Consumer Price Index. The financial impacts of the rent increase are displayed by unit type in (**Attachment I**). Preston Park rents will remain 10 to 16% below market as compared to equivalent units in the market area. The overall budget sustains the formulas for setting annual market rents approved by the Board in June 2010 and is consistent with current FORA Policy.

The FORA Board directed staff to analyze the property management services and a recommendation will be made in October 2013.

In prior Preston Park Board reports the lengthy items such as the Market Survey (**Attachment H**) and Standard Operating Budgets were presented with only summary pages of the full reports because the full reports were forty and 140 pages in length. These lengthy attachments are provided on the FORA website at the following links:

<http://fora.org/Board/2013/Packet/062113Item8aAttachB-BudgetOption1.pdf>

<http://fora.org/Board/2013/Packet/062113Item8aAttachC-BudgetOption2.pdf>

<http://fora.org/Board/2013/Packet/062113Item8aAttachH-MarketSurvey.pdf>

<http://fora.org/Board/2013/Packet/062113Item8aAttachmentK-AmenityAnalysis.pdf>

FISCAL IMPACT:

Reviewed by FORA Controller _____

The FY 2013/2014 Preston Park budget as presented (with the rent increase or without the rent increase) provides adequate revenue to cover the Preston Park loan debt service.

COORDINATION:

FORA Staff, Alliance Staff, Administrative Committee, Executive Committee.

Prepared by _____ Reviewed by _____
Robert J. Norris, Jr. D. Steven Endsley

Approved by _____
Michael A. Houlemard, Jr.

DRAFT

May 29, 2013

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

Re: Preston Park FY 2013/14 Proposed Budget

It has been a pleasure to continue to work with residents and the Fort Ord Reuse Authority over the last year. With the combination of wonderful residents and effective staff, a number of positive changes have been seen in Preston Park:

- 1) **Exterior Building Upgrades:** With the approval of the Capital Budget in December 2012, the community has been given a minor face lift with the replacement of deteriorated fence slats throughout the community. Motion Sensor lighting is currently being added to the front entrance each home. Pending capital projects include Exterior Painting, Roof Replacements, Window and Door Replacements, additional Driveway and Community Lighting.
- 2) **Interior Building Upgrades:** The Community Center has seen minor renovations as the space has been painted, updated with Stainless Steel Appliances, and new flooring has been installed. The purchase of new furniture is in the works.
- 3) **Units of Long Term Residents:** Several long-term residents have seen upgrades in their flooring, paint, and appliances with little intrusion or inconvenience. These services are extended to long-term residents upon notification or inspection indicating replacement is necessary.
- 4) **Go-Green Initiatives:** The community has been implementing water and energy saving programs inspired by Alliance's own Go-Green Initiative. Devices designated as water or energy saving are purchased and installed as replacement appliances and fixtures as needed. PG&E has been working with residents in the Below Market and Section 8 programs to weatherize their homes at no cost to the resident or the community. Planned landscaping changes, including the addition of low cost irrigation soil sensors, will reduce the amount of water usage in the common areas of the community, and will continue to evolve into larger cost savings for residents as we work in conjunction with Paul Lord at Marina Coast Water.
 - Residents in units with water and energy savings devices installed should anticipate an overall reduction in utility costs of up to 10%. Additional savings (up to 15% on irrigation water usage) will be realized through landscaping upgrades that have been pushed back to 2015.
- 5) **Code Compliance/Safety Improvements:** Carbon Monoxide detectors were installed in all homes as of November 2012, and all water heaters were confirmed to be double strapped for seismic safety in August 2012.
 - Additional Life/Safety Issues have been identified and are currently being addressed throughout the community. Please see **Attachment G** from Marina Fire Chief Harold Kelley, and **Attachment H** for detailed information on Life/Safety issues within the community.

Alliance looks to continue to provide the residents at Preston Park a comfortable and quality living experience. Continued capital improvements throughout the community will allow this property to remain a desirable neighborhood for renters, as well as a continued source of affordable housing for the general populace of Marina.

Revenues

The primary source of revenue is rents, Section 8 voucher payments from the Housing Authority of the County of Monterey and associated charges to residents such as late fees.

The proposed budget reflects projected revenues according to the approved formula indicating that the annual increase in market rents for in-place tenants shall be capped at the lesser of three percent (3%) or the Department of Labor’s Consumer Price Index for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers (referred to as CPI-U) Average percentage for the previous year (February to February) be applied to the next fiscal year, provided that the increased rent for in-place residents does not exceed the market rent charged to move-in residents. The proposed Budget Option 1 assumes the maximum rent increase for in-place residents of three percent (2.4%) resulting in an anticipated 4.3% increase in Total Income (\$236,517) over the FY 2012/13 Estimated Actuals. The proposed Budget Option 2 assumes no increase in the FY 2013/14 rent schedule for in-place residents, however still results in a 3.3% increase in Total income (\$178,975) due to new move-in rent values. Please see **Attachment D** for a summary of Revenue Income under the two options.

In Place Residents – Market Rent

The proposed FY 2013/14 Budget – Option 1 assumes a 2.4% increase for in-place residents using the approved formula of three percent (3%) or the Department of Labor’s Consumer Price Index for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers (referred to as CPI-U) which has been documented as 2.4%. The rents proposed in Budget Option 1 are as follows:

Unit Size	In-Place Market Rate Rents		Change 8/1/13
	Current Rent Range FY12/13	Proposed FY13/14 Rent	
Section 8 – Two BR	\$1,029 - \$1,175	\$1,029 - \$1,175	\$0
Section 8 – Three BR	\$1,473 - \$1,562	\$1,473 - \$1,562	\$0
Two Bedroom	\$1,146 - \$1,645	\$1,173 - \$1,684	\$27 - \$39
Three Bedroom	\$1,499 - \$1,950	\$1,535 - \$1,997	\$36 - \$47
Luxury – Two BR*	\$1,650 - \$1,947	\$1,690 - \$1,994	\$40 - \$47
Luxury – Three BR*	\$1,947	\$1,994	\$47

* Note: Four 2-Bedroom homes and one 3-Bedroom home have additional features that warrant higher than average rental rates.

Fair Market Rents (FMR) for Monterey County on a County-wide basis as published in October 2012 by the Monterey County Housing Authority (MCHA) are as follows:

Unit Bedroom Size	Fair Market Rent
Two Bedroom	\$1,223
Three Bedroom	\$1,784

The two bedroom average in-place market rent at Preston Park is \$1,367 which represents a difference of \$144 from the FMR table above. The general cause of the difference in two-bedroom rents relates to the unique amenities and space available in the two-bedroom apartments at the community as compared to the general marketplace. Conversely, the majority of in-place market renters in Preston Park three bedroom homes are below the MCHA Fair Market Rent for a home of this size. The average in-place rent for the three bedroom units at Preston Park is \$1,664, which represents a difference of \$120 from the FMR table above.

Please refer to **Attachment K** for detailed information regarding Preston Park rental rates, including utility estimates, as compared to other communities that pay for Water, Sewer, and Trash service.

Affordable Rents

Affordable rental rates are derived from median income schedules published by governmental agencies. Rental rates at Preston Park are based upon 50% and 60% of the median income for Monterey County. The U.S. Department of Housing and Urban Development calculates the maximum household income by family size in Monterey County, generally once a year. As of the date of this memo the rental rates are based upon families at 50% and 60% of the Monterey County median income for 2013 and allowances for the cost of utilities (as published by MCHA). **Please see Attachment L.** A rental increase is proposed per the revised 2013 rates and allowances.

Unit Size	In-Place Affordable Rate Rents		Change 8/1/13
	Current Rent Range FY12/13	Proposed FY13/14 Rent	
Two Bedroom VL - L	\$656 – \$807	\$677 - \$832	\$21 - \$25
Three Bedroom VL - L	\$731 – \$900	\$756 - \$928	\$25 - \$28

Maximum Household Income Limits for 2013 as published in January 2013.

Income Category	Two Person	Three Person	Four Person	Five Person	Six Person	Seven Person	Eight Person
50% VL	\$28,500	\$32,100	\$35,650	\$38,500	\$41,400	\$44,250	\$47,100
60% L	\$34,260	\$38,520	\$42,780	\$46,260	\$49,680	\$53,100	\$56,520

Current Market Rent Conditions

The market rent for new move-ins is calculated by comparable market rent levels in the competitive market throughout the year. Additionally, the comparables as outlined in the attached Market Survey dated 4.8.13 (**Attachment J**) are smaller in square footage than units at Preston Park, and many do not offer the specialized features including in-home laundry room, gated back yard with patio, direct access garage, generous storage space, dogs and cats

accepted with pet deposit (Breed restrictions apply, max 2 animals per home). Please refer to **Attachment I** for detailed information.

Per the approved rent formula in 2010, the market rents for new move-ins are fluid throughout the year and change according to market conditions. Today, rents for new move-ins are as follows:

Unit Size	Current Rent Range for Incoming Market Rate Residents
Two Bedroom	\$1,610 - \$1,715
Luxury – Two BR	\$1,750 - \$2,100*
Three Bedroom	\$1,985 - \$2,010
Luxury – Three BR	\$2,100*

* Note: Four 2-Bedroom homes and one 3-Bedroom home have additional features that warrant higher than average rental rates.

Budget Summary

Expenses as outlined in **Attachment E** include Operating Expense projections and relevant changes from the FY 2012/13 budget. Operating expenses typically include expenditures for routine maintenance of the property, redecorating expenses as they apply to unit turns, and expenditures relating to the daily operations of the Leasing Office. Non-Routine expenses are included as they pertain directly to the daily function of the community, however are not typically able to be forecasted (i.e. large plumbing leaks requiring vendor service, unit specific rehabilitation projects). Annual Inspection materials are included with the Non-Routine expenses as they are a one-time yearly expense. Overall, total operating expenses proposed for FY 2013/14 are 7.0% higher than the estimated actual expenses for FY 2012/13 (\$96,927). Alliance seeks to maximize cost savings, e.g. lower utilities expenses through installation of water/energy saving devices, while contending with inescapable cost increases such as fuel for maintenance vehicles.

Capital Expenses

Expenses categorized as Capital expenses directly impact the long term value of the community, including roof replacements, exterior painting, large-scale landscaping improvements, and interior upgrades including appliances and carpeting/vinyl. Capital projects currently scheduled to be completed in the 2012/13 FY include:

- 1) Site Lighting Repair/Replacement/Installation - \$265,849
- 2) Roof Replacements - \$1,311,893
- 3) Exterior Paint - \$398,008
- 4) Exterior Unit Doors/Windows- \$1,557,000
- 5) Seal Coat Streets - \$155,787

A Capital Management Agreement was signed on May 2, 2013. Efforts are currently underway to create a scope of work for each project and obtain competitive bids. Work will begin as soon as all approvals are in place. Ownership of streets within Preston Park has been confirmed.

2013/2014 FY Capital Improvement Program

Recommended Capital Projects to be managed through the Construction Department (excluding continuing projects or completions of projects from 2012/13):

- 1) Dry Rot Repairs - \$20,000
- 2) Building Fascia/Flashing Repairs - \$800,000

Recommended capital projects managed at the site level include:

- 3) Fire Extinguishers - \$13,000
- 4) Termite Remediation - \$50,000

Capital Reserves Fund

In accordance with the 2013 reevaluation of the Replacement Reserves Study conducted in April 2008, Alliance recommends a minimum reserve withholding of \$2,937 per unit per year during the 2013/14 fiscal period. **Please refer to Attachment F.** This withholding would ensure that the asset holds adequate reserves to perform necessary replacements and repairs to protect the useful life of the buildings.

While both Budget Options assume owner distribution (revenue to FORA and the City of Marina) similar to FY 2012/2013, these options reflect a withholding amount of just \$2,076.20 per unit per year. Necessary Life/Safety Capital projects will not be able to be accomplished per the attached CIP schedule if withholding amounts are not increased.

Budget Option 1 (Maximum rent increase of 2.4% for in-place residents) offers an opportunity to increase the property's replacement reserve account through revenue generation, thus allowing for many of the critical Capital Improvement projects throughout the community to take place over time. (**Attachment B**)

Budget Option 2 (No rent increase for in-place residents) outlines community needs to continue daily operations, but may compromise many of the necessary long-term capital projects due to restricted funds available to complete such projects. (**Attachment C**)

Management Assessment

In accordance with the December 2012 budget approval, Management has been directed to provide detailed information regarding Leasing and Maintenance services provided to residents and prospects. Alliance Residential utilizes an independent source (Kinglsey Associates) to monitor and gauge resident satisfaction throughout the company portfolio. **Attachment M for Q4 2012 and Attachment N for Q1 2013** indicate that Preston Park consistently outperforms Alliance Portfolio standards.

We will continue to look for new ways to improve our services over the coming year and remain committed to meeting the objectives set by FOR A.

Please feel free to contact me should you have additional questions or concerns at (408) 396-8341. Approval of the final budget prior to May 31, 2013, would be helpful in order to implement rental increases by August 1, 2013.

Regards,

Jill Hammond
Regional Manager

Cc: Jonathan Garcia, FOR A
Ivana Bednarik, FOR A
Robert Norris, FOR A
Brad Cibbins, Chief Operating Officer, Alliance Communities, Inc.
Annette Thurman, Vice President of Operations, Alliance Communities, Inc.

Attachments:

- A.
- B. Budget Document – Option 1
- C. Budget Document – Option 2
- D. FY 2013/2014 Budget Revenue Summary
- E. Operating Expenses
- F. Revised CIP
- G. Life Safety
- H. Letter from Fire Chief Kelley
- I. April 2013 Market Survey
- J. Affordable Housing Rental Rates
- K. Unit Matrix
- L. BMR Rent Limits
- M. Kingsley Q4 2012 Community Report
- N. Kingsley Q1 2013 Community Report

**PRESTON PARK
2014 STANDARD BUDGET
CONSOLIDATION & SIGN-OFF**



Description	2014 Total	2013 Projected	Variance	Variance %
Physical Occupancy	98.04 %	98.96 %		
Economic Occupancy	97.32 %	96.13 %		
Gross Market Potential	\$5,816,930	\$5,643,882	\$173,048	3.1%
Market Gain/Loss to Lease	\$16,124	(\$111,087)	\$127,210	114.5%
Affordable Housing	\$0	\$0	\$0	0.0%
Non-Revenue Apartments	(\$56,187)	(\$47,422)	(\$8,765)	-18.5%
Rental Concessions	\$0	(\$148)	\$148	100.0%
Delinquent Rent	\$0	\$0	\$0	0.0%
Vacancy Loss	(\$114,328)	(\$57,783)	(\$56,546)	-97.9%
Prepaid/Previous Paid Rent	\$0	\$0	\$0	0.0%
Other Months' Rent/Delinquency Recovery	\$0	\$0	\$0	0.0%
Bad Debt Expense	(\$1,750)	(\$2,034)	\$284	14.0%
Other Resident Income	\$36,750	\$33,163	\$3,587	10.8%
Miscellaneous Income	\$8,450	\$10,901	(\$2,451)	-22.5%
Corp Apartment Income	\$0	\$0	\$0	0.0%
Retail Income	\$0	\$0	\$0	0.0%
TOTAL INCOME	\$5,705,989	\$5,469,472	\$236,517	4.3%
PAYROLL	\$520,430	\$488,934	(\$31,495)	-6.4%
LANDSCAPING	\$73,836	\$70,790	(\$3,046)	-4.3%
UTILITIES	\$94,359	\$93,918	(\$441)	-0.5%
REDECORATING	\$78,203	\$76,418	(\$1,785)	-2.3%
MAINTENANCE	\$100,785	\$94,468	(\$6,317)	-6.7%
MARKETING	\$15,290	\$15,398	\$108	0.7%
ADMINISTRATIVE	\$85,423	\$59,907	(\$25,516)	-42.6%
RETAIL EXPENSE	\$0	\$0	\$0	0.0%
PROFESSIONAL SERVICES	\$142,650	\$136,888	(\$5,762)	-4.2%
INSURANCE	\$194,472	\$190,686	(\$3,786)	-2.0%
AD-VALOREM TAXES	\$105,324	\$105,747	\$423	0.4%
NON ROUTINE MAINTENANCE	\$72,375	\$53,064	(\$19,311)	-36.4%
TOTAL OPERATING EXP	\$1,483,147	\$1,386,219	(\$96,927)	-7.0%
NET OPERATING INCOME	\$4,222,842	\$4,083,253	\$139,589	3.4%
DEBT SERVICE	\$0	\$0	\$0	0.0%
DEPRECIATION	\$324,420	\$355,066	\$30,646	8.6%
AMORTIZATION	\$0	\$0	\$0	0.0%
PARTNERSHIP	\$0	\$0	\$0	0.0%
EXTRAORDINARY COST	\$0	\$0	\$0	0.0%
NET INCOME	\$3,898,422	\$3,728,187	\$170,235	4.6%
CAPITAL EXPENDITURES	\$1,229,952	\$4,162,505	\$2,932,553	70.5%
MORTGAGE PRINCIPAL	\$0	\$0	\$0	0.0%
TAX ESCROW	\$0	\$0	\$0	0.0%
INSURANCE ESCROW	\$0	\$0	\$0	0.0%
INTEREST ESCROW	\$0	\$0	\$0	0.0%
REPLACEMENT RESERVE	\$734,976	\$734,976	\$0	0.0%
REPLACEMENT RESERVE REIMBURSE	(\$1,229,952)	(\$4,162,505)	(\$2,932,553)	-70.5%
WIP	\$0	\$0	\$0	0.0%
OWNER DISTRIBUTIONS	\$3,487,866	\$3,348,276	(\$139,590)	-4.2%
DEPRECIATION AND AMORTIZATION	(\$324,420)	(\$355,066)	(\$30,646)	-8.6%
NET CASH FLOW	\$0	\$0	(\$0)	-89.2%

Approvals

Owner	Date
Asset Manager	Date
COO	Date
VP	Date
Regional Manager	Date
Business Manager	Date

Alliance Residential, LLC makes no guarantee, warranty or representation whatsoever in connection with the accuracy of this Operating Budget as it is intended as a good faith estimate only.

Attachment B to Item 8c
FORA Board Meeting, 7/12/13

**PRESTON PARK
2014 STANDARD BUDGET
CONSOLIDATION & SIGN-OFF**



Description	2014 Total	2013 Projected	Variance	Variance %
Physical Occupancy	98.04 %	98.96 %		
Economic Occupancy	98.30 %	96.13 %		
Gross Market Potential	\$5,699,868	\$5,643,882	\$55,986	1.0%
Market Gain/Loss to Lease	\$72,085	(\$111,087)	\$183,171	164.9%
Affordable Housing	\$0	\$0	\$0	0.0%
Non-Revenue Apartments	(\$54,974)	(\$47,422)	(\$7,552)	-15.9%
Rental Concessions	\$0	(\$148)	\$148	100.0%
Delinquent Rent	\$0	\$0	\$0	0.0%
Vacancy Loss	(\$112,000)	(\$57,783)	(\$54,218)	-93.8%
Prepaid/Previous Paid Rent	\$0	\$0	\$0	0.0%
Other Months' Rent/Delinquency Recovery	\$0	\$0	\$0	0.0%
Bad Debt Expense	(\$1,732)	(\$2,034)	\$302	14.9%
Other Resident Income	\$36,750	\$33,163	\$3,587	10.8%
Miscellaneous Income	\$8,450	\$10,901	(\$2,451)	-22.5%
Corp Apartment Income	\$0	\$0	\$0	0.0%
Retail Income	\$0	\$0	\$0	0.0%
TOTAL INCOME	\$5,648,447	\$5,469,472	\$178,974	3.3%
PAYROLL	\$520,430	\$488,934	(\$31,495)	-6.4%
LANDSCAPING	\$73,836	\$70,790	(\$3,046)	-4.3%
UTILITIES	\$94,359	\$93,918	(\$441)	-0.5%
REDECORATING	\$78,203	\$76,418	(\$1,785)	-2.3%
MAINTENANCE	\$100,785	\$94,468	(\$6,317)	-6.7%
MARKETING	\$15,290	\$15,396	\$108	0.7%
ADMINISTRATIVE	\$85,423	\$59,907	(\$25,516)	-42.6%
RETAIL EXPENSE	\$0	\$0	\$0	0.0%
PROFESSIONAL SERVICES	\$141,211	\$136,888	(\$4,323)	-3.2%
INSURANCE	\$194,472	\$190,686	(\$3,786)	-2.0%
AD-VALOREM TAXES	\$105,324	\$105,747	\$423	0.4%
NON ROUTINE MAINTENANCE	\$72,375	\$53,064	(\$19,311)	-36.4%
TOTAL OPERATING EXP	\$1,481,708	\$1,386,219	(\$95,489)	-6.9%
NET OPERATING INCOME	\$4,166,738	\$4,083,253	\$83,485	2.0%
DEBT SERVICE	\$0	\$0	\$0	0.0%
DEPRECIATION	\$324,420	\$355,066	\$30,646	8.6%
AMORTIZATION	\$0	\$0	\$0	0.0%
PARTNERSHIP	\$0	\$0	\$0	0.0%
EXTRAORDINARY COST	\$0	\$0	\$0	0.0%
NET INCOME	\$3,842,318	\$3,728,187	\$114,132	3.1%
CAPITAL EXPENDITURES	\$1,229,952	\$4,162,505	\$2,932,553	70.5%
MORTGAGE PRINCIPAL	\$0	\$0	\$0	0.0%
TAX ESCROW	\$0	\$0	\$0	0.0%
INSURANCE ESCROW	\$0	\$0	\$0	0.0%
INTEREST ESCROW	\$0	\$0	\$0	0.0%
REPLACEMENT RESERVE	\$734,976	\$734,976	\$0	0.0%
REPLACEMENT RESERVE REIMBURSE	(\$1,229,952)	(\$4,162,505)	(\$2,932,553)	-70.5%
WIP	\$0	\$0	\$0	0.0%
OWNER DISTRIBUTIONS	\$3,431,762	\$3,348,276	(\$83,486)	-2.5%
DEPRECIATION AND AMORTIZATION	(\$324,420)	(\$355,066)	(\$30,646)	-8.6%
NET CASH FLOW	\$0	\$0	(\$0)	-42.3%

Approvals

Owner	Date
Asset Manager	Date
COO	Date
VP	Date
Regional Manager	Date
Business Manager	Date

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Attachment C to Item 8c
FORA Board Meeting, 7/12/13

Preston Park Budget Memo Attachment C – Revenue Summary

Budget Option 1 – 2.4% Rent Increase Proposed

<u>Revenue</u>	Proposed FY 2013/ 2014	Estimated Actuals FY 2012/ 2013	Variance from FY 2012/2013 Estimated Actuals	%	Comments	Approved Budget FY 2012/ 2013	Variance From 2012/2013 Estimated Actuals	%	Comments	2013/2014 Proposed Budget vs. 2012/2013 Approved Budget	%
GROSS MARKET POTENTIAL	\$5,816,930	\$5,643,882	\$173,048	3.1%	2.4% increase proposed as of 8/1/13.	\$5,376,900	\$266,982	5.0%	Reflects approved rental increase and higher Market Rents achieved.	\$440,030	8.2%
NON-REVENUE APARTMENTS	-\$56,187	-\$47,422	-\$8,765	-18.5%	Difference accounted for in rent increase throughout property.	-\$62,448	\$15,026	24.1%	Reduction due to the split of the Office/Community Center with Abrams Park. Preston Park is charged 60% and Abrams Park is charged 40%.	\$6,261	10.0%
MISCELLANEOUS INCOME	\$8,450	\$10,901	-\$2,451	-22.5%	Anticipating reduction in Interest income as Capital Projects are completed.	\$7,632	\$3,269	42.8%	Additional income derived from recycling appliances through MARS*.	\$818	10.7%
TOTAL INCOME	\$5,705,939	\$5,469,472	\$236,517	4.3%		\$5,368,586	\$100,886	1.9%		\$337,403	6.3%
NET INCOME	\$3,898,422	\$3,728,187	\$170,235	4.6%		\$3,907,035	-\$178,848	-4.6%	Net Income adversely affected by the Depreciation schedule	-\$8,613	-0.2%

- MARS (Major Appliance Recycling Service) is a national service that provides payment for pickup of appliances that can be reused or recycled.

May 29, 2013

Attachment D to Item 8c
FORA Board Meeting, 7/12/13

Preston Park Budget Memo Attachment C – Revenue Summary

Budget Option 2 – No Increase Proposed

<u>Revenue</u>	<u>Proposed FY 2013/ 2014</u>	<u>Estimated Actuals FY 2012/ 2013</u>	<u>Variance from FY 2012/2013 Estimated Actuals</u>	<u>%</u>	<u>Comments</u>	<u>Approved Budget FY 2012/ 2013</u>	<u>Variance From 2012/2013 Estimated Actuals</u>	<u>%</u>	<u>Comments</u>	<u>2013/2014 Proposed Budget vs. 2012/2013 Approved Budget</u>	<u>%</u>
GROSS MARKET POTENTIAL	\$5,699,868	\$5,643,882	\$55,986	1.0%	Increase due to new move-ins at market rate.	\$5,376,900	\$266,982	5.0%	Reflects higher Market Rents achieved.	\$322,968	6.0%
NON-REVENUE APARTMENTS	-\$54,974	-\$47,422	-\$7,552	-15.9%	Slight increase as new move in market rents have increased.	-\$62,448	\$15,026	24.1%	Reduction due to the split of the Office/Community Center with Abrams Park. Preston Park is charged 60% and Abrams Park is charged 40%.	\$7,474	12.0%
MISCELLANEOUS INCOME	\$8,450	\$10,901	-\$2,451	-22.5%	Anticipating reduction in Interest income as Capital Projects are completed.	\$7,632	\$3,269	42.8%	Anticipating additional income derived from recycling appliances through MARS*.	\$818	10.7%
TOTAL INCOME	\$5,648,447	\$5,469,472	\$178,975	3.3%		\$5,368,586	\$100,886	1.9%		\$279,861	5.2%
NET INCOME	\$3,842,318	\$3,728,187	\$114,131	3.1%		\$3,907,035	-\$178,848	-4.6%	Net Income adversely affected by the Depreciation schedule	-\$64,717	-1.7%

May 29, 2013

Preston Park Budget Memo Attachment C – Highlights of Operating Expenses

<u>Operating Expenses</u>	Proposed FY 2013/ 2014	Estimated Actuals FY 2012/2013	Variance from FY 2012/2013 Estimated Actuals	%	Comments	Approved Budget FY 2012/ 2013	Variance From 2012/2013 Estimated Actuals	%	Comments	2013/2014 Proposed Budget vs. 2012/2013 Approved Budget	%
SALARIES	\$361,775	\$338,147	\$23,628	7.0%	Increase in salaries due to addition of Project Coordinator position	\$320,601	\$17,546	5.5%	Overage in salaries due to overtime hours worked by full time associates to cover additional open staff position.	\$41,174	12.8%
PAYROLL TAXES + BURDEN	\$110,270	\$98,511	\$11,759	11.9%	Additional expense with addition of new associates.	\$101,026	-\$2,515	-2.5%	Savings due to 2 site associates not participating in insurance program.	\$9,244	9.2%
NON-STAFF LABOR	\$21,600	\$35,153	-\$13,553	-38.6%	Reduction in non-staff labor due to full office/maint. staff	\$0	\$35,153	---%	Temp service utilized to fill-in while replacement staff identified.	\$35,153	---%
LANDSCAPING	\$73,836	\$70,790	\$3,046	4.3%	Increase in irrigation repairs.	\$70,700	\$90	0.1%	Negligible variance	\$3,136	4.7%
UTILITIES	\$94,359	\$93,918	\$441	0.5%	Slight increase in Trash removal charges due to higher units turns.	\$96,660	-\$2,742	-2.8%	Decrease due to lower vacancy rate, ie. lower vacant utilities than expected	-\$2,301	-2.4%
REDECORATING	\$78,203	\$76,418	\$1,785	2.3%	Increase to account for higher turnover rate anticipated.	\$81,744	-\$5,326	-6.5%	Multiple units were short term rentals and did not require full service	-\$3,541	-4.3%
MAINTENANCE	\$100,785	\$94,468	\$6,317	6.7%	Increase to account for deteriorating electrical, plumbing, and vehicles.	\$82,332	\$12,136	14.7%	Encountered higher than anticipated plumbing and electrical issues, gas prices and vehicle repairs.	\$18,453	22.4%
MARKETING	\$15,290	\$15,398	-\$108	-0.7%	Negligible difference.	\$13,047	\$2,351	18.0%	Variance caused by addition of pay-per referral service, purchase of new flags and signage for leasing office.	\$2,243	17.2%

May 29, 2013

Attachment E to Item 8c
FORA Board Meeting, 7/12/13

Preston Park Budget Memo Attachment C – Highlights of Operating Expenses

<u>Operating Expenses</u>	Proposed FY 2013/ 2014	Estimated Actuals FY 2012/2013	Variance	%	Comments	Approved Budget FY 2012/ 2013	Variance From 2012/2013 Estimated Actuals	%	Comments	2013/2014 Proposed Budget vs. 2012/2013 Approved Budget	%
ADMINISTRATIVE	\$85,423	\$59,907	\$25,516	42.6%	Addition of check scanning equipment and Courtesy Patrol Service	\$57,606	\$2,301	4.0%	Higher than anticipated attorneys fees due to rent collection issues and evictions.	\$27,817	48.3%
INSURANCE	\$194,472	\$190,686	\$3,786	2.0%	Increase in premiums.	\$185,020	\$5,666	3.1%	Increase in premiums.	\$9,452	5.1%
NON-ROUTINE MAINTENANCE	\$72,375	\$53,064	\$19,311	36.4%	Addition of funds for Concrete Grinding throughout community. Other services include one-time gutter cleaning and sealing of oven vents in each home	\$14,000	\$39,064	279%	Difference to account for re-class of Annual Inspection materials from Maintenance category, and used to code exterior rehab projects at 726/728 Landrum, 712/714 Brown, 663 Bailey, and interior repairs at 660 Horn.	\$58,375	417%
TOTAL OPERATING EXPENSES	\$1,483,147	\$1,386,219	\$96,927	7.0%		\$1,280,463	\$105,756	8.3%		\$202,684	15.8%

May 29, 2013

PRESTON PARK - REVISED PHYSICAL NEEDS ASSESSMENT (8 Year Look Forward - Alliance Residential Recommendation)

Updated: 5/29/2013

Project	Detail	Committed Projects	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019 - 2020	2020 - 2021
1410										
Comprehensive Property Inspection (PNA)	Physical Needs Assessment		\$ 74,600							
Carbon Monoxide Detectors		\$	33,060							
Site Lighting Repair / Replacement /Install	*Exterior site upgrades	\$	265,849					\$ 50,000		
Roof	*Replacement	\$	1,311,893			\$ 10,000		\$ 10,000	\$ 10,000	
Exterior Paint	*Full Paint	\$	398,008					\$ 283,200		
Exterior Unit Doors and Windows	*Replacement	\$	1,557,000				\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500
Building Exterior	*Dryrot Repairs	\$	20,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 75,000	\$ 2,000	\$ 2,000
Fence Slat Replacement	Replacement	\$	35,000					\$ 75,000		
Resident Business Center	FF&E	\$	12,000							
Landscape/ Irrigation	*Replacement / Upgrades			\$ 175,000				\$ 200,000		
Leasing Office / Signage	*Upgrades			\$ 115,000						
Playgrounds	*Replacement			\$ 125,000						
Fire Extinguishers	Add Fire Extinguishers to each home	\$	13,000							
Termite Remediation	Termite remediation	\$	50,000							
Building Fascia/Flashing Repairs	Repairs to exterior sheer walls	\$	800,000							
1415										
New Office Computers	Replace existing old computers	\$	2,600				\$ 2,600			
1416										
One Maintenance Truck	Needed for hauling etc...	\$	14,000			\$ 15,000				\$ 15,000
1420										
Seal Coat Streets		\$	155,787				\$ 155,787			
1425										
Dishwasher	replacement (assume 10 year life)	\$	10,200	\$ 12,160	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200
Refrigerators	replacement (assume 15 year life)	\$	14,400	\$ 16,800	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650
Range	replacement (assume 15 year life)	\$	16,524	\$ 18,360	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500
Garbage Disposal	replacement (assume 10 year life)	\$	2,345	\$ 3,000	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345
Hot Water Heaters	replacement (assume 15 year life)	\$	16,200	\$ 18,000	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250
Carpet	replacement (assume 5 year life)	\$	38,400	\$ 56,532	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600
Vinyl	replacement (assume 10 year life)	\$	66,300	\$ 73,100	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250
HVAC Furnace	replacement (assume 20 year life)	\$	26,400	\$ 26,400	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300
1430										
Applicable Contruction Management Expenses	Miscellaneous (see * items)	\$	211,965	\$ 48,000	\$ 24,900	\$ -	\$ -	\$ -	\$ 25,992	\$ -
Annual Reserve Expenses (uninflated)		\$	4,187,931	\$ 1,229,952	\$ 643,995	\$ 204,095	\$ 229,095	\$ 364,982	\$ 923,787	\$ 206,595
Inflation Factor			0.00%	2.00%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%
Annual Reserve Expenses (Inflated)		\$	4,187,931	\$ 1,254,551	\$ 660,095	\$ 209,197	\$ 234,822	\$ 374,107	\$ 946,882	\$ 211,760
Annual Infusion of Replacement Reserve Funds			\$ 1,239,000	\$ 663,750	\$ 442,500	\$ 442,500	\$ 442,500	\$ 442,500	\$ 442,500	\$ 442,500
Reserve Fund BEFORE Annual Expenses and BEFORE Annual Infusion			\$ 52,213	\$ 700,414	\$ 482,819	\$ 716,122	\$ 923,799	\$ 992,193	\$ 487,811	\$ 718,551
Reserve Fund AFTER Annual Expenses and AFTER Annual Infusion			\$ 36,664	\$ 40,319	\$ 273,622	\$ 481,299	\$ 549,693	\$ 45,311	\$ 276,051	\$ 481,166

Designates projected starting balance of Replacement Reserve Fund

Holdbacks and Reserve Summary	\$/Unit	\$/Unit/Year (Average)
Physical Needs Over the Term:	\$ 8,316,730	\$ 2,937

Note: The CIP above represents projects known to Management as current or pending necessary improvements. It does not represent unknown repairs which may present themselves as the property continues to age such as electrical, plumbing or structural occurrences.

Attachment F to Item 8c
FORA Board Meeting, 7/12/13

Attachment B – Life/Safety Issues

Electrical Issues:

3 incidents have occurred within Preston Park relating to Electrical Issues stemming from ungrounded main panel circuitry at the building site, and overload of power from PG&E power sources. At each instance, the Marina Fire Department, PG&E, and Alliance staff worked in conjunction to restore power to each building site, resulting in minimal inconvenience to residents.

Per community inspection, the grounding rods at each building site have been compromised by age and weatherization causing power overloads to become trapped inside internal circuitry. Additionally, internal sub-panel wiring has been found to be loose or fraying. Bids and approval from FORA staff have been received and this project is set to begin in June 2013.

660 Horn Fire – 2/14/13
677/675 Wahl Incident – 5/6/13
658/650 Bailey – 5/24/13

Attic Inspections/Termite Remediation:

In January 2013 an attic inspection of a home in Abrams Park prompted management to conduct Attic Inspections in Preston Park. Inspections revealed roof leaks at multiple locations, and termite activity within a limited number of homes. Fire walls were found to be intact. Roof repairs are scheduled to be made under the approved FY 2012/2013 Capital Project schedule, and Termite Remediation bids have been received and included in the proposed 2013/2014 budget for possible completion in July 2013.

Oven Vents:

In August 2012, during the non-routine cleaning of a kitchen oven vent by a vendor service, it was discovered that the oven vent was not sealed properly. This prompted staff to immediately inspect 10 other homes of varying floor plans within the community, each with similar results. Documentation was received from the vendor service indicating that within 1 years' time, all of the oven vents within the community would need to be resealed. This service is listed in the budget as a Non-Routine item to be completed in July 2013.

Fire Extinguishers:

During a routine service request regarding a deceased rodent within the interior walls of a home, a fire started in the water heater closet. Staff promptly shut off gas service and began to douse the fire with water from a garden hose. Consideration was then given to adding a one-time use fire extinguisher to each home. Pricing has been obtained, as has input from the Marina Police Department. This service is listed in the budget as a Capital item for installation in each home beginning in July 2013.

Exterior Fascia/Flashing Repairs:

After complaints were received by a resident regarding a musty smell in the stairwell, an inspection revealed that the exterior stucco and shear wall had been compromised. Upon further investigation, the neighboring home was also found to be experiencing the same issue. The cause of the water intrusion was determined to be improperly designed/installed flashing at the point that the garage roof meets the exterior wall of the stairwell. The exterior of the building was removed, rotted wood and compromised

installation replaced, and new watertight papering installed within 2 days. After several trial and error attempts, an exterior repair was made and tested to ensure water intrusion was remedied. Three additional homes were identified with the same flaw and repairs made to the exterior of those buildings. A test sample of 30 additional homes revealed 28 addresses where this design flaw is causing moisture intrusion. Estimated costs for community-wide repairs have been included in the 2013/2014 Capital projects budget. Repairs will need to be completed before painting can be performed.




Marina Fire Department

MEMORANDUM

DATE: May 30, 2013

TO: Corey Williams, Business Manager

CC: Craig Oliver, Chief Building Official
File

FROM: Harald Kelley, Fire Chief 

SUBJECT: Abrams Park and Preston Park Code Compliance Assessment

Over the last several years the fire department has had calls for service that involved electrical issues and code compliance issues in both Abrams Park and Preston Park. Alliance Management has been notified at the time of the incidents and responded in a timely manner assisting both the fire department and the tenants involved.

I strongly support the Community Code Compliance Assessment that is being proposed by the Alliance Communities Inc. management in their FY 2013/2014 budget for Preston Park. At the regular meeting of the Marina City Council held on May 21, 2013, the Marina City Council approved Resolution No. 2013-61 approving funding for compliance safety review (Physical Needs Assessment) and inspections; provided funding for inspections and related proposals for attic repairs and repairs to electrical grounding as part of the Abrams Park Community Code Compliance Assessment. I strongly encourage the FOR A Board to do the same for Preston Park.

The proposed Assessment would assist Alliance management in prioritizing repairs and also help in indentifying code compliance issues. The Assessment is a proactive action in mitigating an emergency verses waiting until an incident occurs.

If you have any question, please contact me at (831) 884-1210 between the hours of 8:00 am and 5:00 pm Monday through Friday.

COMMUNITY DESCRIPTION	
Street address	682 Wahl Court
City, State, Zip Code	Marina, CA 93933
Telephone	(831) 384-0119
Construction type	Mixed use
Year built	1987
Owner	Fort Ord Reuse Authority
Management	Alliance Residential Company
Total units	352
Physical occupancy	99%

COMMUNITY RATINGS	
Location	B
Visibility	C
Curb appeal	B
Condition	C
Interiors	C
Amenities	D

PAYER OF UTILITIES	
Gas	Resident
Electric	Resident
Water	Res/Meter
Sewer	Resident
Trash	Resident
Cable TV	N A
Internet	Resident
Pest control	Community
Valet trash	N A

FEES, DEPOSITS, AND LEASE TERMS	
Application fee	\$44
Lease terms	MTM and 6 months
Short term premium	N/A
Refundable security deposit	Equal to one months' rent
Administrative fee	\$0
Non refundable pet deposit	N/A
Pet deposit	\$250 covers up to 2 pets
Pet rent	\$0

CONCESSIONS
No concessions. Community is partially Below Market Rent and Section 8.

COMMENTS
All units have an attached garage, in-home laundry room, and gated backyard. \$25 fee for end units.

APARTMENT AMENITIES			
Accent color walls	No	Paneled doors	No
Air conditioning	No	Patio/Balcony	Yes
Appliance color	White	Refrigerator	Frost-Free
Cable TV	No	Roman tubs	No
Ceiling	No	Security system	No
Ceiling fans	No	Self cleaning oven	No
Computer desk	No	Separate shower	No
Crown molding	No	Upgraded counters	No
Fireplace	No	Upgraded flooring	Plush Cpt
Icemaker	No	Upgraded lighting	No
Kitchen pantry	Yes	Vaulted ceiling	No
Linen closets	Yes	Washer/Dryer	No
Microwave	No	W/D connection	Full size
Outside storage	No	Window coverings	1" mini

COMMUNITY AMENITIES			
Access gates	No	Free DVD/movie library	No
Addl rentable storage	No	Laundry room	No
Attached garages	Yes	Movie theater	No
Barbecue grills	No	Parking structure	No
Basketball court	Yes	Pet park	No
Billiard	No	Playground	Yes
Business center	No	Pools	No
Club house	Yes	Racquetball	No
Concierge services	No	Reserved parking	No
Conference room	No	Sauna/Jacuzzi	No
Covered parking	No	Tennis court	No
Detached garages	No	Volleyball	No
Elevators	No	Water features	No
Fitness center	No	WiFi	No

FLOORPLANS AND RENTS

Floorplan Type	Unit Description	# of Units	% of Units	Square Feet	Rent per Unit				Concessions		Effective Net Rents	
					Low	High	Average	Avg PSF	Mos Free	Term	Average	Avg PSF
2X1		10	3%	1,150	\$1,610	\$1,610	\$1,610	\$1.40	0.00	0.00	\$1,610	\$1.40
2X1.5		80	23%	1,278	\$1,665	\$1,690	\$1,677	\$1.31	0.00	0.00	\$1,677	\$1.31
2X1.5	1 car attached Renovated	2	1%	1,278	\$2,100	\$2,100	\$2,100	\$1.64	0.00	0.00	\$2,100	\$1.64
2X1.5	1 car attached Renovated	135	38%	1,323	\$1,690	\$1,715	\$1,702	\$1.29	0.00	0.00	\$1,702	\$1.29
3X2.5		124	35%	1,572	\$1,985	\$2,010	\$1,997	\$1.27	0.00	0.00	\$1,997	\$1.27
3X2.5	1 car attached Renovated	1	0%	1,572	\$2,100	\$2,100	\$2,100	\$1.34	0.00	0.00	\$2,100	\$1.34
Total / Weighted Average		352	100%	1,396	\$1,789	\$1,814	\$1,801	\$1.29	0.00	0.00	\$1,801	\$1.29

Attachment D - Unit Matrix

Bedrooms	Bathrooms	Square footage	Average Rent per unit	Utility costs*			Total Utilities	Total Rent including utilities	Total Rent per square foot BEFORE rent increase	Total Rent per square foot after 2.4% increase	Total Rent per square foot AFTER rent increase	Market Survey Data				Abrams Park rent per square foot not including utilities
				Water	Sewer	Trash						Sunbay Suites rent per square foot	Marina Square rent per square foot	Marina del Sol rent per square foot	Shadow Market rent per square foot	
2	1	1150	\$1,367	\$39	\$26	\$18	\$83	\$1,450	\$1.26	\$1,483.00	\$1.29	\$1.88	\$1.31	\$1.50	\$1.39	\$1.35
2	1.5	1278	\$1,367	\$39	\$26	\$18	\$83	\$1,450	\$1.13	\$1,483.00	\$1.16	N/A	N/A	N/A	\$1.33	N/A
2	1.5	1323	\$1,367	\$39	\$26	\$18	\$83	\$1,450	\$1.10	\$1,483.00	\$1.12	N/A	N/A	N/A	\$1.33	N/A
3	2.5	1572	\$1,664	\$50	\$26	\$18	\$94	\$1,758	\$1.12	\$1,799.50	\$1.14	N/A	N/A	N/A	\$1.19	N/A

* Utility costs for 2 Bedroom Unit derived from 3-person household sample

* Utility costs for 3 Bedroom Unit derived from 4-person household sample

Note that in addition to the rental amounts paid by in-place residents, Preston Park residents pay for Water, Sewer, and Trash services that the majority of the comaprables in the market place pay on behalf of the household. The chart above indicates that in each unit type, Preston Park residents are paying a lower rental amount per square foot of space within the homes (not including garage space).

Households in Abrams Park have not received a rental increase in 3 years and are still averaging roughly \$0.10 cents per square foot higher rental rates than Preston Park households.

Table 2.
2013 Maximum Monthly Rental Rates
Monterey County

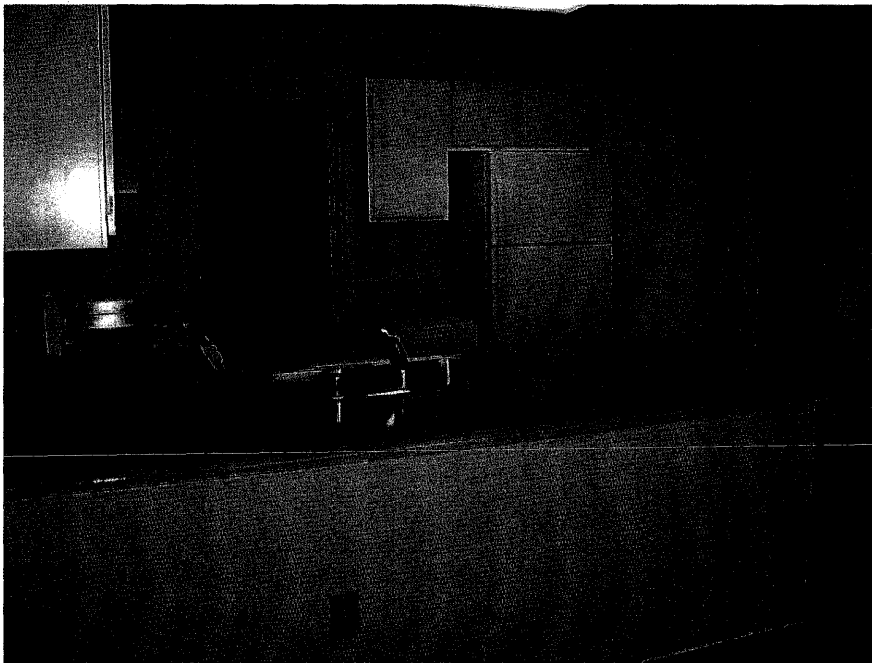
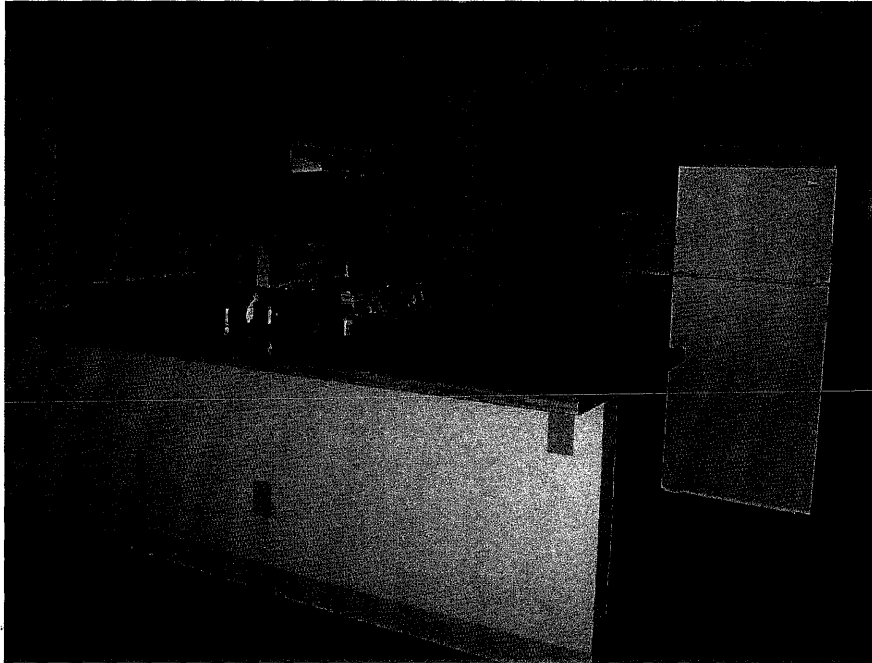
TAX CREDIT PROJECTS				
	Number of Bedrooms in Unit			
	One	Two	Three	Four
Household Size	1.5	3	4.5	6
Very Low Rent (50% of AMI)	\$644	\$773	\$893	\$996
less utilities (2)	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$562	\$677	\$790	\$876
Low Rent (60% of AMI)	\$773	\$928	\$1,072	\$1,196
less utilities	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$691	\$832	\$969	\$1,076
Moderate Rent (110% of AMI)	\$1,417	\$1,701	\$1,965	\$2,192
less utilities	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$1,335	\$1,605	\$1,862	\$2,072
HSC 50053 REGULATIONS FOR PROJECTS W/O TAX CREDITS				
	Number of Bedrooms in Unit			
	One	Two	Three	Four
Household Size	2	3	4	5
Very Low Rent (50% of AMI)	\$687	\$773	\$859	\$928
less utilities (2)	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$605	\$677	\$756	\$808
Low Rent (60% of AMI)	\$824	\$928	\$1,031	\$1,113
less utilities	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$742	\$832	\$928	\$993
Moderate Rent (110% of AMI)	\$1,511	\$1,701	\$1,889	\$2,041
less utilities	-\$82	-\$96	-\$103	-\$120
Monthly Rent net of utilities	\$1,429	\$1,605	\$1,786	\$1,921
(1) Calculations reflect formula per Section 50053 of the California Health and Safety Code.				
(2) Utility allowance assumes gas heat, gas cooking, other electric, gas water heating, water, sewer and trash.				

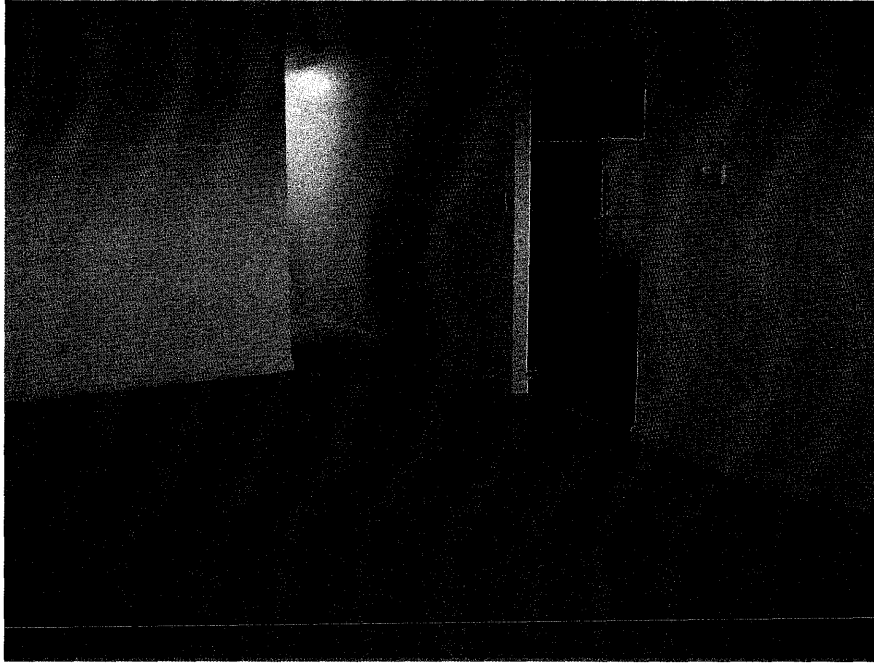
Sources: Median incomes from California Department of Housing and Community Development, 2012. Utility allowances from Housing Authority of the County of Monterey, Effective January 1, 2013 (standard non-energy efficient utility allowance for apts. and townhouses).

Attachment G – Amenity Analysis

Attachment K to Item 8c
FORA Board Meeting, 7/12/13

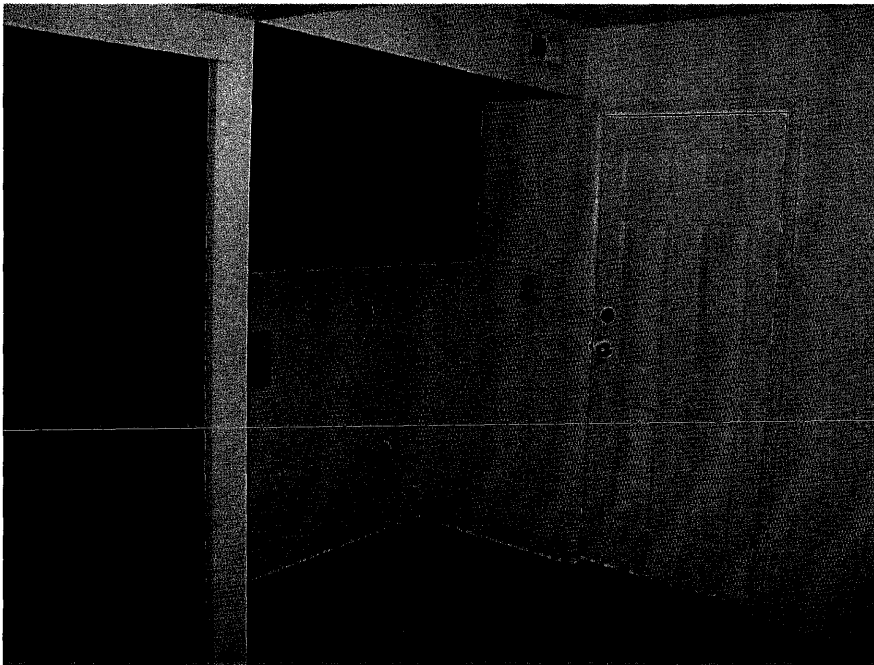
Preston Park residents are treated to Large Eat-In Kitchens with Refrigerators, Dishwashers, and a Gas Stove/Oven. Deep Double Sinks with Garbage Disposal are standard. A dining area roughly the same size as the kitchen is directly adjacent to the kitchen.



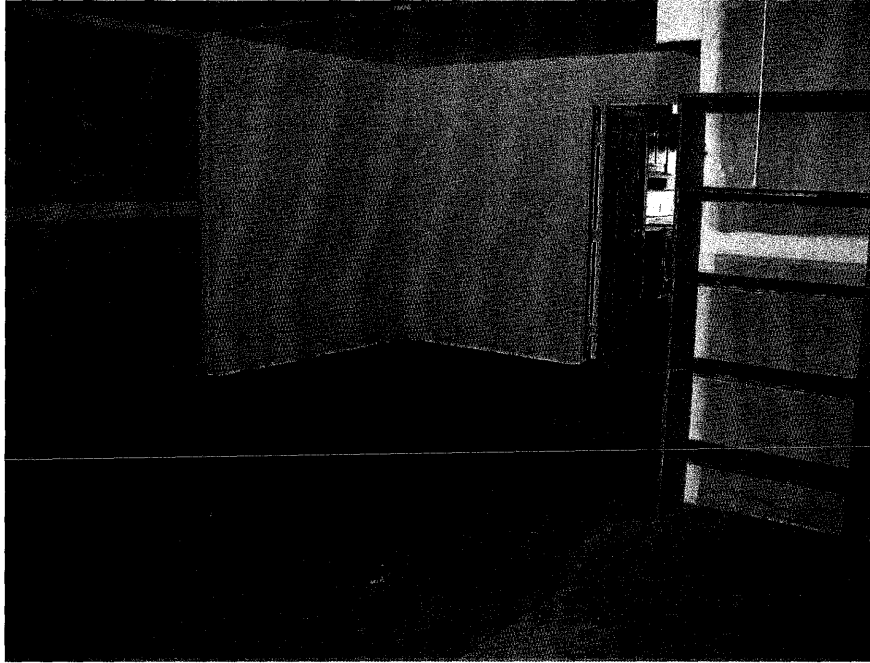


Preston Park offers oversized living spaces. The living room in most homes is an estimated 350 square feet. Many homes have newer plush carpeting in the living room areas, and wood style linoleum in the kitchen, dining, laundry room and bathrooms.

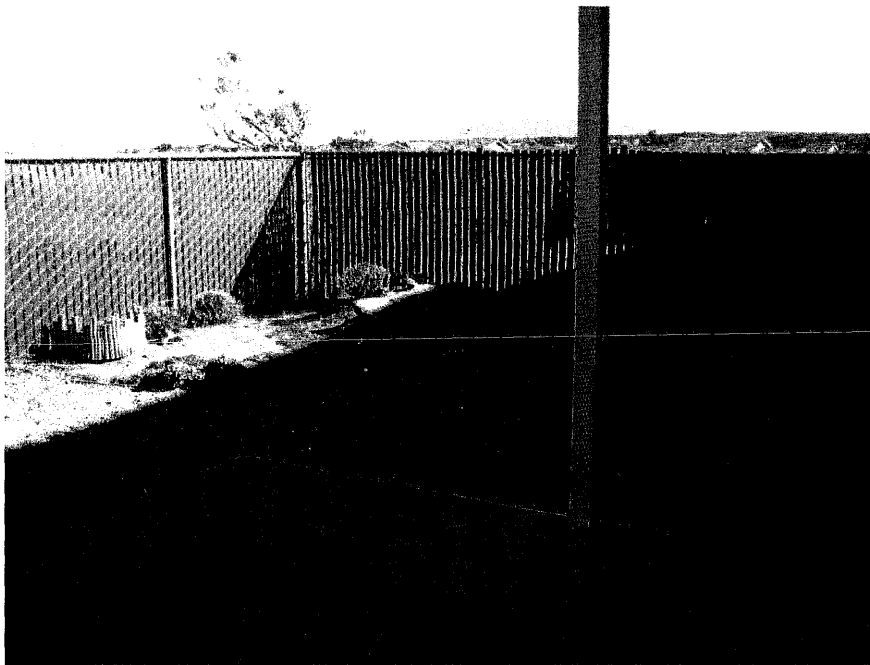
Regardless of Floor Plan, each home in Preston Park has an in-home laundry room with space for full sized washer and dryers, in addition to an added pantry closet and/or shelving unit.



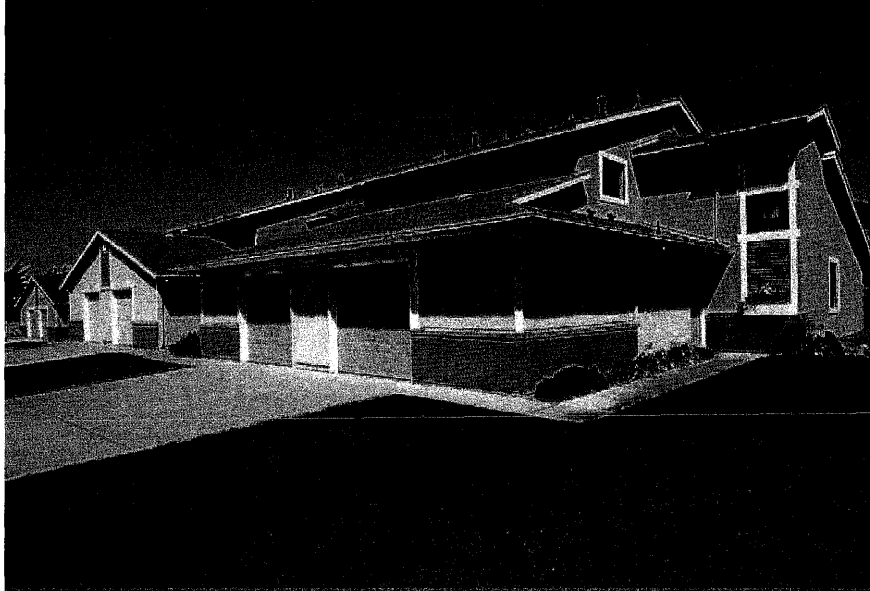
Additional storage space is located within each Single-car direct access attached garage. Storage shelving and an additional raised pad area add an abundance of extra storage area to this space.



Each home comes with an attached gated back yard. A covered patio area is included, as well as outside electrical outlets and a back yard water spigot for easy gardening.



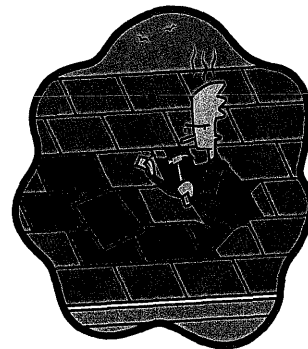
Preston Park boasts spacious front yard and open areas, and townhome style living to the majority of residents. Every residence has at least one dedicated driveway parking space in addition to their garage space. Multiple homes within the community have 2 or 3 car length driveways.



Exterior landscaping is maintained by the property, and multiple outdoor basketball and playground facilities are located within the community.

Our newly updated Community Center is available for all residents to utilize for private parties, free of cost.

We are a Pet Friendly Community and allow cats and dogs up to 50 pounds (Breed Restriction apply) with a maximum of 2 pets per household. Our Maintenance Team is available for emergency requests 24-hours a day.



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

Subject: Base Reuse Plan (BRP) Post-Reassessment Follow-Up

Meeting Date: July 12, 2013

Agenda Number: 8d

INFORMATION/ACTION

RECOMMENDATION:

- i. Receive a report from Post-Reassessment Advisory Committee (PRAC) INFORMATION
- ii. Consider PRAC "Category IV" approach recommendations ACTION

BACKGROUND

The PRAC has met six times to discuss how to implement the corrections and edits in Category I and to identify methods for the board to implement policies in Category IV of the 2012 Base Reuse Plan (BRP) Reassessment Report.

DISCUSSION

Recognizing the importance of implementing the BRP as soon as possible, the PRAC has identified two near-term recommendations that could accelerate FORA's progress toward that goal.

1. Conduct a colloquium hosted by CSUMB to explore the following topics:
 - Discuss how to identify and attract economic development to the former Fort Ord.
 - Discuss how to complete the BRP design guidelines.
 - Discuss how to complete blight removal.
 - Discuss how to emphasize the National Monument designation in order to serve as an immediate catalyst for tourism and other economic development.
2. Authorize PRAC to coordinate with CSUMB and FORA staff to develop the colloquium program for the Fall of 2013.

FISCAL IMPACT

Reviewed by FORA Controller _____

Staff time for this item is included in the approved FORA budget. Future costs associated with a post-reassessment colloquium/series would be presented to the Board for authorization.

COORDINATION

Administrative Committee, Executive Committee, PRAC, CONCUR, Inc.

Prepared by _____ Approved by _____

Jonathan Garcia

Michael A. Houlemard, Jr.

Placeholder for Item 8e

FORA Initiatives Status Report and Recommendations

- i. California Central Coast Veterans Cemetery, Open Space Preservation, and Economic Revitalization Initiative
 - ii. Protect Fort Ord Open Space Initiative
-

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

FORT ORD REUSE AUTHORITY BOARD REPORT
EXECUTIVE OFFICER'S REPORT

Subject:	Administrative Consistency Determination For Entitlement: City of Seaside's Chartwell School Kiln and Clay Storage Shed	
Meeting Date:	July 12, 2013	INFORMATION/ACTION
Agenda Number:	10e	

RECOMMENDATION(S):

1. Receive a report from the Executive Officer regarding the City of Seaside's Chartwell School Kiln and Clay Storage Shed Project Administrative Consistency Determination per Section 8.02.030 of the Fort Ord Reuse Authority ("FORA") Master Resolution; **OR**
2. Conduct a hearing and consider the Executive Officer's concurrence in Seaside's development entitlement consistency determination if:
 - a. An appeal is received within the 10-day (Master Resolution Section 8.01.050) or 15-day (Master Resolution Section 8.03.070) appeal response terms; **OR**
 - b. A Board member requests that a hearing be conducted on this project within the 35-day response term (Master Resolution Section 8.01.040).

BACKGROUND:

Seaside submitted the Chartwell School Kiln and Clay Storage Shed project ("project") for consistency determination on June 18, 2013. The project is a 282-square-foot storage building on the campus of Chartwell School, a private school (elementary through high school curriculum) located at 2511 Numa Watson Road. The proposed storage building's use is related to the school's art program. The structure would be placed near the basketball courts on the southwest side of the school; please refer to the plan set and other project-related information in the City of Seaside's submittal package (**Attachment A**). Per the City's zoning regulations for an institutional land use in the Public Institutional zone, the Seaside Planning Commission granted a use permit for the project on May 22, 2013.

Seaside requested Development Entitlement Consistency review of the project in accordance with section 8.02.030 of the FORA Master Resolution, the process for which does not require Board approval. Under state law, as codified in FORA's Master Resolution, consistency determinations for legislative land use decisions (plan level documents such as General Plans, Zoning Codes, Specific Plans, Redevelopment Plans, etc.) differ from development entitlement consistency determinations for projects under approved General Plan and Zoning designations. By law, legislative land use decisions must be scheduled for FORA Board review under strict timeframes. Development entitlements are treated differently by the law; unless appealed to the FORA Board, they are reviewed by staff to determine consistency with the Base Reuse Plan ("BRP"). The legislative framers wrote the law this way in recognition of the high volume of development entitlements expected to be processed by member jurisdictions.

DISCUSSION:

Rationale for consistency determinations: FORA staff finds that there are several defensible rationales for making an affirmative consistency determination. Sometimes additional information is provided to buttress those conclusions. The BRP is a framework for

development, not a precise plan to be mirrored. However, there are thresholds set in the resource-constrained BRP that may not be exceeded without other actions, most notably 6,160 new residential housing units and a finite water allocation. The project's conformance to each of the the specific consistency criteria is discussed below.

DEVELOPMENT ENTITLEMENT CONSISTENCY (FROM SECTION 8.02.030 OF THE FORA MASTER RESOLUTION)

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board shall withhold a finding of consistency for any development entitlement that:

(1) Provides an intensity of land uses, which is more intense than that provided for in the applicable legislative land use decisions, which the Authority Board has found consistent with the Reuse Plan;

The Chartwell campus is developed with two buildings and two portable modular units which are used to provide the day-to-day school related activities and administrative functions. The project would be located on a previously graded level ground, immediately adjacent to an open space recreation area (Basketball Courts) at the southwest corner of the Chartwell School campus. There are no significant site or infrastructure improvements planned as part of the proposed project, other than physical connections of the shed to the existing school utilities (e.g. water electricity, gas).

The Seaside General Plan Land Use Designation for the project site is PI (Public/Institutional). The land use classification is intended to provide for land uses that are under public or institutional ownership and/or have public benefit. The proposed project consists of an auxiliary shed to augment the existing school related arts and craft curriculum occurring within the boundaries of the existing campus. As such, the project is not more intense than what is permitted under the current land use designation. The location, size, and operating characteristics of the project would be compatible with the character of the site and the existing land use. The project design will incorporate "Green" building techniques compatible with the Platinum LEED Certification that was awarded to Chartwell School by the U.S Green Building Council for its main school campus.

(2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;

The proposed location, size, and operating characteristics of the project would be compatible with the character of the site and the land uses and development intended for the surrounding area by the Seaside General Plan.

(3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution;

The proposed project is the addition of an auxiliary storage building to the site. The project will not substantially alter the site's existing use. The City of Seaside has taken appropriate measures to ensure that the project would not adversely affect the surrounding open space areas that border the school's campus and would be compatible with the architectural design

and operating characteristics of the existing school, as further discussed in the responses to items #4-10 below.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;

The project does not conflict with, and is not incompatible with, the open space, recreational, or habitat management areas within FORA's authority. The project site will be located at the southwestern edge of the main campus adjacent to an existing basketball court/handball recreational area. An open space, oak woodland area that abuts the school's campus to the south is separated from the school campus by a retaining wall with a chain link fence on top of the retaining wall. No portion of the project will negatively affect or encroach into the open space area and all storm water generated from the project will be retained on the Chartwell School campus.

(5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision;

Prior to the issuance of a Building Permit, Chartwell School will be required to pay its fair share of the basewide costs through the CFD special tax that will accrue to FORA for construction of the proposed 282-square-foot storage building.

(6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan;

The Fort Ord Habitat Management Plan ("HMP") designates certain parcels for "Development," in order to allow economic recovery through development while promoting preservation, enhancement, and restoration of special status plant and animal species in designated habitats. The project only affects lands that are located within areas designated for "Development" under the HMP. Lands designated for "Development" have no management restrictions placed upon them as a result of the HMP. The project would not conflict with implementation of the Fort Ord HMP.

(7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board; and

The project is outside of the Highway 1 Scenic Corridor.

(8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

The jobs/housing balance requirements are not applicable to the project. The project consists of constructing an auxiliary building to supplement the school's existing arts and crafts educational programs. The educational programs will serve to provide a public benefit in terms of core educational needs/services and skills.

Additional Considerations

(9) Adoption of required programs from section 8.02.040 of the FORA Master Resolution

The project consists of constructing an auxiliary building to supplement the school's existing arts and crafts educational programs. The proposed educational use of the project would

conform to the built environment of the school, the BRP Development Resource Management Plan, and the FORA Master Resolution.

(10) Is not consistent with FORA's prevailing wage policy, section 3.03.090 of the FORA Master Resolution.

This policy is limited to "First Generation Construction" work, which is defined in §1.01.050 of the Master Resolution. In addition to the exceptions enumerated in the definition of Development Entitlements found in §1.01.050 of the Master Resolution, this policy does not apply to:

- (1) Construction work performed by the Authority or a member jurisdiction with its own workforce;
- (2) Construction improvements following issuance of an occupancy permit;
- (3) Construction of facilities to be used for eleemosynary non-commercial purposes when owned in fee by a non-profit organization operating under §501(c)(3) of the Internal Revenue Code.

The prevailing wage policy would not apply to the project based on fact that the project is for a subsequent addition to the school. "First Generation Construction" related to the development of the main campus's existing buildings. Sub-categories (2) and (3) listed above also appear to apply to the project.

Conclusion: Based on the preceding analysis, the Executive Officer concurs with the City of Seaside that the project is consistent with the BRP and the FORA Master Resolution. Community Facilities District ("CFD") fees for this project will be required at the FORA CFD Special Tax rate for the "Office" category.

FISCAL IMPACT:

Reviewed by FORA Controller _____

This consistency review is regulatory in nature and should have no direct fiscal, administrative, or operational impact. Staff time for this item is included in the approved FORA budget. The project is subject to the FORA CFD fee.

COORDINATION:

Seaside staff, Executive Committee, Administrative Committee.

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.



RESOURCE MANAGEMENT SERVICES

440 Harcourt Avenue
Seaside, CA 93955

Telephone (831) 899-6737
FAX (831) 899-6211

June 19, 2013

Michael A. Houlemard Jr., Executive Director
Fort Ord Reuse Authority
920 2nd Avenue, Ste: A
Marina, CA 93933

RE: Request for Development Entitlement Consistency Determination for the Chartwell School Kiln and Clay Storage Shed Project, 2511 Numa Watson Road, Seaside, CA.

Dear Mr. Houlemard:

The City of Seaside (City) requests that the Fort Ord Reuse Authority (FORA) adopt a finding that the proposed Kiln and Clay Storage Shed project approved by the City of Seaside for Chartwell School in accordance with Use Permit Application No. UP-13-02 is consistent with the Development Entitlement process of the Fort Ord Base Reuse Plan (BRP).

The attached submittal package was prepared in accordance with the instructions received from FORA staff for a Development Entitlement Consistency Determination. The submittal package includes the following documents for FORA's review and determination of consistency for the proposed project:

1. Development Entitlement Consistency Checklist from Section 8.02.030 of the FORA Master Resolution; and
2. May 22, 2013 Seaside Planning Commission Staff Report (Use Permit Application No. UP-13-02); and
3. Legal Notice published in the Monterey Weekly on Thursday, May 9, 2013 for the May 22, 2013 Public Hearing; and
4. Seaside Planning Commission Resolution No. 13-09 (Use Permit Application No. UP-13-02); and
5. Project Plans for the Chartwell School Kiln and Clay Storage Shed project
6. Notice of Exemption from the California Environmental Quality Act

If you have any questions or require additional information, please do not hesitate to contact me at (831) 899-6726 or rmedina@ci.seaside.ca.us.

Sincerely,

A handwritten signature in cursive script that reads "Rick Medina".

Rick Medina
Senior Planner

CC: John Dunn, City Manager
Diana Ingersoll, P.E., Deputy City Manager – Resource Management Services
Lisa Brinton, Community and Economic Development Services Manager

CHARTWELL SCHOOL KILN-CLAY STORAGE SHED

DEVELOPMENT ENTITLEMENT CONSISTENCY FROM SECTION 8.02.030 OF THE FORA MASTER RESOLUTION

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board shall withhold a finding of consistency for any development entitlement that:

(1) Provides an intensity of land uses, which is more intense than that provided for in the applicable legislative land use decisions, which the Authority Board has found consistent with the Reuse Plan;

The Chartwell School Kiln-Clay Storage Shed project is located on the campus of Chartwell School in Seaside at 2511 Numa Watson Road. The subject parcel is approximately 28 acres with only a portion of the parcel developed as the existing Chartwell School campus and the remaining portion of the site vegetated with dense tree canopy (see Aerial Images as Exhibit C of project staff report). Chartwell School is a private school serving grades 1-8 (Elementary/Middle School) and 9-12 (High School). The campus is developed with two buildings and two portable modular units which are used to provide the day-to-day school related activities and administrative functions. The proposed kiln and clay storage shed would be located on a previously graded level ground, immediately adjacent to an open space recreation area (Basketball Courts) at the southwest corner of the Chartwell School campus. There are no significant site or infrastructure improvements planned as part of the proposed project, other than physical connections of the shed to the existing school utilities (e.g. water electricity, gas).

The Seaside General Plan Land Use Designation for the project site is PI (Public/Institutional). The land use classification is intended to provide for land uses that are under public or institutional ownership and/or have public benefit. The proposed project will consist of an auxiliary shed to augment the existing school related arts and craft curriculum occurring within the boundaries of the existing campus and, as such, is not more intense than what is permitted under the current land use designation. Furthermore, the location, size, and operating characteristics of the project would be compatible with the character of the site and the existing land use. The project design will also incorporate "Green" building techniques that would be compatible with the Platinum LEED Certification that was awarded to Chartwell School by the U.S Green Building Council for its main school campus. The proposed project is consistent with the following General Plan Goal and Policy of the City of Seaside:

Land Use Element

Goal LU-11: Cooperate with local school districts and other educational organizations to ensure that a level of public education is provided that meets the community's educational needs

Policy LU-11.1: Consider impacts of proposed projects on school enrollment and facilities.

Evidence: Approval of a kiln/clay storage shed on the Chartwell School campus would provide for enhanced and expanded art related activities and programs and would be consistent with the core educational standards of Chartwell School.

(2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;

The proposed the location, size, and operating characteristics of the Chartwell Kiln and Clay Storage Shed project would be compatible with the character of the site and the land uses and development intended for the surrounding area by the Seaside General Plan. The project design will incorporate Green strategies that are consistent with the existing LEED Platinum Certification that the existing main campus currently holds.

(3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution;

The City of Seaside has taken the appropriate measures to ensure that the Chartwell School Kiln and Clay Storage Shed project would not negatively and/or adversely affect the surrounding open space areas that border the school's campus and would be compatible with the architectural design and operating characteristics of the existing school as discussed in the responses to #4-#10 of the Development Entitlement Consistency checklist.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;

The Chartwell School Kiln-Clay Storage Shed project does not conflict and is not incompatible with the open space, recreational, or habitat management areas within FORA's authority. The project site will be located at the southwestern edge of the main campus adjacent to an existing basketball court/handball recreational area. An open space, oak woodland area that abuts the school's campus to the south is separated from the school campus by a retaining wall with a chain link fence on top of the retaining wall. No portion of the project will negatively affect or encroach into the open space area and all storm water generated from the project will be retained on the Chartwell School campus.

(5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision;

Prior to the issuance of a Building Permit, Chartwell School will be required to pay its fair share of the base wide costs through the developer fee that will accrue to FORA for the construction of the proposed 282 square-foot Kiln-Clay Storage Shed.

(6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan;

The Fort Ord Habitat Management Plan (“HMP”) designates certain parcels for “Development,” in order to allow economic recovery through development while promoting preservation, enhancement, and restoration of special status plant and animal species in designated habitats. The Chartwell School Kiln-Clay Storage Shed project only affects lands that are located within areas designated for “Development” under the HMP. Lands designated for “Development” have no management restrictions placed upon them as a result of the HMP. The Chartwell School Kiln-Clay Storage Shed project would not conflict with implementation of the Fort Ord HMP.

(7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board; and

The project is outside of the Highway 1 Scenic Corridor.

(8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

The jobs/housing balance requirements would not be applicable to the project. The proposed Chartwell School Kiln-Clay Storage Shed project will consist of constructing an auxiliary building to supplement the schools existing arts and crafts educational programs. The educational programs will serve to provide a public benefit in terms of core educational needs/services and skills sought by employers.

Additional Considerations:

(9) Adoption of required programs from section 8.02.040 of the FORA Master Resolution.

The Chartwell School Kiln-Clay Storage Shed project will consist of constructing an auxiliary building to supplement the schools existing arts and crafts educational programs. The proposed educational use of the project would conform to the as-built environment of the school, the Development Resource Management Plan, and FORA Master Resolution.

(10) Is not consistent with FORA's prevailing wage policy, section 3.03.090 of the FORA Master Resolution.

This policy is limited to "First Generation Construction" work, which is defined in §1.01.050 of this Master Resolution. In addition to the exceptions enumerated in the definition of Development Entitlements found in §1.01.050 of this Master Resolution, this policy does not apply to:

- (1) Construction work performed by the Authority or a member jurisdiction with its own workforce;
- (2) Construction improvements following issuance of an occupancy permit;
- (3) Construction of facilities to be used for eleemosynary non-commercial purposes when owned in fee by a non-profit organization operating under §501(c)(3) of the Internal Revenue Code.

The prevailing wage policy would not apply to the project based on fact that the project is for a subsequent addition to the school. The "First Generation Construction" related to the development of the main campus which is comprised of two buildings. Sub-categories (1), (2), (3) listed above would also apply to the project.

**CITY OF SEASIDE
PLANNING COMMISSION**

AGENDA ITEM OVERVIEW

MEETING DATE: May 22, 2013
FIRST HEARING DATE: May 22 2013 **CONTINUED FROM:** N/A
DATE DEEMED COMPLETE: April 12, 2013
STREAMLINE PERMITTING ACT DEADLINE: June 12, 2013
APPLICATION NO.: UP-13-02
OWNERS / APPLICANTS: Chartwell School (Doug Atkins, Executive Director)
PROPERTY ADDRESS: 2511 Numa Watson Road
ASSESSOR'S PARCEL NUMBER: 031-151-022
ZONING CLASSIFICATION: PI (Public/Institutional)
GENERAL PLAN DESIGNATION: PI (Public/Institutional)
ENVIRONMENTAL DETERMINATION: Class 3 Categorical Exemption, Section 15303 (New Construction or Conversion of Small Structures)
FLAGGED AND STAKED: N/A

PURPOSE:

The purpose of this item is to consider a Use Permit application for the construction of a 282 square foot kiln/clay storage building on the existing campus of the Chartwell School on the former Fort Ord Army Base.

ISSUES:

- 1) None

OPTIONS:

- 1) Approve Use Permit Application No. UP-13-02 with the findings, evidence and conditions of approval provided as Exhibit A.
- 2) Direct staff to prepare findings and evidence for the denial of the project.

STAFF RECOMMENDATION:

Approve Use Permit Application No. UP-13-02 to allow the construction of a 240 square foot kiln/clay storage building on the existing campus of the Chartwell School.

EXHIBITS:

- A) Draft Resolution No. 13-XX
Attachment 1: Project Plans
- B) Location Map
- C) Aerial Map
- D) Site Photographs

STAFF CONTACT: Rick Medina, Senior Planner (831) 899-6736

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CITY OF SEASIDE
PLANNING COMMISSION
STAFF REPORT

TO: Planning Commission

FROM: Diana Ingersoll, Deputy City Manager – Resource Management Services
Lisa Brinton, Community and Economic Development Services Manager

BY: Rick Medina, Senior Planner

DATE: May 22, 2013

ITEM: Use Permit Application No. UP-13-02. Chartwell School (Property Owner) and Jerome King (Applicant - Architect) are requesting approval of a Use Permit for the construction of a 282 square foot kiln/clay storage room on the Chartwell School campus at 2511 Numa Watson Road, located in the PI (Public/Institutional) Zoning District.

PURPOSE

The purpose of this item is to consider a Use Permit application for the construction of a 282 square foot kiln and clay storage building on the Chartwell School campus that will be used to facilitate an instructional art program for the school.

RECOMMENDATION

Staff recommends approval of Use Permit Application No. UP-13-02, subject to the findings, evidence and conditions of approval in the draft resolution provided as Exhibit A.

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act pursuant to a Class 3, Section 15303 (New Construction or Conversion of Small Structures) categorical exemption. Class 3 exemptions consist of construction and location of limited numbers of new, small facilities or structures, including structures not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area.

Evidence: The proposed structures would be a total of approximately 240 square feet in floor area, less than the maximum structure floor area of 2,500 square feet as defined under this exemption. The proposed structure would also involve less than significant amounts of hazardous substances as the structures are proposed to be used as kiln and clay storage room that would be used for art instructional activities.

SITE LOCATION AND DESCRIPTION

The subject parcel is approximately 28 acres with only a portion of the parcel developed as the existing Chartwell School campus and the remaining portion of the site vegetated with dense tree canopy (see Aerial Images as Exhibit C). The proposed portable building would be located on previously graded level ground, immediately adjacent to an open space recreation area (Basketball Courts) on the southwest corner of the Chartwell School campus. There are no significant site or infrastructure improvements planned as part of the proposed project, other than physical connections of the building to existing school utilities.

Surrounding land uses are shown on Figure 1 (right), including the Marshall Elementary School to the west, military residential community to the north and undeveloped former Ft. Ord land to the east and south (See also Location Map as Exhibit B).

Figure 1: Project Site Adjacent Land Uses

NW	N			NE
	Military Residential	Military Residential	Military Residential	
W	Marshall Elementary School	Project Site	Vacant former Ft. Ord land	E
	Vacant former Ft. Ord land	Vacant former Ft. Ord land	Vacant former Ft. Ord land	
SW	S			SE

BACKGROUND

The Chartwell School was approved as a permitted use on July 9, 2003 through the adoption of a Negative Declaration under the California Environmental Quality Act. The original project description in the Negative Declaration anticipated three (3) permanent classroom buildings on the Chartwell School campus. Of three planned classroom buildings, two are currently built. The proposed kiln would serve to enhance and expand art related activities and programs at Chartwell School. The design and construction methods utilized for the campus has received a LEED certification as a “Green Building”.

PROJECT DESCRIPTION

Proposed Use

The proposed kiln and clay storage room would be constructed using a self adhering waterproof membrane. A galvanized “Hog Wire” Vine grille will be affixed to the exterior to allow for planting materials to establish a complete green wall on the side and front elevation of the building. Along the rear east elevation, the kiln will abut an existing eight-foot tall concrete wall which is used for “Hand Ball” recreational activities in the adjoining recreation area. A new eight-foot tall CMU wall would be constructed for the remaining portion of the structure on the east side. A galvanized “Hog Wire” Vine grille will be affixed to the CMU wall to provide a green wall to match the side and front elevations. A CMU wall has been proposed to minimize vibrations from balls bouncing against this side of the structure which may contain shelving for supplies and ceramics. The roof will consist of a low profile design that is described as a “Cool Roof”. The height of the structure will be 8 feet. Four 2x4 aluminum flat panel skylites are proposed to maximize the use of natural light.

Site Access

Access to the project site would occur via existing driveways, parking areas and walkways of the Chartwell School campus.

Parking

Additional parking spaces are not proposed as part of this proposed project. Existing off-street parking is adequate for the existing and future development phases of the School, as approved in 2003, and the proposed project would not increase the required parking spaces for the project site.

FINDINGS AND STAFF ANALYSIS

Use Permit Findings

In accordance with S.M.C. Section 17.26.020(C), an application for an expansion of an educational facility shall be filed through the Use Permit process, and considered by the Planning Commission to determine whether the following findings can be made concerning the proposed project:

- 1) The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Zoning Ordinance and the Municipal Code.**

Zoning Ordinance Conformance

This project is located within the PI (Public/Institutional) Zoning District. The zoning designation is intended to include public and private schools and other public or quasi-public serving uses. The proposed project is consistent with the development standards of the PI Zone under S.M.C. Section 17.26.050 (Special Purpose Zone Site Planning and Building Standards) since the proposed project does not conflict with the City's Public/Institutional Land Use Designation of the Seaside General Plan and Seaside Municipal Code.

- 2) The proposed use is consistent with the General Plan and any applicable specific plan.**

Seaside General Plan Conformance

The Seaside General Plan Land Use Designation for the project site is PI (Public/Institutional). The land use classification is intended to include public and private schools and other public or public-serving uses. According to the Seaside General Plan, the PI land use designation is intended to provide for land uses that are under public or institutional ownership and/or have public benefit. The proposed project would be utilized in conjunction with the previously approved private Chartwell School campus to enhance and expand the schools art related activities and programs. The proposed project is consistent with the following General Plan Goals and Policy.

Land Use Element

Goal LU-11: Cooperate with local school districts and other educational organizations to ensure that a level of public education is provided that meets the community's educational needs

Policy LU-11.1: Consider impacts of proposed projects on school enrollment and facilities.

Evidence: Approval of a kiln/clay storage building on the Chartwell School campus would provide for enhanced and expanded art related activities and programs and would be consistent with the core educational standards of Chartwell School.

- 3) The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and planned future land uses in the vicinity.**

Design

The proposed design of the kiln/clay storage building would be a modern contemporary style with the incorporation of a "Green Wall" using a galvanized wire mesh to enable the building to blend into the open space areas at the edge of the school. The proposed building would also utilize green building principles in the design to be compatible the LEED certified design of the main school campus building.

Location

The proposed building would be located on the existing Chartwell School campus, immediately to the south of the two existing permanent classroom buildings, consistent with the existing outdoor walkway and congregation areas of the Chartwell School.

Size

The proposed building would be approximately eight (8) feet in height with a footprint of approximately 282 square feet. The proposed dimensions of the building are consistent with the existing scale, size, and shape of the existing Chartwell School campus hours.

Operating Characteristics

The proposed building would be used primarily during normal school business hours. Occasional evening use could occur by school faculty or afterschool activities. These operating characteristics are consistent with the existing Chartwell School campus.

- 4) The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.**

The Chartwell School campus is served by existing water, wastewater, and electrical infrastructure and facilities with adequate capacity to serve the proposed project. As condition of approval, the applicant must receive clearance from the applicable public utility agency to permit the connection of standard utilities for the building.

- 5) **Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone district in which the property is located.**

The granting of a use permit for the proposed building would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other existing or future uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare of the City.

CONCLUSION

Based on the analysis, staff recommends approval of Use Permit Application No. UP-13-02. The proposed Use Permit complies with the goals and policies of the Seaside General Plan and applicable requirements of Title 17 of the Seaside Municipal Code.

ATTACHMENTS

- Exhibit A: Draft Resolution No. 13-XX
Attachment 1: Reduced Project Plans
- Exhibit B: Location Map
- Exhibit C: Aerial Images
- Exhibit D: Site Photographs

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RESOLUTION NO. 13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEASIDE, STATE OF CALIFORNIA, APPROVING A USE PERMIT TO GRANT APPROVAL FOR THE CONSTRUCTION OF A KILN/CLAY STORAGE BUILDING ON THE CAMPUS OF CHARTWELL SCHOOL AT 2511 NUMA WATSON ROAD, IN THE PI (PUBLIC/INSTITUTIONAL) ZONING DISTRICT.

WHEREAS, Chartwell School (property owner) and Jerome King (Architect) have applied for a Use Permit to construct a kiln/clay storage building on the Chartwell School campus at 2511 Numa Watson Road, located in the PI (Public/Institutional) Zoning District; and

WHEREAS, the proposed project requires discretionary approval as an institutional land use in the Public Institutional Special Zoning District, and it is the responsibility of the Planning Commission to consider and weigh the merits of the application and public input in relation to the policies, standards and intent of the Seaside General Plan and Seaside Municipal Code; and

WHEREAS, the Seaside Planning Commission considered oral comments and written information concerning the proposed amendment at a duly noticed public hearing at public meeting held on May 22, 2013; and

WHEREAS, the project is a Categorically Exempt, Class 3, Section 15303 meeting the following conditions:

- a) *The proposed structures would total approximately 282 square feet in floor area, less than the maximum structure floor area of 2,500 square feet as defined under this exemption. The proposed structures would also involve less than significant amounts of hazardous substances as the structures are proposed to be built using green building techniques and would be approved for occupancy as an accessory building for the school.*

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission adopts the following findings for Use Permit Application No. UP-13-02

- 1. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Zoning Ordinance and the Municipal Code.**

Evidence: This project is located within the PI (Public/Institutional) Zoning District. The Chartwell School was approved in July of 2003 as a permitted use under the previous 2003 Seaside Zoning Ordinance. The proposed project is consistent with the development standards of the PI Zone under S.M.C. Section 17.26.050 (Special Purpose Zone Site Planning and Building Standards) since the proposed project does not conflict with the City's Public/Institutional Land Use Designation of the Seaside General Plan and Seaside Municipal Code..

Evidence: The proposed design of the kiln and clay storage building would be of a modern contemporary style with the incorporation of a “Green Wall” using a galvanized wire mesh to enable the building to blend into the open space areas at the edge of the school. The proposed building would also utilize green building principles in the design to be compatible with the LEED certified design of the main school campus.

Evidence: The proposed building would be located on the existing Chartwell School campus, immediately to the south of the two existing permanent classroom buildings, consistent with the existing outdoor walkway and congregation areas of the Chartwell School.

Evidence: The proposed building would be approximately eight (8) feet in height with a footprint of approximately 282 square feet. The proposed dimensions of the building are consistent with the scale, size, and shape of the existing Chartwell School campus buildings.

Evidence: The proposed building would be used primarily during normal school business hours. Occasional evening use could occur by school faculty or afterschool activities. These operating characteristics are consistent with the existing Chartwell School campus hours.

2. The proposed use is consistent with the General Plan and any applicable specific plan

Evidence: The proposed use is consistent with the underlying PI (Public/Institutional) land use designation as a private school.

Evidence: The proposed use satisfies Policy LU-11.1 of the Seaside General Plan Land Use Element such that approval an accessory building on the Chartwell School campus that would provide for the accommodation of enhanced and expanded art related school activities and programs.

3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and planned future land uses in the vicinity.

Evidence: The location, size, and operating characteristics of the project would be compatible with the character of the site, and the land uses and development intended for the surrounding area by the Seaside General Plan. The project design will also incorporate “Green” building techniques that would be compatible with the LEED Certifications for the main school campus.

4. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

Evidence: The project site is served by existing water, wastewater, and electrical infrastructure and facilities with adequate capacity to serve the proposed project.

5. **Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone district in which the property is located.**

Evidence: The granting of a Use Permit for the proposed building would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, or welfare of the City.

NOW, BE IT FURTHER RESOLVED, that the Planning Commission approves Use Permit Application No. UP-13-02 subject to the following conditions:

Project Specific

Planning:

1. Except as modified by required conditions of approval, plans submitted for a building permit shall substantially conform to the site plans identified as “Kiln and Clay Storage Shed” stamped as “Received on March 12, 2013, Resource Management Services”, and approved on May 22, 2013. Project site plan is provided as Attachment 1 to Exhibit “A”.
2. Prior to issuance of occupancy by the Building Division, the project shall receive a consistency determination by the Fort Ord Reuse Authority (FORA).

Building:

3. The applicant shall receive building permit approval by the Building Division for the construction of the building approved under this Use Permit on the Chartwell School campus.
4. Prior to the issuance of a building permit, applicant must provide manufactures specifications for the kiln furnace.
5. Project plans submitted for building permit must have wet stamp from project architect.

Public Works:

6. Plans submitted for a building permit application shall clearly define the direction and flow of stormwater created by new construction and all new impervious surfaces added as a result of new construction. Any new retention basins required to mitigate new stormwater runoff shall be approved by the Public Works Department prior to the issuance of a building permit by the Building Division.

Fire Department:

7. The proposed building must be designed to address the following:
 - a. Minimum 1-hour wall separation inside the building; and
 - b. The building shall be fully sprinklered; and
 - c. Provide a 2A10BC fire extinguisher inside the building

The Seaside Fire Marshall shall be responsible for the approval of such improvements.

Standard:

8. Use Permit approval is subject to revocation procedures contained in S.M.C.S. 17.69.060 in the event any of the conditions of this approval are violated, this discretionary permit was granted on the basis of false or misleading information, written or oral, given willingly or negligently by the applicant or property owner, and/or there has been a discontinuance of the use, or purposed for which the permit was issued, for a period of 180 days or more.
9. This Use Permit is subject to procedures and requirements of Chapter 17.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 6 (Zoning Ordinance Administration) of Title 17 of the Municipal.
10. The applicant agrees as a condition and in consideration of the approval of this discretionary permit that it will defend, indemnify and hold harmless the City of Seaside or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul this approval. The applicant will reimburse the City for any court costs and attorney's fees, which the City may be required by a court to pay as a result of such action. City may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. The City shall promptly notify the applicant of any such claim, action, or proceeding, and the City shall cooperate fully in the defense thereof.
11. Any proposed future development shall comply with the requirements of the Fire, Health, Planning, Code Enforcement, Building and Public Works Departments.
12. The project shall comply with all applicable fees and regulations of the Fort Ord Reuse Authority (FORA) prior to occupancy of approved use.
13. The project shall comply with the requirements and the applicable ordinances of the Marina Coast Water District (MCWD) for the installation of new water and sewer infrastructure.
14. The permit shall have no force or effect unless and until accepted, and the terms thereof agreed to, in writing, by the applicant and property owner within fifteen (15) days from the date of its approval.
15. This Use Permit shall expire and become void 12 months from the date of approval, or upon the expiration of another time limit established by the review authority, unless use has commenced within the required time limit or the Zoning Administrator has granted an extension of time. In accordance with Section 17.54.080.B.1.a of the Zoning Code, the applicant must file request for time extension at least 30 days prior to expiration date in order to receive consideration of time extension by the Commission.

16. For purposes of assuring compliance, the applicant, agents, representatives or their assignees agree not to deny or impede access to the subject property by City employees in the performance of their duties.

PASSED AND ADOPTED at the regular meeting of the Planning Commission of the City of Seaside, State of California, on May 22, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Paul Muga, Chairperson

ATTEST:

Planning Commission Secretary

**USE PERMIT APPLICATION NO. UP-13-02
RESOLUTION NO. 13-XX**

These permits are hereby accepted upon the express terms and conditions hereof, and shall have no force or effect unless and until agreed to, in writing, by the applicant and property owner(s).

The undersigned hereby acknowledge the approved terms and conditions and agree to fully conform to, and comply with, said terms and conditions within the time frames approved by the City of Seaside Planning Commission.

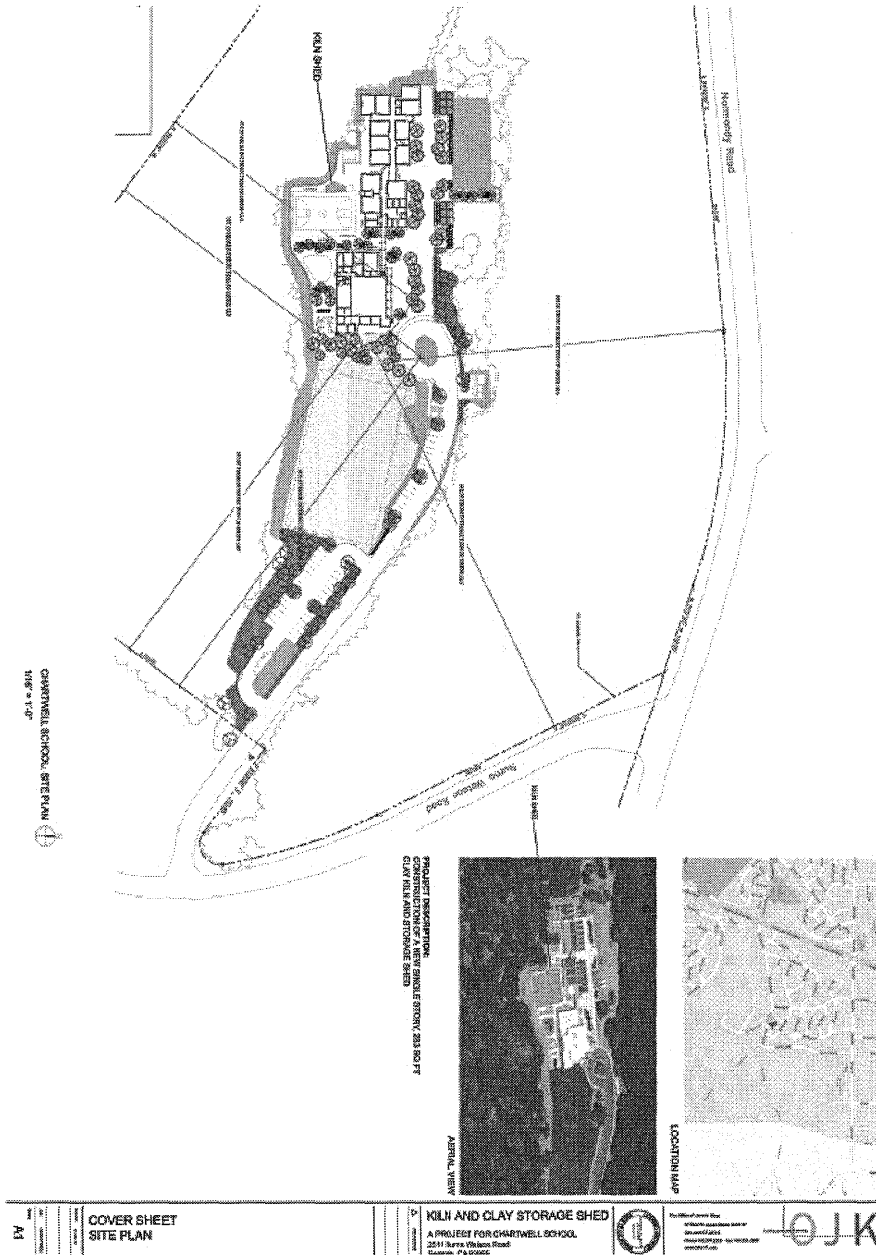
Applicant's Signature

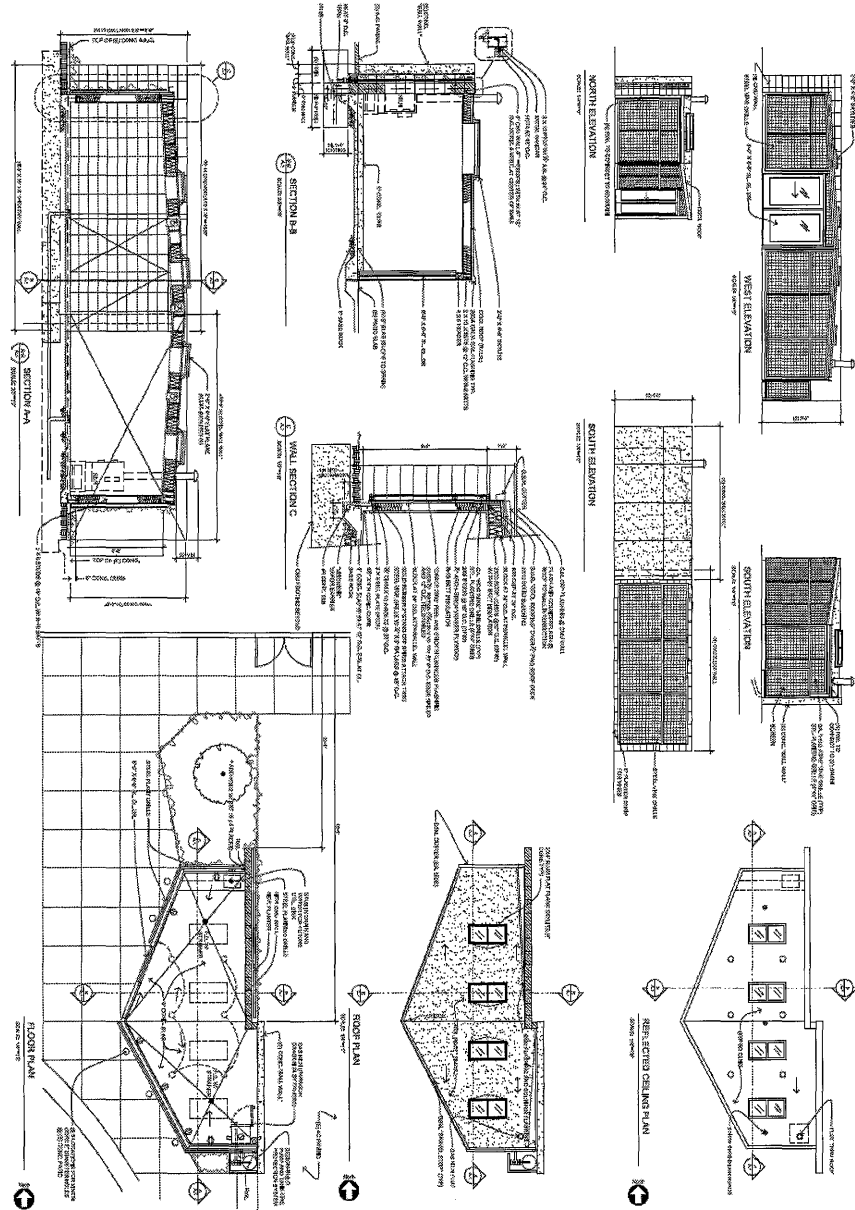
Date

Property Owner's Signature

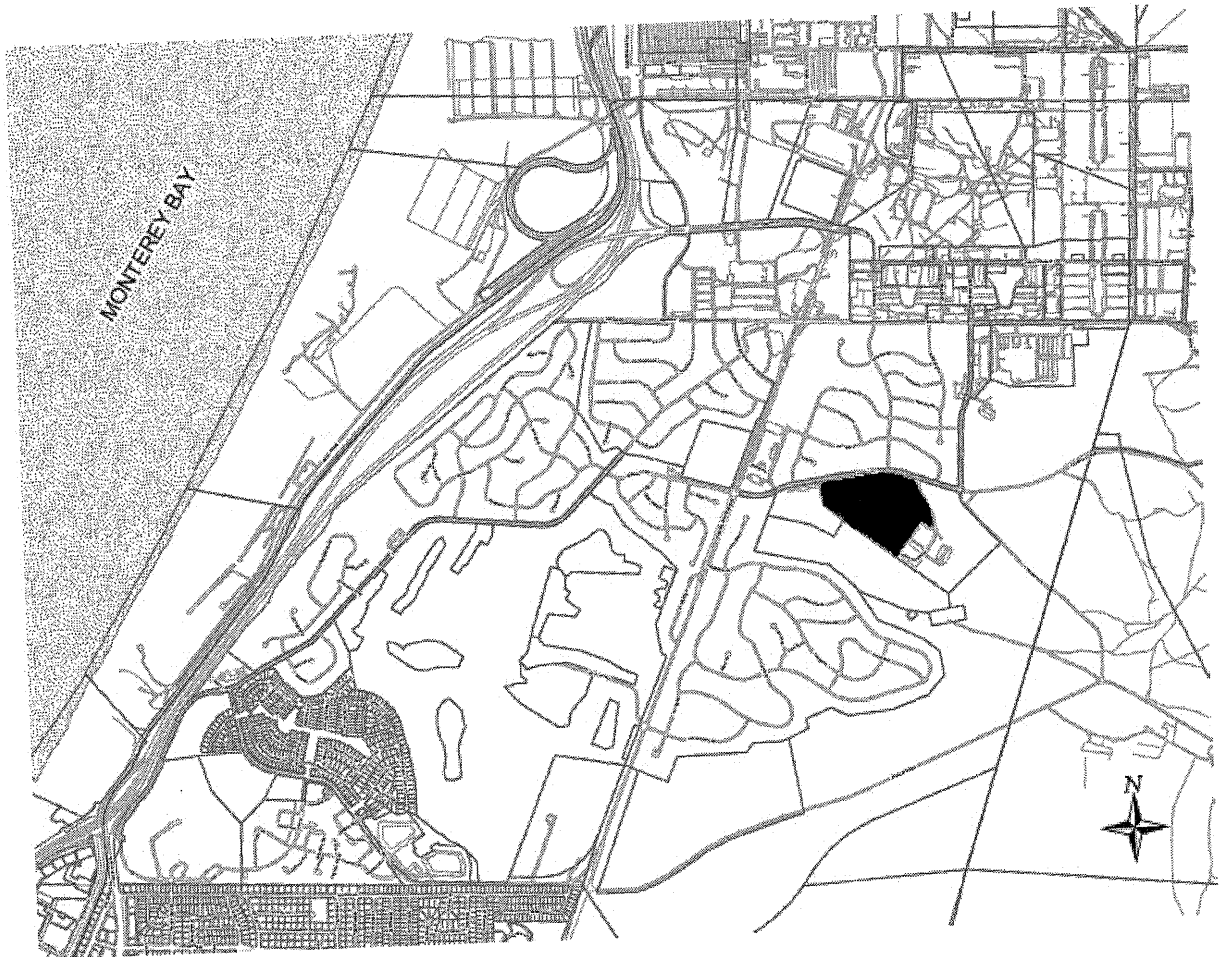
Date

Reduced Plans





Location Map



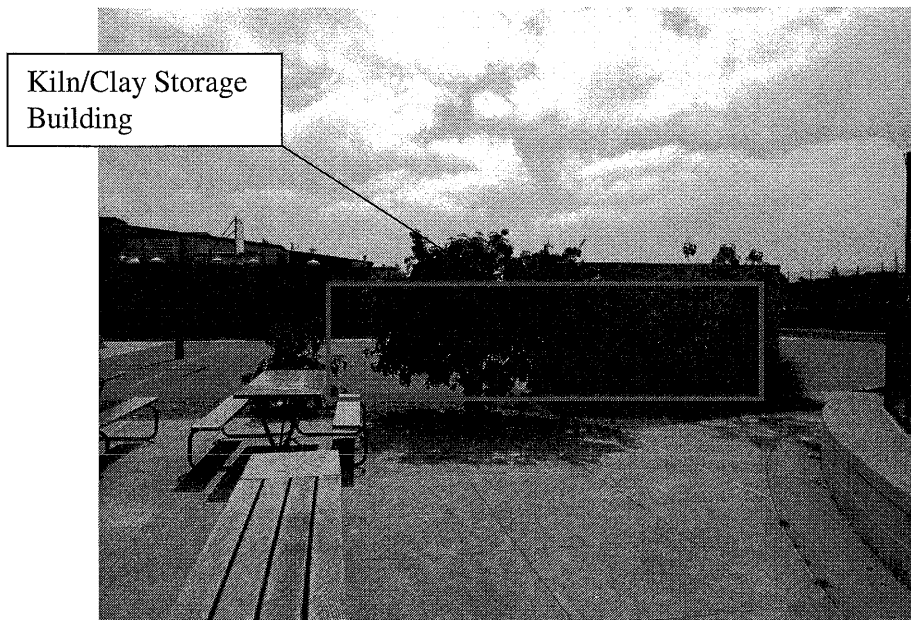
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Aerial Images

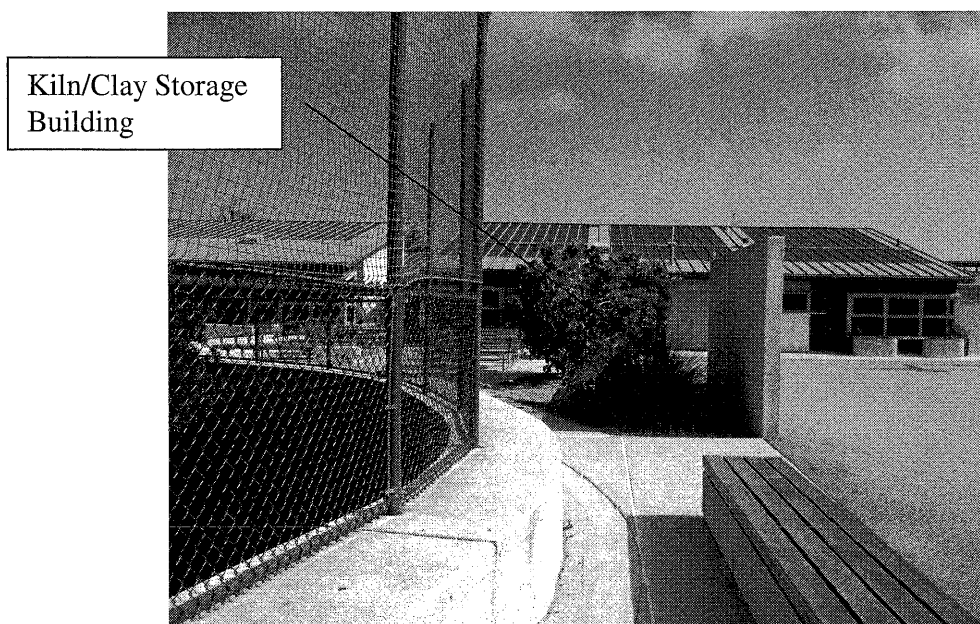


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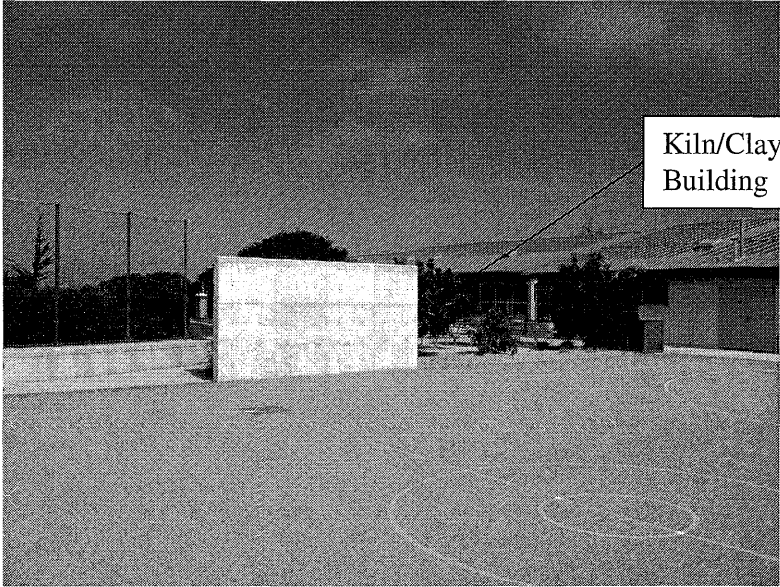
Site Photographs



Kiln/Clay Storage Building Looking East

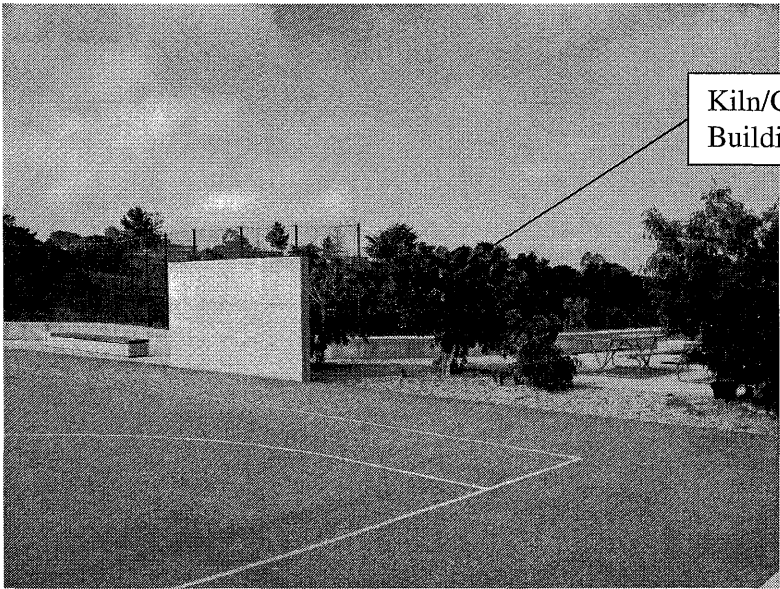


Kiln/Clay Storage Building Looking North



Kiln/Clay Storage Building

Kiln/Clay Storage Building Looking West



Kiln/Clay Storage Building

Kiln/Clay Storage Building Looking South



Resource Management Department
440 Harcourt Avenue Telephone: (831) 899-6707
Seaside, CA 93955 Fax: (831) 899-6201

PUBLIC HEARING LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the **Planning Commission** of the City of Seaside will conduct a public hearing to consider the following applications:

1. **Minor Use Permit Application No. MUP-13-01:** Ruth Lagrange, property owner, and Kevin Kosick, applicant, are requesting the approval of a minor use permit to grant a parking waiver of one parking space to allow for the establishment of an "Eagle Rider" motorcycle rental business within a commercial building that is currently occupied with a three-bay major motorcycle repair business (**Pinit Motorsports**). The project site is located at 1933 Del Monte Boulevard in the CA (Automotive Regional Commercial) Zoning District. The proposed project is Exempt Class 1, Section 15301(a) from the California Environmental Quality Act Guidelines.
2. **Use Permit Application No. UP-13-02:** Chartwell School, Property Owner and applicant, is requesting use permit approval for the construction of a one-story, 282 square-foot kiln/clay storage building on the premise of the Chartwell School (Grades 1-8) that will be used as part of the schools educational programs. The project site is located at 2511 Numa Watson Road in the PI (Public/Institutional) Zoning District. The proposed project is Exempt Class 3, Section 15303(e) from the California Environmental Quality Act Guidelines.

NOTICE IS FURTHER GIVEN that the public hearing will be held on **Wednesday, May 22, 2013 at 7:00 pm** (or as soon thereafter as the Agenda permits) in the City Council Chambers at City Hall, 440 Harcourt Avenue, Seaside, California. Any and all interested persons are welcome to appear at the hearing and be heard concerning the proposed entitlements. You can contact the Planning Division at (831) 899-6737 or visit <http://www.ci.seaside.ca.us/> for additional information on the proposed entitlements and/or the scheduled meeting date.

/s/
Rick Medina
Senior Planner

Publish no later than **Thursday, May 9, 2013**

For questions, contact:
Rick Medina, Senior Planner
440 Harcourt Avenue
Seaside, CA 93955
Telephone (831) 899-6737
FAX (831) 899-6201

RESOLUTION NO. 13-09

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEASIDE, STATE OF CALIFORNIA, APPROVING A USE PERMIT TO GRANT APPROVAL FOR THE CONSTRUCTION OF A KILN/CLAY STORAGE BUILDING ON THE CAMPUS OF CHARTWELL SCHOOL AT 2511 NUMA WATSON ROAD, IN THE PI (PUBLIC/INSTITUTIONAL) ZONING DISTRICT.

WHEREAS, Chartwell School (property owner) and Jerome King (Architect) have applied for a Use Permit to construct a kiln/clay storage building on the Chartwell School campus at 2511 Numa Watson Road, located in the PI (Public/Institutional) Zoning District; and

WHEREAS, the proposed project requires discretionary approval as an institutional land use in the Public Institutional Special Zoning District, and it is the responsibility of the Planning Commission to consider and weigh the merits of the application and public input in relation to the policies, standards and intent of the Seaside General Plan and Seaside Municipal Code; and

WHEREAS, the Seaside Planning Commission considered oral comments and written information concerning the proposed amendment at a duly noticed public hearing at public meeting held on May 22, 2013; and

WHEREAS, the project is a Categorically Exempt, Class 3, Section 15303 meeting the following conditions:

- a) *The proposed structures would total approximately 282 square feet in floor area, less than the maximum structure floor area of 2,500 square feet as defined under this exemption. The proposed structures would also involve less than significant amounts of hazardous substances as the structures are proposed to be built using green building techniques and would be approved for occupancy as an accessory building for the school.*

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission adopts the following findings for Use Permit Application No. UP-13-02

- 1. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Zoning Ordinance and the Municipal Code.**

Evidence: This project is located within the PI (Public/Institutional) Zoning District. The Chartwell School was approved in July of 2003 as a permitted use under the previous 2003 Seaside Zoning Ordinance. The proposed project is consistent with the development standards of the PI Zone under S.M.C. Section 17.26.050 (Special Purpose Zone Site Planning and Building Standards) since the proposed project does not conflict with the City's Public/Institutional Land Use Designation of the Seaside General Plan and Seaside Municipal Code.

Evidence: The proposed design of the kiln and clay storage building would be of a modern contemporary style with the incorporation of a "Green Wall" using a galvanized wire mesh to enable the building to blend into the open space areas at the edge of the school. The

proposed building would also utilize green building principles in the design to be compatible with the LEED certified design of the main school campus.

Evidence: The proposed building would be located on the existing Chartwell School campus, immediately to the south of the two existing permanent classroom buildings, consistent with the existing outdoor walkway and congregation areas of the Chartwell School.

Evidence: The proposed building would be approximately eight (8) feet in height with a footprint of approximately 282 square feet. The proposed dimensions of the building are consistent with the scale, size, and shape of the existing Chartwell School campus buildings.

Evidence: The proposed building would be used primarily during normal school business hours. Occasional evening use could occur by school faculty or afterschool activities. These operating characteristics are consistent with the existing Chartwell School campus hours.

2. The proposed use is consistent with the General Plan and any applicable specific plan

Evidence: The proposed use is consistent with the underlying PI (Public/Institutional) land use designation as a private school.

Evidence: The proposed use satisfies Policy LU-11.1 of the Seaside General Plan Land Use Element such that approval an accessory building on the Chartwell School campus that would provide for the accommodation of enhanced and expanded art related school activities and programs.

3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and planned future land uses in the vicinity.

Evidence: The location, size, and operating characteristics of the project would be compatible with the character of the site, and the land uses and development intended for the surrounding area by the Seaside General Plan. The project design will also incorporate "Green" building techniques that would be compatible with the LEED Certifications for the main school campus.

4. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

Evidence: The project site is served by existing water, wastewater, and electrical infrastructure and facilities with adequate capacity to serve the proposed project.

5. Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone district in which the property is located.

Evidence: The granting of a Use Permit for the proposed building would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, or welfare of the City.

NOW, BE IT FURTHER RESOLVED, that the Planning Commission approves Use Permit Application No. UP-13-02 subject to the following conditions:

Project Specific

Planning:

1. Except as modified by required conditions of approval, plans submitted for a building permit shall substantially conform to the site plans identified as "Kiln and Clay Storage Shed" stamped as "Received on March 12, 2013, Resource Management Services", and approved on May 22, 2013. Project site plan is provided as Attachment 1.
2. Prior to issuance of occupancy by the Building Division, the project shall receive a consistency determination by the Fort Ord Reuse Authority (FORA).

Building:

3. The applicant shall receive building permit approval by the Building Division for the construction of the building approved under this Use Permit on the Chartwell School campus.
4. Prior to the issuance of a building permit, applicant must provide manufactures specifications for the kiln furnace.
5. Project plans submitted for building permit must have wet stamp from project architect.

Public Works:

6. Plans submitted for a building permit application shall clearly define the direction and flow of stormwater created by new construction and all new impervious surfaces added as a result of new construction. Any new retention basins required to mitigate new stormwater runoff shall be approved by the Public Works Department prior to the issuance of a building permit by the Building Division.

Fire Department:

7. The proposed building must be designed to address the following:
 - a. Minimum 1-hour wall separation inside the building; and
 - b. The building shall be fully sprinklered; and
 - c. Provide a 2A10BC fire extinguisher inside the buildingThe Seaside Fire Marshall shall be responsible for the approval of such improvements.

Standard:

8. Use Permit approval is subject to revocation procedures contained in S.M.C.S. 17.69.060 in the event any of the conditions of this approval are violated, this discretionary permit was granted on the basis of false or misleading information, written or oral, given willingly or negligently by the applicant or property owner, and/or there has been a discontinuance of the use, or purposed for which the permit was issued, for a period of 180 days or more.
9. This Use Permit is subject to procedures and requirements of Chapter 17.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 6 (Zoning Ordinance Administration) of Title 17 of the Municipal.
10. The applicant agrees as a condition and in consideration of the approval of this discretionary permit that it will defend, indemnify and hold harmless the City of Seaside or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul this approval. The applicant will reimburse the City for any court costs and attorney's fees, which the City may be required by a court to pay as a result of such action. City may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. The City shall promptly notify the applicant of any such claim, action, or proceeding, and the City shall cooperate fully in the defense thereof.
11. Any proposed future development shall comply with the requirements of the Fire, Health, Planning, Code Enforcement, Building and Public Works Departments.
12. The project shall comply with all applicable fees and regulations of the Fort Ord Reuse Authority (FORA) prior to occupancy of approved use.
13. The project shall comply with the requirements and the applicable ordinances of the Marina Coast Water District (MCWD) for the installation of new water and sewer infrastructure.
14. The permit shall have no force or effect unless and until accepted, and the terms thereof agreed to, in writing, by the applicant and property owner within fifteen (15) days from the date of its approval.
15. This Use Permit shall expire and become void 12 months from the date of approval, or upon the expiration of another time limit established by the review authority, unless use has commenced within the required time limit or the Zoning Administrator has granted an extension of time. In accordance with Section 17.54.080.B.1.a of the Zoning Code, the applicant must file request for time extension at least 30 days prior to expiration date in order to receive consideration of time extension by the Commission.
16. For purposes of assuring compliance, the applicant, agents, representatives or their assignees agree not to deny or impede access to the subject property by City employees in the performance of their duties.


PASSED AND ADOPTED at the regular meeting of the Planning Commission of the City of Seaside, State of California, on May 22, 2013, by the following vote:

AYES: K. Dodson, M. Lechman, D. Ross, A. Taketomo

NOES: None

ABSENT: P. Mugan, J. Owens, J. Robinson

ABSTAIN: None



Amy Taketomo, Vice-Chairperson

ATTEST:

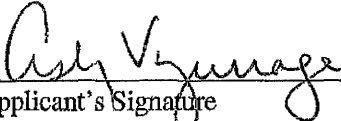


Planning Commission Secretary

**USE PERMIT APPLICATION NO. UP-13-02
RESOLUTION NO. 13-09**

These permits are hereby accepted upon the express terms and conditions hereof, and shall have no force or effect unless and until agreed to, in writing, by the applicant and property owner(s).

The undersigned hereby acknowledge the approved terms and conditions and agree to fully conform to, and comply with, said terms and conditions within the time frames approved by the City of Seaside Planning Commission.



Applicant's Signature

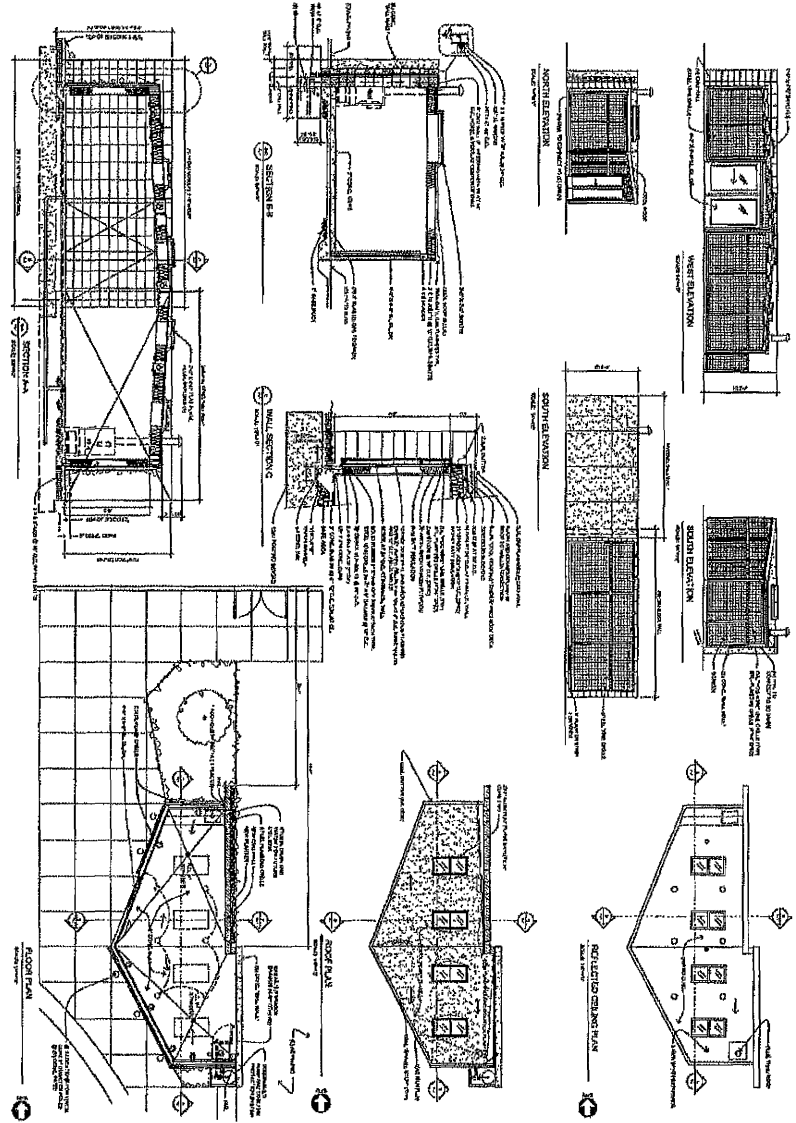
6/7/13
Date



Property Owner's Signature

6.7.13
Date

Reduced Plans



PLANS / SECTIONS / ELEVATIONS

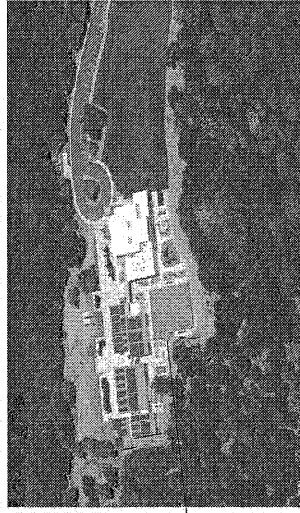
KILN AND CLAY STORAGE SHED
A PROJECT FOR CHARTWELL SCHOOL

The Office of Architecture
3010 Peachtree Road, Suite 400
Atlanta, GA 30327
Phone: 404.524.4400
www.oaarch.com

OA

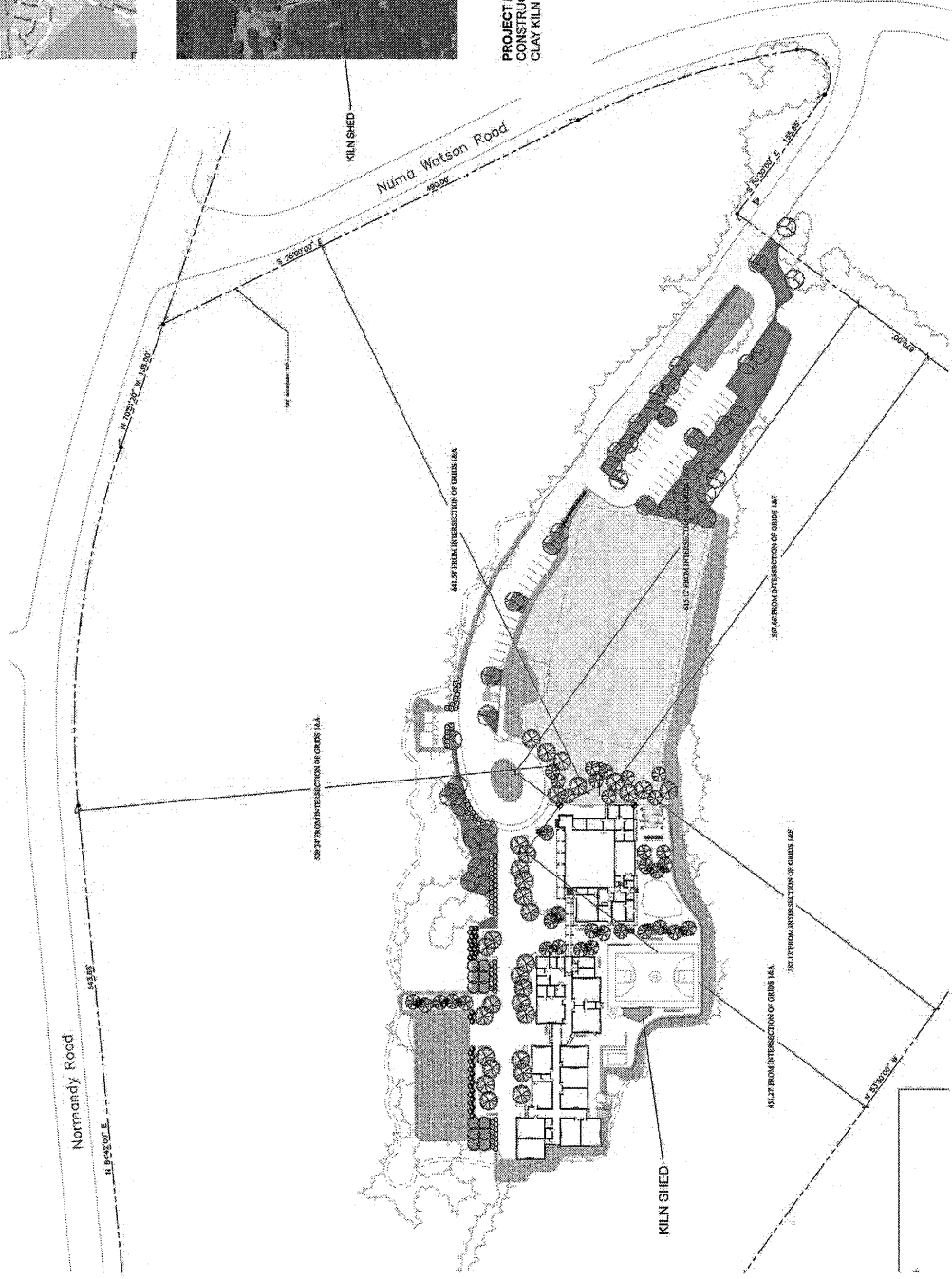


LOCATION MAP

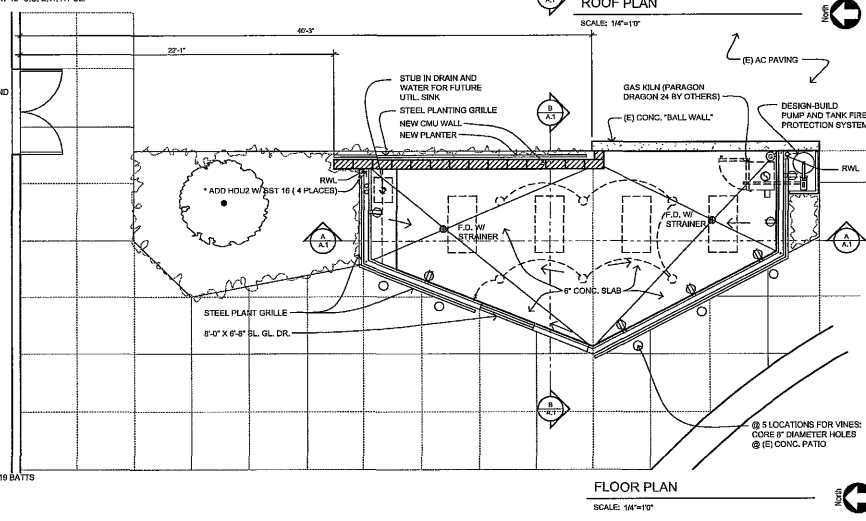
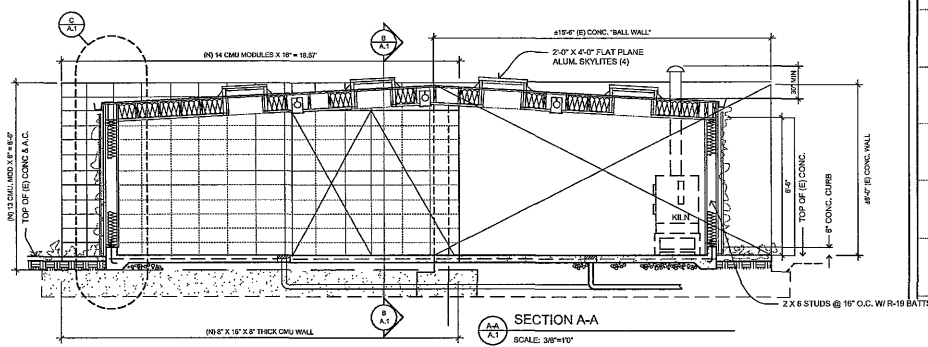
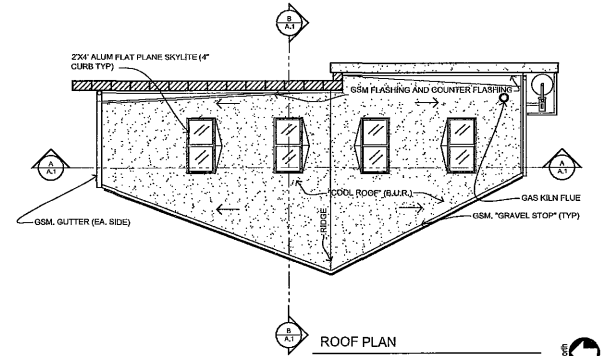
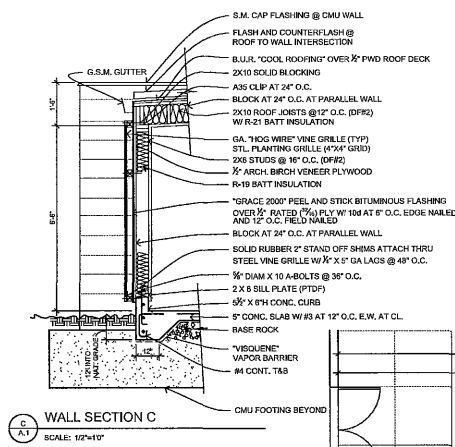
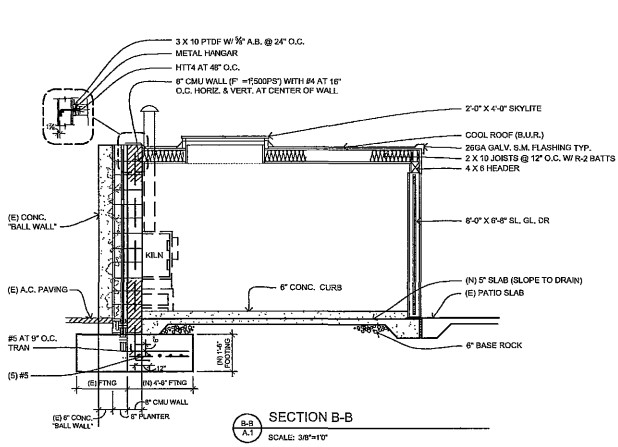
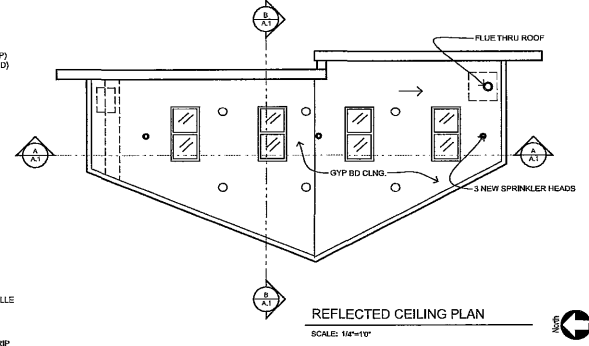
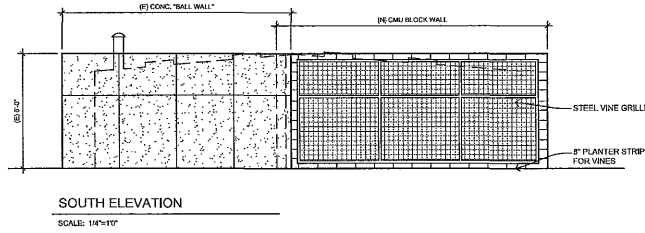
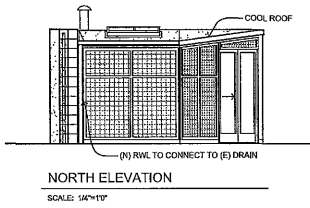
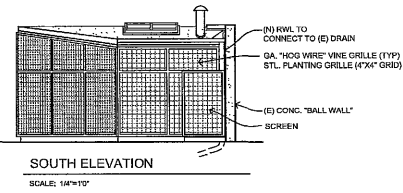
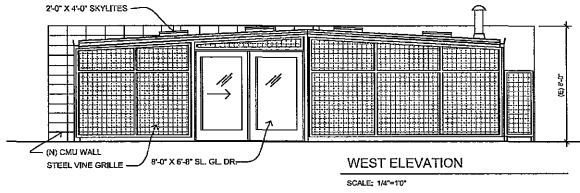


AERIAL VIEW

PROJECT DESCRIPTION:
 CONSTRUCTION OF A NEW SINGLE STORY, 283 SQ. FT.
 CLAY KILN AND STORAGE SHED



CHARTWELL SCHOOL: SITE PLAN
 1/16" = 1'-0"



REVISIONS

Issue: 02.02.2013

Job: CHARTWELL

Sheet

Notice of Exemption

Form D

To: [] Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 958123-3044

From: (Public Agency) City of Seaside
440 Hardcourt Avenue
Seaside, CA 93955
(Address)

FILED

JUN 07 2013

[X] County Clerk
County of Monterey
Monterey County Court House
240 Church Street
Salinas, CA 93901

STEPHEN L. VAGNINI
MONTEREY COUNTY CLERK
DEPUTY

2013-0084

Project Title: Chartwell School Kiln and Clay Storage Building

Applicant: Chartwell School, 2511 Numa Watson Road

Project Location - Specific: Project site is located at 2511 Numa Watson Road on Assessor's Parcel No. 031-151-022.

Project Location - City: Seaside

Project Location - County: Monterey

Description of Project: The proposed project will consist of a kiln and clay storage room that would be constructed as 282 square-foot accessory building on the campus of the Chartwell School Elementary School to facilitate its arts and crafts programs. The exterior material will consist of a self adhering waterproof membrane. A galvanized "Hog Wire" Vine grille will be affixed to the exterior to allow for planting materials to establish a complete green wall on the side and front elevation of the building. Along the rear east elevation, the kiln will abut an existing eight-foot tall concrete wall which is used for "Hand Ball" recreational activities in the adjoining recreation area. A new eight-foot tall CMU wall would be constructed for the remaining portion of the structure on the east side. A galvanized "Hog Wire" Vine grille will be affixed to the CMU wall to provide a green wall to match the side and front elevations. A CMU wall has been proposed to minimize vibrations from balls bouncing against this side of the structure which may contain shelving for supplies and ceramics. The roof will consist of a low profile design that is described as a "Cool Roof". The height of the structure will be 8 feet. Four 2x4 aluminum flat panel skylites are proposed to maximize the use of natural light.

Name of Public Agency Approving Project: City of Seaside

Name of Person or Agency Carrying Out Project: City of Seaside

Exempt Status: (check one)

- [] Ministerial (Sec. 21080(b)(1); 15268);
[] Declared Emergency (Sec. 21080(b)(3); 15269(a));
[] Emergency Project (Sec. 21080(b)(4); 15369(b)(c));
[X] Categorical Exemption. State type and section number: New Construction or Conversion of Small Structures, § 15303(c) of the CEQA Guidelines
[] Statutory Exemptions. State code number:

Reasons why project is exempt:

This project is exempt from the California Environmental Quality Act pursuant to a Class 3, Section 15303(c) (New Construction or Conversion of Small Structures) categorical exemption. Class 3 exemptions consist of construction and location of limited numbers of new, small facilities or structures, including structures not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area.

Evidence: The proposed structure would be approximately 282 square feet in floor area, less than the maximum structure floor area of 2,500 square feet as defined under this exemption. The proposed structure would be used to house a kiln and clay storage for the existing Chartwell School which is an elementary school for grades 1-8. In addition to being less than 2,500 square feet, the proposed structure would also not involve the use or storage of any hazardous substances.

Chartwell School Kiln/Clay Storage Building – Notice of Exemption

File No. UP-13-02

Page 2 of 2

Lead Agency

Contact Person: Rick Medina

Area Code/Telephone/Extension: (831) 889-6726

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: *Rick Medina* Date: June 6, 2013 Title: Senior Planner

Signed by Lead Agency

Date received for filing at OPR: _____

Signed by Applicant

-END-

**DRAFT
BOARD PACKET**

NOTE TO USERS OF THE STANDARD CLAUSES IA FOR NON-FOREST HCPs:

These clauses were developed to improve the HCP program and provide a predictable format for implementing agreements. While HCPs by nature must be site specific and customized for each applicant, IAs generally do not. The Wildlife Agencies are striving for consistency amongst IAs so as not to revisit standard policy decisions for each new applicant. **Deviations from the standard clauses must be well-justified, based on site-specific conditions**, after consulting with the Solicitor's Office or NOAA General Counsel, as appropriate.

MARCH 19, 2012 DRAFT

IMPLEMENTING AGREEMENT

for the

FORT ORD REGIONAL HABITAT COOPERATIVE (A JOINT POWERS
AUTHORITY), FORT ORD REUSE AUTHORITY,
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (ON BEHALF OF THE UC
SANTA CRUZ CAMPUS),
COUNTY OF MONTEREY,
CITY OF MARINA,
CITY OF SEASIDE,
CITY OF DEL REY OAKS,
CITY OF MONTEREY,
THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (ON BEHALF
OF THE MONTEREY BAY CAMPUS),
MONTEREY PENINSULA COLLEGE,
MONTEREY PENINSULA REGIONAL PARK DISTRICT,
MARINA COAST WATER DISTRICT,
BUREAU OF LAND MANAGEMENT,
UNITED STATES FISH AND WILDLIFE SERVICE,
and
CALIFORNIA DEPARTMENT OF FISH AND GAME

for

**FORMER FORT ORD INSTALLATION-WIDE
MULTISPECIES HABITAT CONSERVATION PLAN**

CONTENTS

- 1.0 PARTIES**
- 2.0 RECITALS AND PURPOSES**
 - 2.1 Recitals**
 - 2.2 Purposes**
- 3.0 DEFINITIONS**
 - 3.1 Terms defined in the federal Endangered Species Act**
 - 3.2 Terms defined in the California Endangered Species Act**
 - 3.3 Terms defined from “Agreement” through 3.55 “Wildlife Agencies”**
- 4.0 OBLIGATIONS OF THE PARTIES AND BLM**
 - 4.1 Obligations of the Permit Applicants**
 - 4.2 Obligations of the BLM**
 - 4.3 Obligations of the Wildlife Agencies**
 - 4.3.1 Coverage of Permits**
 - 4.3.2 “No Surprises” assurances**
 - 4.4 Interim obligations upon a finding of unforeseen circumstances**
- 5.0 INCORPORATION OF THE HCP**
- 6.0 LEGAL FINDINGS AND REVIEW BY THE WILDLIFE AGENCIES**
- 7.0 TERM**
 - 7.1 Initial term**
 - 7.2 Suspension or revocation of the Permits**

7.3 Treatment of unlisted species

7.4 Extension of the Permits

7.5 Withdrawal

7.6 Effect of Withdrawal

8.0 FUNDING

8.1 HCP costs

8.2 BLM's funding commitment

8.3 State Parks' funding commitment

8.4 FORA's, the Cities', and the County's funding commitments

8.5 UC's, MPC's, and CSUMB's funding commitments

8.6 MPRPD's funding commitment

8.7 HCP funding consistent with stay-ahead provision

8.8 HCP Endowment Fund use

8.9 Use of the Fort Ord Natural Reserve Endowment

8.10 Use of the Implementation Assurances Fund

8.11 Long-term management funding

8.12 Effect of inadequate funding

9.0 MONITORING AND REPORTING

9.1 Planned periodic reports

9.2 Other reports

9.3 Certification of reports

9.4 Monitoring by the Wildlife Agencies

10.0 CHANGED CIRCUMSTANCES

10.1 Permit Applicant-initiated response to changed circumstances

10.2 Wildlife Agencies-initiated response to changed circumstances

10.3 Listing of species that are not HCP species

11.0 ADAPTIVE MANAGEMENT

11.1 Permit Applicant-initiated adaptive management

11.2 Wildlife Agencies-initiated adaptive management

11.3 Reductions in mitigation

11.4 No increase in take

12.0 LAND TRANSACTIONS

12.1 Acquisition of land by the Permit Applicants

12.2 Disposal of land by the Permit Applicants

13.0 AMENDMENTS

13.1 Minor amendments

13.2 Amendment of the Permits

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In general

14.2 No monetary damages

14.3 Injunctive and temporary relief

14.4 Enforcement authority of the United States

14.5 Dispute resolution

14.5.1 Informal dispute resolution process

15.0 MISCELLANEOUS PROVISIONS

15.1 No partnership

15.2 Notices

15.3 Entire agreement

15.4 Elected officials not to benefit

15.5 Availability of funds

15.6 Duplicate originals

15.7 No third-party beneficiaries

15.8 Relationship to the ESA, FLPMA, and other authorities

15.9 References to regulations

15.10 Applicable laws

15.11 Successors and assigns

15.12 Calendar days

15.13 Response times

15.14 Review of third-party participant applications

15.15 Changes in the boundaries of the County, Cities, or other land use jurisdictions

15.16 Defense

15.17 Attorneys' fees

15.18 Relationship to the ESA, CESA, and other authorities

15.19 Severability

15.20 Due authorization

15.21 Headings

1.0 PARTIES

The Parties to this Implementing Agreement (“IA”) are:

- a) Fort Ord Regional Habitat Cooperative, a Joint Powers Authority (“JPA”) (“Cooperative”),
- b) Fort Ord Reuse Authority (“FORA”),¹
- c) County of Monterey (“County”),
- d) City of Marina (“Marina”),
- e) City of Seaside (“Seaside”),
- f) City of Del Rey Oaks (“Del Rey Oaks”),
- g) City of Monterey (“Monterey”),
- h) United States Fish and Wildlife Service (“USFWS”),
- i) California Department of Fish and Game (“CDFG”),
- j) California Department of Parks and Recreation (“State Parks”),
- k) The Regents of the University of California (on behalf of the University of California Santa Cruz Campus) (“UC”),
- l) The Board of Trustees of the California State University (on behalf of the Monterey Bay Campus) (“CSUMB”),
- m) Monterey Peninsula College (“MPC”),
- n) Monterey Peninsula Regional Park District (“MPRPD”),
- o) Marina Coast Water District (“MCWD”), and
- p) Bureau of Land Management (“BLM”).

In this Agreement, these entities are referred to individually as “Party” and collectively as “Parties.” USFWS and CDFG are collectively referred to as the “Wildlife Agencies.” Seaside, Marina, Del Rey Oaks, and Monterey may be referred to collectively as the “Cities.” The Cooperative, FORA, County, Cities, State Parks, UC, CSUMB, MPC, MPRPD, and MCWD, are referred to collectively as the “Permit Applicants.” The BLM is cooperating with the other Parties to implement this Agreement. The Permit Applicants are each represented on the Cooperative Governing Board. The Cooperative Governing Board shall be the decision-making body among the Permit Applicants. The Cooperative Governing Board’s decision-making process is described in the Joint Exercise of Powers Agreement Establishing the Fort Ord Regional Habitat Cooperative (**Exhibit A**)

2.0 RECITALS AND PURPOSES

2.1 Recitals. The Parties have entered into this Agreement in consideration of the following facts:

¹ When FORA sunsets (expected in 2015), it will cease to be a party to the HCP and a member of the JPA/Cooperative.

- (a) The former Fort Ord military installation has been determined to provide, or potentially provide, habitat for the following federal and state-listed species: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Contra Costa goldfields (*Lasthenia conjugens*), Yadon's piperia (*Piperia yadonii*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Smith's blue butterfly (*Euphilotes enoptes smithi*), western snowy plover (*Charadrius nivosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and Seaside bird's beak (*Cordylanthus rigidus* var. *littoralis*);
- (b) The former Fort Ord military installation has also been determined to provide, or potentially provide, habitat for the following unlisted species: coast wallflower (*Erysimum ammophilum*), Toro manzanita (*Arctostaphylos montereyensis*), sandmat manzanita (*Arctostaphylos pumila*), Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), Eastwood's ericameria (*Ericameria fasciculata*), Hooker's manzanita (*Arctostaphylos hookeri*), black legless lizard (*Anniella pulchra nigra*), Monterey ornate shrew (*Sorex ornatus salaries*), and California linderiella (*Linderiella occidentalis*);
- (c) The Permit Applicants have developed a series of measures, described in the habitat conservation plan ("HCP"), to minimize and mitigate to the maximum extent practicable the effects of take of HCP species incidental to Permit Applicant covered activities;
- (d) The Permit Applicants, in consultation with USFWS, developed the HCP to provide the basis for compliance with Section 10(a)(1)(B) of the federal Endangered Species Act ("ESA") and submitted it to USFWS with a request that the USFWS issue an incidental take permit. The HCP provides a comprehensive framework to ensure former Fort Ord natural resource conservation, recovery, and enhancement. The HCP improves and streamlines the environmental permitting process for development project areas described in the HCP that may impact endangered and threatened species or their habitats. The HCP goals are to: a) conserve species, wetlands, and ecosystems; b) contribute to the recovery of endangered and threatened species within the former Fort Ord; and c) balance open space, habitat, and urban development. To that end, the HCP describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on HCP species and their habitats. The HCP also describes the necessary protections from future or existing former Fort Ord real property development and other activities, as the basis for permitting take or impacts;
- (e) The Cooperative is a JPA comprising and formed by the Permit Applicants under Government Code Sections 6500 et seq. to implement the HCP;
- (f) The Plan Area encompasses approximately 27,838 former Fort Ord acres within

northern Monterey County, approximately 100 miles south of San Francisco, in which land use impacts are evaluated, and in which habitat conservation will occur;

- (g) Permit Applicants seek authorization from the Wildlife Agencies for “Incidental Take” of special-status species and certain other species, as “Take” is defined by federal and state law (see below at Section 3.50 of this Agreement), while carrying out certain potential future real property development and other activities;
- (h) The Permit Applicants, in consultation with CDFG, developed the HCP to provide the basis for compliance with Section 2081 of the California Endangered Species Act (“CESA”) and submitted it to CDFG with a request that CDFG issue an incidental take permit;
- (i) In April 1997, the U.S. Army Corps of Engineers issued the revised *Installation-Wide Multi-Species Habitat Management Plan for Former Fort Ord* (“HMP”) on behalf of the U.S. Department of the Army (“Army”). The HMP was developed with input from federal, state, and local agencies concerned with the natural resources and the Army’s real property disposal as it pertained to future Fort Ord reuse. It provides a comprehensive species and habitat conservation program as part of the closure, disposal, and potential former Fort Ord reuse. Specifically, the HMP establishes a habitat conservation area and corridor system and parcel-specific land use categories and management requirements. The HMP was also intended to serve as the basis for a habitat conservation plan and to support the issuance of incidental take permits under ESA Section 10(a)(1)(B) and CESA Section 2081;
- (j) The HCP was based on the HMP. It minimizes and mitigates the impact of contemplated land uses on special-status species;
- (k) The Permit Applicants intend to allow developers, infrastructure project proponents, and certain landowners to receive federal Permit and state Permit take authorization coverage for certain development and other activities, subject to the conditions in this Agreement, the HCP, and the Permits; and
- (l) The HMP and HCP planning processes included intensive study of the special-status species, their habitats, and proposed development and other activities within the HCP Plan Area; discussions with the Wildlife Agencies; input from independent science advisors and the public; and environmental review under the National Environmental Policy Act (42 USC §4321 et seq.) (“NEPA”) and the California Environmental Quality Act (Public Resources Code §21000 et seq.) (“CEQA”).

2.2 Purposes. The purposes of this Agreement are:

- (a) To ensure implementation of each of the terms of the HCP;

- (b) To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and
- (c) To provide assurances to the Permit Applicants that as long as the terms of the HCP, the Permits, and this Agreement are performed, no additional mitigation will be required of the Permit Applicants, with respect to HCP species, except as provided for in this Agreement or required by law.

DRAFT

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

3.1 Terms defined in the federal Endangered Species Act. Terms used in this Agreement and specifically defined in the ESA or in regulations adopted by USFWS under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 Terms defined in the California Endangered Species Act. Terms used in this Agreement and specifically defined in the CESA or in regulations adopted by CDFG under the CESA have the same meaning as in the CESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.3 “Agreement” means this Implementing Agreement, which incorporates the HCP and the Permits by reference.

3.4 “authorized take” means the extent of incidental take of HCP species authorized by the USFWS in the federal Permit issued to the Permit Applicants under Section 10(a)(1)(B) of ESA, and the extent of take of HCP species authorized by CDFG in the state Permit issued to the Permit Applicants under California Fish and Game Code (FGC) Section 2835.

3.5 “BLM” means the Bureau of Land Management, an agency of the U.S. Department of Interior.

3.6 “Borderlands” means designated development parcels or HMA parcels at the urban/wildland interface where specific design considerations and management activities are required to minimize effects of development on HCP species and natural communities. Under the HCP, four borderlands categories exist. Borderland requirements require the land owner to perform management actions related to development design elements, access control (through design), and fire-wise planning and the Cooperative to perform management actions related to invasive species control, erosion control, fuel break maintenance, and access control to address the urban/wild land interface and protect the species and habitats within the Habitat Management Areas. The HCP identifies four Borderland categories based on anticipated conditions at the urban/wildland interface. Category 1, 2, and 3 Borderlands apply to designated development parcels in the Plan Area that share a border with a Habitat Management Area (“HMA”). Category 4 Borderlands applies to HMAs that abut areas of existing development in the Plan Area or areas of development outside of the Plan Area. In all cases, the landowner and Cooperative are required to implement Borderland requirements specific to the Borderland type.

3.7 “CDFG” means the California Department of Fish and Game, a department of the California Resources Agency.

3.8 “CEQA” means the California Environmental Quality Act (Public Resources Code §21000 et seq.) and rules, regulations and guidelines promulgated under that Act.

3.9 “CESA” means the California Endangered Species Act (FGC §2050 et seq.) and rules, regulations, and guidelines promulgated under that Act.

3.10 “changed circumstances” means changes in circumstances affecting an HCP species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties to the HCP and that can reasonably be planned for in the HCP (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events). Changed circumstances and the planned responses to those circumstances are described in Section 8.1.1.2 of the HCP. Changed circumstances are not unforeseen circumstances.

3.11 “conserve,” “conserving,” or “conservation” means to use, and the use of, methods and procedures within the HCP Plan Area that are necessary to bring the federally and state-listed HCP species to the point at which the measures provided under ESA and CESA are not necessary, and to maintain or enhance the condition of the non-listed HCP species so that listing under ESA and CESA is unnecessary.

3.12 “conservation measure” means HCP required actions detailed in HCP Chapter 5 that is a component of the conservation strategy.

3.13 “conservation strategy” means all HCP required actions, including avoidance and minimization measures (“AMMs”) and mitigation measures, as described in Chapter 5 of the HCP; monitoring and adaptive management measures, as described in Chapter 6 of the HCP; program administration and reporting requirements, as described in Chapter 7 of the HCP; and responses to changed circumstances, as described in Chapter 8 of the HCP. Implementation of HCP required actions are required by the Permits to avoid, minimize, mitigate, and monitor the impacts of take of the HCP species, plus fulfill administrative and reporting requirements and identify the Permit Applicants’ responses to changed circumstances.

3.14 “Cooperative” means the JPA responsible for implementing HCP terms and conditions. The Cooperative is composed of appointed and elected officials of the Permit Applicants, as further described in HCP Chapter 7 (Section 7.3.1.2).

3.15 “covered activities” means certain activities carried out by the Permit Applicants on covered lands that may result in incidental take of HCP species. Covered activities means the following activities, provided that these activities are otherwise lawful: development in designated development parcels, development with restrictions in HMAs, road corridors and infrastructure in HMAs (including future road corridors, existing roads, and utilities, easements, rights of way, and MCWD facilities in HMAs), and management activities within HMAs encompassing conservation actions for permit compliance (these include habitat restoration and enhancement, prescribed burning, alternative vegetation management, invasive species control, erosion control, and monitoring) and resource management actions (these include maintenance of roads and trails, maintenance of fuel breaks, access control, and monitoring [research, education,

and training]).

3.16 “covered lands” means the lands upon which the Permits authorize incidental take of HCP species and the lands to which the HCP's conservation measures apply. These lands are described in **Exhibit B**.

3.17 “Endowment” means: a) the HCP Endowment Fund, b) the Fort Ord Natural Reserve (“FONR”) Endowment Fund, c) the Implementation Assurances Fund (“IAF”), and d) the Borderlands Endowment Fund described in HCP Section 9.3. Funds generated by the Fort Ord Reuse Authority’s Community Facilities District Special Tax and other sources will be used to establish these four separate funds to offset both capital and operational HCP costs.

3.18 “effective date” means the date when both Permits described in Section 3.21, *federal Permit*, and Section 3.49, *state Permit*, are issued.

3.19 “federal covered species” means species considered covered for the purposes of the federal Permit.

3.20 “federally listed species” means the HCP species which are listed as threatened or endangered species under ESA as of the Effective Date, which includes: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Contra Costa goldfields (*Lasthenia conjugens*), Yadon’s piperia (*Piperia yadonii*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Smith’s blue butterfly (*Euphilotes enoptes smithi*), western snowy plover (*Charadrius nivosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*) and the HCP species which are listed as threatened or endangered under ESA during the HCP term as of the date of such listing.

3.21 “federal Permit” means the federal incidental take permit issued by the USFWS to the Permit Applicants under Section 10(a)(1)(B) of ESA, as it may be amended from time to time.

3.22 “ESA” means the Federal Endangered Species Act of 1973, as amended (16 United States Code [USC] §1531 et seq.) and rules, regulations, and guidelines promulgated under that Act.

3.23 “FLPMA” means the Federal Land Policy Management Act of 1976 (P.L. 94-579).

3.24 “fully protected species” means any species identified in California FGC Sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.

3.25 “habitat land owners” means BLM, State Parks, UC, County, Marina, MPC, and the MPRPD. Habitat land owners possess one or more HMAs.

3.26 “Habitat Management Area” means the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels included in the Reserve System. Descriptions of HMAs are provided in HCP Sections 2.3.1 through 2.3.14.

3.27 “Habitat Reserve System” means the land transferred from the U.S. Army to designated Habitat Land Owners to meet HCP preservation, conservation, enhancement, and restoration objectives of the conservation strategy. The Reserve System consists of land within the HMAs.

3.28 “HMA Managers” means the Cooperative, BLM, State Parks, and UC.

3.29 “HCP” means the habitat conservation plan prepared by the Permit Applicants for the former Fort Ord military installation.

3.30 “HCP Implementing Ordinance” means in the case of the Cooperative, FORA, the County, the Cities, the MPRPD, and the MCWD, an ordinance; and, in the case of State Parks, UC, CSUMB, and MPC, a resolution, delegation of authority, or equivalent legislative action by its governing board. These instruments will ensure HCP implementation through the following elements: 1) requirement for the collection of the FORA Community Facilities District Special Tax on former Fort Ord development projects in order to fund the HCP Endowments; 2) requirement for a project that seeks take authorization and falls within a Permit Applicant’s jurisdiction to submit a certificate of inclusion application during their entitlement process; and 3) a procedure for Permit Applicants to extend a portion of their take coverage to third-party applicants.

3.31 “HCP Section” means a section of the HCP.

3.32 “HCP species” means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing incidental take permits under ESA §10(a)(1)(B) or CESA §2081. Federal and state-listed species include: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Contra Costa goldfields (*Lasthenia conjugens*), Yadon’s piperia (*Piperia yadonii*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Smith’s blue butterfly (*Euphilotes enoptes smithi*), western snowy plover (*Charadrius nivosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and seaside bird’s beak (*Cordylanthus rigidus* var. *littoralis*). Unlisted species include coast wallflower (*Erysimum ammophilum*), Toro manzanita (*Arctostaphylos montereyensis*), sandmat manzanita (*Arctostaphylos pumila*), Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), Eastwood’s ericameria (*Ericameria fasciculata*), Hooker’s manzanita (*Arctostaphylos hookeri*), black legless lizard (*Anniella pulchra nigra*), Monterey ornate shrew (*Sorex ornatus salaries*), and California linderiella (*Linderiella occidentalis*).

3.33 “Installation-Wide MultiSpecies HCP EIS/EIR” means the Joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) dated (XXXX XX, 20XX) prepared to analyze the environmental impacts of the HCP and Permits under NEPA

and CEQA.

3.34 “Jurisdictional Wetlands and Waters” means state and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act or, from the State Water Resources Control Board under either Section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under FGC Section 1602.

3.35 “listed species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.36 “local jurisdictions” means the County, the Cities, and the MPRPD.

3.37 “mitigation measures” means management actions required by the HCP that are necessary to achieve HCP biological goals and objectives.

3.38 “MBTA” means the federal Migratory Bird Treaty Act (16 USC §703 et seq.) and rules, regulations, and guidelines promulgated under that Act.

3.39 “NEPA” means the National Environmental Policy Act (42 USC §4321 et seq.) and rules, regulations, and guidelines promulgated under that Act.

3.40 “non-listed species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under ESA or CESA.

3.41 “Party” or “Parties” means any of the signatories to this Agreement.

3.42 “Permit Area” means the area within the Plan Area where the Permit Applicants are seeking authorization from the Wildlife Agencies for the authorized take of HCP species while carrying out covered activities, within the area depicted in HCP Figure 1-2, attached to this Agreement as **Exhibit A**.

3.43 “Permits” means the federal Permit issued by USFWS to the Permit Applicants pursuant to Section 10(a)(1)(B) of the ESA and the state Permit issued by CDFG to the Permit Applicants under FGC Section 2081 for take incidental to covered activities on the former Fort Ord military installation, as they may be amended from time to time.

3.44 “Permit Applicants” means the Cooperative, FORA, County, Marina, Monterey, Seaside, Del Rey Oaks, State Parks, UC, CSUMB, MPC, MPRPD, and MCWD.

3.45 “Plan Area” means the geographic area analyzed in the HCP, located in the northern portion of Monterey County, as depicted in HCP Figure 1-2, attached to this Agreement as **Exhibit A**. The Plan Area is further described in detail in HCP Section 1.4.

3.46 “Resource Management Plan” means HMA-specific resource management plans and base-wide management strategies as defined in Chapter 5, Section 5.5.3 of the HCP..

3.47 “state covered species” means species considered covered for the purposes of the state Permit and include only those HCP Species which are state-listed or candidate species.

3.48 “state-listed species” means the HCP species listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, which includes: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), seaside bird’s beak (*Cordylanthus rigidus* var. *littoralis*), and California tiger salamander (*Ambystoma californiense*).

3.49 “state Permit” means the state take permit issued to the Permit Applicants under FGC Section 2081, as it may be amended from time to time.

3.50 “take”

3.50.1 means, under the federal Permit, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted HCP species. Harm means an act that actually kills or injures a member of an HCP species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of an HCP species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.50.2 means, under the state Permit, to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture or kill a listed species (FGC Section 86). Harm and harassment constitute take if they are the proximate cause of death (CDFG General Counsel). Section 2080 of the FGC prohibits commerce and taking of species listed as endangered or threatened under the CESA.

3.51 “third-party participants” means developers, infrastructure project proponents, and other persons or entities that qualify for and receive take authorization from a Permit Applicant in exchange for compliance with applicable AMMs and mitigation measures and other terms and conditions of this Agreement, the HCP, and the Permits.

3.52 “unforeseen circumstances”

3.52.1 means, under the federal Permit, changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the USFWS at the time of the conservation plan’s

negotiation and development, and that result in a substantial and adverse change in the status of the HCP species.

3.52.2 means, under the state Permit, changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more HCP species.

3.53 “unlisted species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

3.54 “USFWS” means the U.S. Fish and Wildlife Service, an agency of the U.S. Department of Interior.

3.55 “Wildlife Agencies” means USFWS and CDFG.

4.0 OBLIGATIONS OF THE PARTIES AND BLM

4.1 Obligations of the Permit Applicants. The Permit Applicants will fully and faithfully perform all obligations assigned to them under this Agreement, the Permits, and the HCP.

4.2 Obligations of the BLM. In the spirit of cooperation, the BLM commits, to the extent allowed under governing law and regulation, including FLMPA and NEPA, to implement the conservation strategy on the BLM administered Fort Ord lands. However, nothing in the HCP will or shall be in the future interpreted as superseding BLM’s obligations under the BLM’s Resource Management Plan (RMP), Area of Critical Environmental Concern (ACEC) designation, or any requirements of BLM’s governing law and regulation, including FLPMA and NEPA.

4.3 Obligations of the Wildlife Agencies. Upon execution of this Agreement by all Parties, the Wildlife Agencies will issue the Permit Applicants Permits under Section 10(a)(1)(B) of the ESA and under Section 2081 of FGC, authorizing incidental take by the Permit Applicants of each listed HCP species resulting from covered activities on covered lands.

4.3.1 Coverage of Permits. The federal and state Permits will identify all HCP species. The Permits will take effect for listed HCP species at the time the Permits are issued. Subject to compliance with all other terms of this Agreement, only the Section 10(a)(1)(B) Permit (federal) will take effect for an unlisted HCP species upon the listing of such species.

4.3.2 “No Surprises” assurances. Provided that the Permit Applicant have complied with their obligations under the HCP, this Agreement, and the Permits, the Wildlife Agencies can require the Permit Applicants to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the “No Surprises” regulations at 50 Code of Federal Regulations (“CFR”) §§17.22(b)(5), 17.32(b)(5), 222.22(g). Additionally, notwithstanding anything to the contrary in this Agreement and the HCP, USFWS retains statutory authority, under Section 10 of the ESA, to revoke incidental take permits that the Wildlife Agencies find are likely to jeopardize the continued existence of a listed species.

4.4 Interim obligations upon a finding of unforeseen circumstances. If the Wildlife Agencies make a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, the Permit Applicants will avoid contributing to or appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF THE HCP

The HCP is incorporated herein by this reference. If this Agreement conflicts with the HCP, this Agreement will control. In all other cases, this Agreement and the HCP will be interpreted to be supplementary to each other.

6.0 LEGAL FINDINGS AND REVIEW BY THE WILDLIFE AGENCIES

USFWS has statutory authority to issue the Section 10(a)(1)(B) Permit for both listed and unlisted species required under this Agreement. This Agreement uses the term “Federal Covered Species” to refer to those species covered by the federal Permit. CDFG may only issue a state Permit for state-listed endangered and threatened species under CESA. CDFG does not have legal authority to issue take permits under Section 2081 for unlisted species. Thus, Federal Covered Species are not State Covered Species for purposes of the state Permit. This Agreement, like the HCP, uses the term “HCP species” for consistency. The term HCP species includes both federal covered species and state covered species.

7.0 TERM

7.1 Initial term. This Agreement and the HCP will become effective on the date that the Wildlife Agencies issue the Permits. This Agreement, the HCP, and the Permits will remain in effect for a period of 50 years from issuance of the original Permits, except as provided below.

7.2 Suspension or revocation of the Permits. The Wildlife Agencies may suspend or revoke the Permits for cause in accordance with the laws in force at the time of such suspension or revocation (See 5 USC §558; 50 CFR §§13.27–13.29, 222.27; 15 CFR Part 904) except that the Wildlife Agencies may revoke the Permits based on a determination that the continuation of the permitted activity would be likely to jeopardize the continued existence of the HCP species only if the Wildlife Agencies have not been successful in remedying the situation in

a timely fashion through other means as provided in the No Surprises regulation (50 CFR §§17.22(b)(5), 17.32(b)(5), 222.22(g)). Such suspension or revocation may apply to the entire Permits, or only to specified HCP species, covered lands, or covered activities. If the Permits are suspended or revoked, the Permit Applicants' obligations under this Agreement and the HCP will continue until the Wildlife Agencies determine that all take of HCP species that occurred under the Permits has been fully mitigated in accordance with the HCP.

7.3 Treatment of unlisted species. Species that meet the “unlisted species” and “HCP species” definitions will be treated as though they were listed species in determining the amount of take and the mitigation required.

7.4 Extension of the Permits. Upon agreement of the Parties, the Permits may be extended beyond their initial term under regulations of the Wildlife Agencies in force on the date of such extension. If the Permit Applicants desire to extend the Permits, they will so notify the Wildlife Agencies at least 180 days before the then-current term is scheduled to expire. Extension of the Permits constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the Wildlife Agencies may require at the time of extension.

7.5 Withdrawal. Any Party may withdraw from this Agreement upon 90 days written notice to the other Parties. Any withdrawing Permit Applicant remains obligated, to the same extent, if any, that the remaining Permit Applicants are obligated, to contribute money to pay any Cooperative debts, liabilities, and obligations arising from or related to Cooperative actions taken while the withdrawing Permit Applicant was a party to the Agreement.

7.6 Effect of Withdrawal. Upon withdrawal, the withdrawing party shall no longer be a Party, and the term “Parties” as used in this Agreement shall thereafter mean the remaining Parties. Withdrawing Permit Applicants cease to enjoy the regulatory benefits conferred upon Parties by USFWS and CDFG.

8.0 FUNDING

The Permit Applicants warrant that they have, and will expend, such funds as may be necessary to fulfill their obligations under the HCP, and in the case of the UC, MPC, and CSUMB, that it will meet the commitments set forth in paragraph 8.5. The Permit Applicants will promptly notify the Wildlife Agencies of any material change in their financial ability to fulfill their obligations. In addition to providing any such notice, the Cooperative will provide the Wildlife Agencies with a copy of its annual report each year of the Permits, or with such other reasonably available financial information that the Parties agree will provide adequate evidence of the Permit Applicants' ability to fulfill their obligations.

8.1 HCP costs. HCP Chapter 9, *Cost and Funding* describes HCP implementation costs, funding sources, and assurances. The Permit Applicants developed the cost model to estimate HCP implementation expenses of the Cooperative, UC, State Parks, and BLM over the

Permit term. The Permit Applicants commit to adequately fund the costs associated with the HCP. FORA Community Facilities District (CFD) Special Tax payments and annual appropriations from state and federal budgets will be the primary HCP funding sources. Notwithstanding the foregoing, UC's, MPC's, and CSUMB's obligation to fund such measures and activities shall be limited to that provided in Section 8.5 of this Agreement.

8.2 BLM's funding commitment. The BLM agrees to include a request for sufficient funding to meet implementation costs attributed to it under HCP Chapter 9. The BLM does not, and cannot, commit funds in excess of its authority under the Anti-Deficiency Act.

8.3 State Parks' funding commitment. State Parks will include in its annual budget requests for sufficient funds to fulfill its obligations under this HCP for the 979-acre Fort Ord Dunes State Park. State Parks will fund the management, monitoring, and other obligations assigned to it under the HCP with available appropriated funds supplemented by grants and other non-appropriated monies as available.

8.4 FORA's, the Cities', and the County's funding commitments. FORA will continue to collect FORA CFD Special Tax payments through June 30, 2014 and the Cities and County will continue to collect FORA CFD Special Tax payments after June 30, 2014 to fund the Endowment, which includes: a) the HCP Endowment Fund, b) the FONR Endowment Fund, c) the IAF and d) the Borderlands Endowment Fund held by the Endowment Manager. FORA, the Cities and the County will contribute 25% of FORA CFD Special Tax payments collected to the Endowments until the Endowment is funded. The Cooperative will ensure that the HCP Endowment Fund and the FONR Endowment Fund are funded at equal rates such that they are scheduled to be fully funded at the same time. Upon initial establishment of the FONR Endowment, the Endowment Manager will transfer this Endowment to UC. Until the FONR Endowment is fully funded, UC will manage the Endowment, but will not make withdrawals. Once the FONR Endowment is fully funded, UC will oversee the Endowment for management of the FONR consistent with the HCP. In committing to collect FORA CFD Special Tax payments, these entities will have met their respective obligations for the funding of the Endowment under the terms of this Agreement. No City or County may be compelled to obligate its General Fund to satisfy its financial obligations under the HCP.

8.5 UC's, MPC's, and CSU's funding commitments. UC will continue to support FORA, Marina, and the County to ensure collection of FORA CFD Special Tax payments on development located on UC's lands. As provided in that certain Agreement Regarding Public Safety Officer Training Facilities among MPC, the County, and FORA, dated November 8, 2002, MPC's share of the costs of Infrastructure Improvements was set at \$500,000, subject to adjustment for any deferred payment in accordance with adopted FORA practice. FORA shall apply MPC's Infrastructure Improvements payment according to its current Capital Improvement Program ("CIP") document obligations as described in Table 5, Section I. Allocation of Fees Against Obligations. After making its Infrastructure Improvement payment to FORA, MPC will have met its habitat management obligations under Sections 9.0 *Monitoring and Reporting*, 10.0 *Changed Circumstances*, 11.0 *Adaptive Management*, and 12.0 *Land Transactions*, of this

Agreement, its obligation for the funding of the Endowment under the terms of this Agreement, and its Borderlands management obligations according to this Agreement and the HCP. As provided in the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and the CSU Board of Trustees, dated September 14, 2009, CSU has agreed to request legislative funding to pay FORA a one-time payment of \$47,800 for HCP preparation costs plus \$4,784.91 annual payment to manage the CSU Borderland property. If the Legislature denies CSU's initial funding request, CSU shall: (i) resubmit the request during the following CSU budget cycle, and (ii) continue to resubmit the request annually until the funding is appropriated or until the HCP is completed and executed by all parties thereto, whichever comes first. If the Legislature has not appropriated the funding at the time the HCP is executed, CSU shall seek authority from the Trustees to engage in discussions with representatives of FORA and Marina regarding the availability of alternative funding sources, if any, for CSU's one-time payment of \$47,800 and its annual payments of \$4,784.91. To the extent funding is appropriated from the Legislature or provided through an agreed alternative funding source, FORA, and thereafter its successor agency, shall allocate CSU's payments to reimburse HCP preparation costs and for management of CSU Borderlands property to the HCP endowment fund. CSU's payments to FORA, as described in this Section 8.5, shall fulfill all of CSU's HCP funding obligations and Borderlands management obligations, pursuant to this Agreement and the HCP. CSU will not be subject to any additional fees including special assessments, taxes, or CFD Special Taxes. If CSU does not pay the amount set forth in this Section 8.5, CSU will not be subject to the HCP or the IA.

8.6 MPRPD's funding commitment. The MPRPD will fund habitat management, compliance, and monitoring actions (consistent with the HCP) on its 19-acre property either through a one-time monetary contribution of \$____ to the Cooperative or assuming the responsibility to perform such actions (consistent with the HCP) on its property.

8.7 HCP funding consistent with the stay-ahead provision. Initial conservation resource demands to support HCP services or other HCP needs will be provided through FORA, BLM, State Parks, and the Army to meet HMP or deed requirements, and by separate agreement between FORA and CSUMB, MPC, and UC as set forth in paragraph 8.5. FORA will continue to collect funding as noted herein and will seek grant or contract award support where applicable. BLM, State Parks, and the Army are committed to meeting the HMP or HCP conservation demands on their property through federal or state management and resource processes. HCP Section 7.6, *Stay-Ahead Provision* states that the proportion of dedicated reserve acreage for each HCP species' habitat transferred from the Army shall be at least 5% higher than the proportion of allowable development-related impacts on each species' habitat. In order to meet the stay-ahead provision, reserve lands in HMA's must also have funding to ensure management according to the conservation strategy (see HCP Section 9.3.4, *Funding Adequacy*). The Permit Applicants will ensure that habitat and habitat management funding are provided prior to impact on an HCP species' habitat, consistent with the HCP Sections 7.6 and 9.3.4. Notwithstanding the foregoing, UC's, CSUMB's, and MPC's obligation to fund such measures and activities shall be limited to that set forth in paragraph 8.5 above.

8.8 HCP Endowment Fund use. The Cooperative shall use funds from the HCP Endowment Fund to implement HCP habitat management obligations on HMAs owned by the County, the MPRPD, MPC, and the City of Marina. The Cooperative shall use funds from the HCP Endowment Fund to pay for monitoring on HMAs within the HCP Plan Area, regardless of ownership (i.e., including BLM, State Parks, and UC lands), and to pay for ongoing Borderlands management actions on UC, MPC, and CSUMB properties, if FORA collects FORA CFD Special Tax payments or negotiated mitigation payments according to paragraph 8.5 of this Agreement, and on all other Borderlands property identified in Figure 3-2, *Borderlands Categories*, in the HCP. The Permit Applicants commit to funding HCP required action implementation in perpetuity. The CFD Special Tax will be used to annually fund HCP required actions and the four separate Endowment funds as described in Section 9.3 of the HCP.

8.9 Use of the Fort Ord Natural Reserve Endowment. FORA provides approximately \$82,000 annually to the UC/Natural Reserve System (“UC/NRS”) for their interim management of the 605-acre FONR. The funding amount changes annually to keep pace with the annual change in the Bay Area Consumer Price Index (“CPI”). The Cooperative will provide annual funding to the UC/NRS sufficient to meet the annual costs of complying with the HCP on FONR lands until FORA, or, if after June 30, 2014, the Cities and County, have fully funded the FONR Endowment. The annual funding amount will continue to change in line with the Bay Area CPI.

Upon initial establishment of the FONR Endowment, the Endowment Manager will transfer this Endowment to UC. Until the FONR Endowment is fully funded by FORA CFD Special Tax payments, UC will manage the Endowment, but will not make withdrawals. Once the FONR Endowment is fully funded, UC will oversee the Endowment for management of the FONR consistent with the HCP.

8.10 Use of the Implementation Assurances Fund. The Cooperative will use funds from the IAF to ensure adequate funding of necessary remedial measures to address any of the changed circumstances described in HCP Section 8.1.1.2. The Cooperative will also use funds from the IAF to augment annual revenues for the HCP if FORA CFD Special Tax payments do not keep pace with HCP funding needs or federal or state appropriations decline unexpectedly (see Section 8.12 below). FORA (and the County and Cities after June 30, 2014) will use FORA CFD Special Tax payments to fund the IAF until an Endowment of \$3.4 million is reached. The Endowment Manager will reinvest interest from this fund to ensure that it keeps pace with inflation and the rising costs of HCP implementation.

8.11 Long-term management funding. The Cooperative will ensure that the four Endowment funds, established by FORA, the County, and Cities through FORA CFD Special Tax payments during the Permit term, will continue to fund post-Permit management and monitoring (see HCP Section 9.3.4). This will ensure that HCP required actions are effective and HMAs retain their biological values. The four Endowment Funds are designed to grow by the end of the Permit term to generate sufficient interest to pay for management on lands owned by local agencies, CSUMB and the UC/NRS (HCP Table 9-5). These funds will also generate

enough interest to pay for monitoring costs on all HMAs (including State Parks and BLM land). After the Permit term, the Cooperative will no longer be required to implement remedial measures in the event of changed circumstances; however, funding must be maintained to ensure HCP implementation on all HMAs. While UC will maintain the Endowment for the UC/NRS FONR, the Cooperative will instruct the Endowment Manager to transfer any remaining funds from the IAF into the HCP Endowment Fund to simplify accounting. BLM and State Parks will continue to seek adequate funding of operational costs on their property to implement the HCP (Table 9-5).

8.12 Effect of inadequate funding. If there is a funding shortfall in a given year, the Cooperative will use funds from the IAF to ensure adequate funding of necessary remedial measures to address any of the changed circumstances described in HCP Section 8.1.12. In addition, the Cooperative will include in its annual report to USFWS and CDFG an accounting of: 1) all revenues received (by type), 2) an assessment of progress towards total revenue goals, 3) an evaluation of the economic assumptions on which the HCP was based, and 4) an assessment of progress toward a complete funding strategy for implementation after the Permit term. USFWS and CDFG will use the annual report to assess the adequacy of program funding. If those Agencies determine that the IAF, the HCP Endowment Fund, the FONR Endowment, and/or the Borderlands Endowment Fund funding is inadequate, they will evaluate the effect of the funding shortfall on the scope and validity of the Permits. Unless the Permit Applicants exercise the authority to withdraw under Section 7.5 of this Agreement or the Wildlife Agencies revoke the Permits under Section 7.2 of this Agreement, the Parties agree that they will meet and confer to cooperatively develop a strategy to address the funding shortfall, and to maintain the level of conservation and take authorization afforded by the Permits until adequate funding is restored. Notwithstanding the foregoing, UC's, CSUMB's, and MPC's funding commitments, including any obligation to fund such funding shortfalls shall be limited to those set forth in Section 8.5 above.

9.0 MONITORING AND REPORTING

9.1 Planned periodic reports. As described in the HCP, the Cooperative will submit periodic reports on behalf of the Permit Applicants describing its activities and results of the monitoring program provided for in the HCP.

9.2 Other reports. The Cooperative will provide, within 30 days of being requested by the Wildlife Agencies, any additional information in its possession or control related to implementation of the HCP that is requested by the Wildlife Agencies for the purpose of assessing whether the terms and conditions of the Permits and the HCP, including the HCP's adaptive management plan, are being fully implemented.

9.3 Certification of reports. All reports will include the following certification from a responsible Cooperative official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all

relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

9.4 Monitoring by the Wildlife Agencies. The Wildlife Agencies may conduct inspections and monitoring in connection with the Permits in accordance with their regulations (See 50 CFR §§13.47, 220.47.).

10.0 CHANGED CIRCUMSTANCES

10.1 Permit Applicant-initiated response to changed circumstances. The Cooperative will give notice to the Wildlife Agencies within 7 days after learning that any of the changed circumstances listed in Section 8.1.1.2 of the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the changed circumstances, the Permit Applicants will modify their activities in the manner described in Section 8.1.1.2 of the HCP, to the extent necessary to mitigate the effects of the changed circumstances on HCP species, and will report to the Wildlife Agencies on their actions. The Permit Applicants will make such modifications without awaiting notice from the Wildlife Agencies.

10.2 Wildlife Agencies-initiated response to changed circumstances. If the Wildlife Agencies determine that changed circumstances have occurred and that the Permit Applicants have not responded in accordance with Section 8.1.1.2 of the HCP, the Wildlife Agencies will so notify the Permit Applicants and will direct the Permit Applicants to make the required changes. Within 30 days after receiving such notice, the Permit Applicants will make the required changes and report to the Wildlife Agencies on their actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the Permits or HCP.

10.3 Listing of species that are not HCP species. If a non-HCP species that may be affected by covered activities becomes listed under the ESA, the Permit Applicants will implement the “no-take/no-jeopardy” measures identified by the Wildlife Agencies until the Permits are amended to include such species, or until the Wildlife Agencies notify the Permit Applicants that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of the non-HCP species.

11.0 ADAPTIVE MANAGEMENT

11.1 Permit Applicant-initiated adaptive management. The Cooperative will implement the adaptive management provisions in HCP Chapter 6, when changes in management practices are necessary to achieve the HCP’s biological objectives, or to respond to monitoring results or new scientific information. The Cooperative will make such changes without awaiting notice from the Wildlife Agencies, and will report to the Wildlife Agencies on any actions taken pursuant to this section.

11.2 Wildlife Agencies-initiated adaptive management. If the Wildlife Agencies

determine that one or more of the adaptive management provisions in the HCP have been triggered and that the Cooperative has not changed its management practices in accordance with Chapter 6 of the HCP, the Wildlife Agencies will so notify the Cooperative and will direct the Cooperative to make the required changes. Within 30 days after receiving such notice, the Cooperative will make the required changes and report to the Wildlife Agencies on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the Permits, or HCP, except as provided in this section.

11.3 Reductions in mitigation. The Cooperative will not implement adaptive management changes that may result in less mitigation than provided for HCP species under the original terms of the HCP, unless the Wildlife Agencies first provide written approval. The Cooperative may propose any such adaptive management changes by notice to the Wildlife Agencies, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on HCP species, and other environmental impacts. Within 120 days of receiving such a notice, the Wildlife Agencies will approve the proposed adaptive management changes, approve them as modified by the Wildlife Agencies, or notify the Cooperative that the proposed changes constitute amendments to the Permits that must be reviewed under Section 13.2 of this Agreement.

11.4 No increase in take. This section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of HCP species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under Section 13.2 of this Agreement.

12.0 LAND TRANSACTIONS

12.1 Acquisition of land by the Permit Applicants. Nothing in this Agreement, the HCP, or the Permits limits the Permit Applicants' rights to acquire additional lands. Any lands that may be acquired will not be covered by the Permits except upon amendment of the Permits as provided in Section 13.2 of this Agreement.

12.2 Disposal of land by the Permit Applicants. The Permit Applicants' transfer of ownership or control of covered land will not require prior approval by the Wildlife Agencies and an amendment of the Permits if: (1) a Permit Applicant transfers ownership or control of covered land to another Permit Applicant or (2) a Permit Applicant transfers ownership or control of non-HMA covered land to a third-party developer that will be subject to the Permit Applicant's adopted HCP ordinance/policy or that of another Permit Applicant. If the Permit Applicants' transfer of ownership or control of covered land does not meet requirements 1 or 2, such transfer of ownership or control will require prior approval by the Wildlife Agencies and an amendment of the Permits in accordance with Section 13.2 of this Agreement, except that transfers of covered lands may be processed as minor modifications in accordance with Section 13.1 of this Agreement if:

- (a) The land will be transferred to an agency of the federal government and, prior to transfer, the Wildlife Agencies have determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;
- (b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to the Wildlife Agencies (e.g., an easement held by CDFG with USFWS as third-party beneficiaries or a deed restriction requiring implementation of the HCP) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP; or
- (c) The Wildlife Agencies determine that the amount of land to be transferred will not have a material impact on the ability of the Permit Applicant to comply with the requirements of the HCP and the terms and conditions of the Permits.

13.0 AMENDMENTS

13.1 Minor amendments.

- (a) Any Party may propose minor amendments to the HCP or this Agreement by providing notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on HCP species. The Parties will use best efforts to respond to proposed minor amendments within 60 days of receipt of such notice. Proposed minor amendments will become effective upon all other Parties' written approval. If a receiving Party objects to a proposed modification, it must be processed as an amendment of the Permits in accordance with Section 13.2. The Wildlife Agencies will not propose or approve minor amendments to the HCP or this Agreement if the Wildlife Agencies determine that such minor amendments would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.
- (b) Minor amendments to the HCP and this Agreement processed pursuant to this subsection may include the following:
 - (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
 - (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permits or HCP;

- (3) minor changes to survey, monitoring or reporting protocols; and
 - (4) changes to any measure(s) in the conservation strategy to respond to changed circumstances identified in Section 10.0 of this Agreement
 - (5) changes listed in Section 12.2 of this Agreement; and
 - (6) other changes that do not result in adverse effects on HCP species beyond that analyzed in the HCP and the associated biological opinion, and do not limit the ability of the Cooperative to achieve the HCP biological goals and objectives.
- (c) Any other amendments to the HCP or IA will be processed as amendments of the Permits in accordance with Section 13.2.

13.2 Amendment of the Permits. The Permits may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the NEPA, and the Wildlife Agencies' permit regulations. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on HCP species. The process for amendment of the Permits is detailed in HCP Section 8.4.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In general. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permits, and the HCP.

14.2 No monetary damages. With the exception of BLM, no Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

14.3 Injunctive and temporary relief. With the exception of BLM, the Parties acknowledge that the HCP species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with this Agreement.

14.4 Enforcement authority of the United States. This Agreement does not limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

14.5 Dispute resolution. The Parties agree to work together in good faith to resolve disputes, using the informal dispute resolution procedures set forth in this section. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy

without waiting to complete informal dispute resolution.

14.5.1 Informal dispute resolution process. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved Party will notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.
- (b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.
- (c) Within 30 days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

15.0 MISCELLANEOUS PROVISIONS

15.1 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

15.2 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

ATTN: Program Administrator
Fort Ord Regional Habitat
Cooperative
920 2nd Ave., Ste. A

ATTN: Executive Officer
Fort Ord Reuse Authority
920 2nd Ave., Ste. A
Marina, CA 93933

ATTN: Administrator
County of Monterey
168 W. Alisal St., 3rd Fl
Salinas, CA 93901

Marina, CA 93933
Telephone ("T"): 831-883-3672
FAX ("F"): 831-883-3672
ATTN: City Manager
City of Marina
211 Hillcrest Ave.
Marina, CA 93933
ATTN: City Manager
City of Monterey
580 Pacific Street
Marina, CA 93940
T:
F:

T: 831-883-3672
F: 831-883-3672
ATTN: City Manager
City of Seaside
440 Harcourt Ave.
Seaside, CA 93955
ATTN: City Manager
City of Marina
211 Hillcrest Ave.
Marina, CA 93933
T:
F:

T:
F:
ATTN: City Manager
City of Del Rey Oaks
650 Canyon Del Rey
Del Rey Oaks, CA 93940
ATTN: Field Supervisor
U.S. Fish and Wildlife
Service
Ventura Fish and Wildlife
Office
2493 Portola Rd., Ste. B
Ventura, CA 93003
T:
F:

ATTN: Regional Manager
California Department of Fish
and Game
Central Region Headquarters
Office
1234 E. Shaw Avenue
Fresno, CA 93710
T:
F:

ATTN: District
Superintendent
California Department of
Parks and Recreation
Monterey District
2211 Garden Road
Monterey, CA 93940
T:
F:

ATTN: General Manager
Marina Coast Water
District
11 Reservation Road
Marina, CA 93933
T:
F:

ATTN: Managing Director
UC MBEST Center
c/o REO/MBEST
1156 High Street
Santa Cruz, CA 95064
T:
F:

ATTN: President
California State University
Monterey Bay
100 Campus Center
Bldg. 1
Seaside, CA 93955
T:
F:

ATTN:
Superintendent/President
Monterey Peninsula
College
980 Fremont Street
Monterey, CA 93940
T:
F:

ATTN: Director, UCSC
Natural Reserves
Physical & Biological Sciences
c/o ENVIS
1156 High Street
Santa Cruz, CA 95064
T:
F:

ATTN: General Manager
Monterey Peninsula Regional
Park District
60 Garden Court,
Suite 325
Monterey, CA 93940
T:
F:

ATTN: Field Manager
Bureau of Land Management
20 Hamilton Court
Hollister, CA 95023
(831)630-5000
(831)630-5055

15.3 Entire agreement. This Agreement, together with the HCP, the Permits, the anticipated HCP implementing ordinances/delegation of authority (among the Permit

Applicants), and JPA Agreement (among the Permit Applicants), constitutes the entire agreement among the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party that is not embodied herein.

15.4 Elected officials not to benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

15.5 Availability of funds. Implementation of this Agreement and the HCP by the USFWS and BLM is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the USFWS and BLM will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

15.6 Duplicate originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

15.7 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

15.8 Relationship to the ESA, FLPMA, and other authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA, FLPMA, and applicable federal law. In particular, nothing in this Agreement is intended to limit the authority of the USFWS to seek penalties or otherwise fulfill their responsibilities under the ESA, and nothing in this Agreement is intended to limit the authority of the BLM to fulfill their responsibilities under FLPMA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS and BLM as agencies of the federal government. Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of the Permit Applicants under the HCP and this Agreement will be considered in any consultation affecting the Permit Applicants' use of the covered lands.

15.9 References to regulations. Any reference in this Agreement, the HCP, or the Permits to any regulation or rule of the USFWS shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

15.10 Applicable laws. All activities undertaken pursuant to this Agreement, the HCP, or the Permits must be in compliance with all applicable state and federal laws and regulations.

15.11 Successors and assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the Permits shall be governed by the Wildlife Agencies' regulations in force at the time.

15.12 Calendar days. Throughout this Agreement and the HCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

15.13 Response times. Except as stated herein or required by law, the Wildlife Agencies and the Permit Applicants shall use reasonable efforts to respond to written requests from a Party within forty-five (45) days. The Parties acknowledge, however, that the Cities, the County, and MCWD are subject to the Permit Streamlining Act and that nothing in this Agreement shall be construed to require them to violate that Act. In addition, the Wildlife Agencies will provide timely review of proposals for covered activities to be implemented directly by the Permit Applicants, where such review is required by this Agreement, the HCP, or the Permits.

15.14 Review of third-party participant applications. Various conservation measures in the HCP require third-party participants to submit applications, plans or reports for approval by a Permit Applicant prior to carrying out a covered activity. In such circumstances, no later than sixty (60) days after receiving the application, the point of contact for the relevant Permit Applicant will provide one of the following in writing: (1) an approval of the application, plan, or report; (2) a conditional approval of the application, plan, or report subject to specifically identified additional information; or (3) a denial of the application, plan, or report with a written explanation of what changes can be made to receive approval if the application, plan, or report is resubmitted.

15.15 Changes in the boundaries of the County, Cities, or other land use jurisdictions. The Parties acknowledge that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances, and similar land use ordinances or adopted plans, and the granting of land use entitlements by the County, Cities, or other land use jurisdictions are matters within the sole discretion of the County, Cities, or other land use jurisdictions and shall not require amendments to this Agreement or the approval of other Parties to this Agreement. However, no such action by the County, Cities, or other land use jurisdictions (with the exception of BLM) shall alter or diminish their obligations under this Agreement, the HCP, or the Permits. BLM retains the ability to change its land use plan which could impact the Agreement, the HCP, and the Permits.

15.16 Defense. Upon request, CDFG shall, to the extent authorized by California law, cooperate with the Permit Applicants in defending, consistent with HCP terms, lawsuits arising out of the Permit Applicants' adoption of this Agreement and the HCP.

15.17 Attorneys' fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Parties to the litigation shall bear their own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable federal law.

15.18 Relationship to the ESA, CESA, and other authorities. The terms of this Agreement are consistent with and shall be governed by and construed in accordance with ESA, CESA, and other applicable state and federal laws. In particular, nothing in this Agreement limits the authority of the USFWS and CDFG to seek penalties or otherwise fulfill its responsibilities under ESA and CESA. Moreover, nothing in this Agreement limits the responsibilities of the USFWS as an agency of the federal government or CDFG as an agency of the State of California.

15.19 Severability. In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one does not automatically cause revocation of the other.

15.20 Due Authorization. The Parties represent and warrant that (1) the execution and delivery of this Agreement has been duly authorized and approved by requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable the Parties to enter into and comply with the terms of this Agreement, and (3) the persons executing this Agreement on behalf of the Parties have the authority to bind the Parties.

15.21 Headings. Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Wildlife Agencies issue the Permits.

BY _____

Deputy Regional Director
United States Fish and Wildlife Service
Pacific Southwest Region
Sacramento, California

Date _____

BY _____
[Name], President [Director, etc.]
[Company, Organization, Agency]

Date _____

[Include “approval as to form” signature lines]

Exhibit A

Joint Exercise of Powers Agreement Establishing the Fort Ord Regional Habitat Cooperative

Exhibit B

Reproduction of Figure 1-2 from the Former Fort Ord Installation-Wide Multispecies HCP

Exhibit C

Reproduction of Table 1-1 from the Former Fort Ord Installation-Wide Multispecies HCP

Exhibit D

HCP Model Implementing Ordinance

DRAFT

ORDINANCE NO. 2013-XX (uncodified)

(Adoption of the Fort Ord Installation-Wide Multispecies Habitat Conservation Plan Community Facilities District Special Tax Collection and Implementation Procedures)

The Monterey County Board of Supervisors ordains as follows:

SECTION I. SUMMARY.

This ordinance implements the Fort Ord Installation-Wide Multispecies Habitat Conservation Plan ("HCP") within the County of Monterey ("County") by County collecting fees to fund habitat conservation. The HCP will mitigate potential County development impact on certain species.

SECTION II. AUTHORITY.

This ordinance is enacted under the Mitigation Fee Act (Gov. Code, §66000 et seq.) and Article II, Section 7 of the California Constitution.

SECTION III. NOTICE AND HEARING.

This ordinance complies with Government Code Sections 54986 and 66017–66018. Required notices have been given and public hearing held.

SECTION IV. DEFINITIONS.

As used in this ordinance:

- A. "Affected Development Projects" means the development projects to which this ordinance applies.
- B. "Cooperative" means the Fort Ord Regional Habitat Cooperative, a Joint Powers Authority (JPA) formed by the Fort Ord Reuse Authority ("FORA"), County of Monterey ("County"), City of Marina ("Marina"), City of Seaside ("Seaside"), City of Del Rey Oaks ("Del Rey Oaks"), City of Monterey ("Monterey"), California Department of Parks and Recreation ("State Parks"), Regents of the University of California ("UC"), Board of Trustees of California State University ("CSUMB") (on behalf of the Monterey Bay), Monterey Peninsula College ("MPC"), Monterey Peninsula Regional Park District ("MPRPD"), and Marina Coast Water District ("MCWD") to oversee the implementation of the HCP.
- C. "Community Facilities District Special Tax" or "Special Tax" means the FORA Base-wide Community Facilities District ("CFD") Special Tax described in Section 9.3 of the HCP and adopted in 2002.
- D. "Development Project" means flat or vertical construction, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

- E. "Endowment Manager(s)" means the entity(ies), approved by the U.S. Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG"), which will hold the collected Special Tax funds or other capital resources to pay to the Cooperative to implement the HCP.
- F. "FORA Base-wide Community Facilities District Special Tax" means the special tax imposed on development projects under the FORA Base-wide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002. This special tax will finance all or a portion of the costs of the following types of facilities or programs: Roadway Improvements, Transit Improvements and Vehicles, Water and Storm Drain Improvements, Habitat Management, and Other Public Facilities.
- G. "HCP" means the Fort Ord Installation-Wide Multispecies Habitat Conservation Plan, approved by the USFWS on _____, as may be revised.
- H. "HCP Species" means those species of plants and animals whose conservation and management are provided for by the HCP for which limited take is authorized by state and federal permits.
- I. "Implementing Agreement" means the agreement by and among the Cooperative, FORA, County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, UC, Board of Trustees of California State University (on behalf of the Monterey Bay), MPC, MPRPD, MCWD, Bureau of Land Management, USFWS, and CDFG that sets forth terms and conditions for implementing the HCP.
- J. "Project Applicant" means a property owner, or designated agent of the property owner, who has submitted a Development Project approval request to the County.
- K. "Public facilities" includes public improvements or utility services.
- L. "State and federal permits" means the permit issued by CDFG to the County and others on _____, authorizing take of state listed species under the HCP (permit number _____) and the permit issued by the USFWS to the County and others on _____, authorizing incidental take of federal listed species under the HCP and the federal Endangered Species Act ("ESA") (permit number _____), as those documents may be amended.
- M. "Take" has the same meaning provided by the ESA, as amended (16 United States Code [USC] §1531 et seq.) and its implementing regulations with regard to activities subject to that Act. It has the same meaning provided in the California Fish and Game Code with regard to activities subject to the California Endangered Species Act (Fish and Game Code §2050 et seq.) ("CESA") and the Natural Community Conservation Planning Act (Fish and Game Code §2800 et seq.). Take is defined in ESA to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to

engage in any such conduct" (16 USC §1532(18)) and in CESA section 86 as "to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, capture, or kill."

- N. "Urban Development Area" means the areas designated for urban development that are depicted on the map attached hereto as Exhibit A, incorporated herein by reference.

SECTION V. APPLICATION OF ORDINANCE.

- A. This ordinance applies to all Development Projects in unincorporated Monterey County within the Urban Development Area.
- B. The Development Projects to which this ordinance applies, may be referred to as "Affected Development Projects."

SECTION VI. SPECIAL TAX/USE OF REVENUE.

A portion of the Special Tax will be set aside to finance HCP defined habitat management obligations as follows:

- A. mitigate impacts on habitat and HCP covered species,
- B. fund habitat management to protect HCP species,
- C. fund monitoring of HCP species and their habitats, and
- D. administrative actions necessary to implement the HCP.

SECTION VII. FINDINGS.

The County Board of Supervisors finds and determines:

- A. There is a need to establish a comprehensive framework to protect and conserve species, wetlands, natural communities, and ecosystems in the County, while improving the environmental permitting process for impacts of future development on rare, threatened, and endangered species.
- B. To meet the purposes identified in Section VI, the County joined with FORA and other agencies to develop the HCP and the Implementing Agreement. The Board finds that the HCP, implemented in accordance with the Implementing Agreement, will: a) provide comprehensive species and ecosystem conservation; b) help preserve endangered species; c) balance open space, habitat, and urban development; d) reduce the cost and increase the clarity and consistency of federal and state permits; e) consolidate these processes into a single plan; f) encourage multiple uses of protected areas; g) share the costs and benefits of the HCP as widely and equitably as possible; and h) protect private property rights.

- C. This ordinance will enable the County to: a) promote public benefit by helping achieve the conservation goals in the HCP, b) implement the terms and conditions of the Implementing Agreement, and c) preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act, the California Environmental Quality Act, ESA, CESA, and other applicable laws.
- D. There is a reasonable relationship between the use of the Special Tax and Development Projects.
- E. There is a reasonable relationship between the need for the conservation activities to be funded by the Special Tax and the type of Development Projects on which the tax is imposed because the need for these activities, which includes the management of habitat, arises from mitigating impacts of the very Development Projects to which the Special Tax will apply (i.e., Development Projects that disturb open space, habitat, and HCP species).
- F. There is a reasonable relationship between the amount of the Special Tax and the cost of the conservation activities attributable to the Development Projects.

SECTION VIII. SPECIAL TAX.

The Special Tax funds conservation activities identified in Section VI, as follows:

A. Special Tax

1. FORA charges a Special Tax against Affected Development Projects described in the Fort Ord Reuse Authority Base-wide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002.
2. The County will collect the Special Tax, according to the terms and conditions of the FORA–County Implementation Agreement.
3. After FORA’s June 30, 2014 expiration, the County will ensure collection of the Special Tax in the unincorporated area of former Fort Ord.

B. Condition of Approval

Compliance with this ordinance, including payment of the Special Tax is a condition of approval of Affected Development Projects.

C. Fee Transmittal

Affected Development Project developers will transmit the Special Tax to the FORA Controller until June 30, 2014 and FORA shall disburse no less than 25% of the collected Special Tax to the HCP Capital Account and to the Endowment

Manager(s) until the complete HCP Endowments are funded consistent with the HCP. After June 30, 2014, Affected Development Project developers will transmit the Special Tax to the County Auditor-Controller and the County shall disburse no less than 25% of the collected Special Tax to the HCP Capital Account and Endowment Manager(s) until the HCP Endowments are funded consistent with the HCP.

SECTION IX. ADJUSTMENTS TO SPECIAL TAX.

On July 1 of each year, FORA will adjust the Special Tax as described in the Fort Ord Reuse Authority Base-wide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002. On July 1 of each year, beginning July 1, 2014, the County of Monterey will adjust the Special Tax as described in the Fort Ord Reuse Authority Base-wide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002.

SECTION X. CERTIFICATE OF INCLUSION APPLICATION AND REVIEW PROCEDURES.

- A. Section 3.3 of the HCP defines covered activities, which are those projects for which take authority is issued under the HCP. These projects fall into two general categories: 1) projects funded and implemented by Permit Applicants and 2) projects for which there are private (i.e., non-signatory, third-party) applicants, which require entitlements from a Permit Applicant. In both cases, the entity seeking take authorization must follow the HCP concurrence process described in Section 7.5 of the HCP. If the project is an ongoing maintenance, management or other activity not subject to discretionary review, the Permit Applicant or Cooperative shall issue a notice of HCP concurrence once they determine that the proposal is a covered activity under the HCP. If the proposed activity is subject to discretionary review, the third-party applicant will submit a report or certificate of inclusion application to the Permit Applicant with jurisdiction over the area at the time of project application that supplies the following information:
- Definition of project area, including project footprint, extent of construction, and extent of ongoing maintenance activities.
 - Written description of project, including maps.
 - Results of planning surveys.
 - Compliance with avoidance and minimization measures, especially in Borderlands (see Section 5.4, *Measures to Avoid and Minimize Impacts*).
 - Quantification of anticipated direct and indirect impacts on HCP species habitats.
 - Other information as directed by the Planning Director under the HCP.
- B. The County may extend a portion of its take authorization under permit number (TEXXXXX) if it finds, on substantial evidence, that:

1. The application for a certificate of inclusion is complete.
2. The approval requires the Development Project/applicant to comply with the Implementing Agreement, the HCP, and the state and federal permits. Such terms and conditions include but are not necessarily limited to the following:
 - a. Special Tax payment.
 - b. Compliance with surveys, monitoring, avoidance, minimization and mitigation measures applicable to the project, under the HCP.
 - c. Take authorization extension to be consistent with the HCP, the Implementing Agreement, the state and federal permits and federal, state and local laws and regulations.

SECTION XI. JUDICIAL REVIEW.

An action to void the Special Tax shall be commenced within one hundred twenty (120) days after this ordinance is adopted. Any action to attack an increase adopted under Section IX shall be commenced within one hundred twenty (120) days after the effective date of the increase.

SECTION XII. SEVERABILITY.

If any part of the Special Tax or any provision of this ordinance is held invalid, that holding will not affect the validity of the remaining fee components and/or ordinance provisions. The Board declares it would have adopted each part of this ordinance irrespective of the validity of any other part.

SECTION XIII. EFFECTIVE DATE.

This ordinance becomes effective _____, or sixty (60) days after passage, whichever is later, and within fifteen (15) days after passage shall be published once with the names of the Supervisors voting for and against it in the Monterey County Herald, a newspaper of general circulation published in this County.

PASSED AND ADOPTED on _____, by the following vote:

NOES: -
 ABSENT:
 ABSTAIN: ----
 ATTEST:

DRAFT

03-19-12

JOINT EXERCISE OF POWERS AGREEMENT

ESTABLISHING THE

FORT ORD REGIONAL

HABITAT COOPERATIVE

December __, 2012
(To be adopted date)

JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE FORT ORD REGIONAL HABITAT COOPERATIVE

This Joint Exercise of Powers Agreement ("Agreement") is dated for reference on December ____, 2012 ("Effective Date"), and is entered into by and among:

- a. Fort Ord Reuse Authority ("FORA")
- b. County of Monterey ("County"),
- c. City of Marina ("Marina"),
- d. City of Seaside ("Seaside"),
- e. City of Del Rey Oaks ("Del Rey Oaks"),
- f. City of Monterey ("Monterey"),
- g. California Department of Parks and Recreation ("State Parks"),
- h. The Regents of the University of California ("UC"),
- i. The Regents of the California State University (on behalf of the Monterey Bay) ("CSUMB"),
- j. Monterey Peninsula College ("MPC"),
- k. Monterey Peninsula Regional Park District ("MPRPD"), and
- l. Marina Coast Water District ("MCWD").

Each Party is a public agency as defined in Government Code Section 6500. The parties may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title I of the Government Code of the State of California authorizes the Parties to create a joint exercise of powers entity that has the power to exercise jointly the powers common to the Parties.

B. The Parties are empowered by law to undertake certain projects and programs.

C. This Agreement creates an entity to implement the **Installation-Wide Multispecies Habitat Conservation Plan** ("HCP") for the former Fort Ord, California. The HCP provides a multi-agency mechanism to protect natural resources on the former Fort Ord. The Parties expect the HCP to enable them to achieve certain land use planning and development goals and provide comprehensive species and ecosystem conservation for all covered species listed in the HCP or which may be added to the HCP by amendment.

D. The Parties have a common interest in creating an entity capable of implementing the HCP in accordance with the **Implementing Agreement for the Former Fort Ord Installation-Wide Multispecies Habitat Conservation Plan** ("Implementing Agreement"). The HCP and Implementing Agreement identify certain duties and obligations that must be fulfilled to support the issuance of permits to the Parties under the federal Endangered Species Act and California Endangered Species Act. Those permits are intended to enable urban development and other development projects on property owned or controlled by the Parties at the former Fort Ord.

E. Under the terms and conditions of the Implementing Agreement, the Parties acknowledge that they have certain responsibilities for ensuring successful implementation of

Fort Ord Regional Habitat Cooperative

the HCP including collection of the Community Facilities District (“CFD”) Special Tax established by FORA and making HCP concurrence determinations prior to take within their jurisdiction along with other specific responsibilities.

AGREEMENT

NOW, THEREFORE, the Parties, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

1.0 DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for purposes of this Agreement have the meanings specified herein.

“Act” means the Joint Exercise of Powers Act, Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title I of the Government Code of the State of California (Sections 6500–6599).

“Board” means the Fort Ord Regional Habitat Cooperative Governing Board.

“CDFG” means the California Department of Fish and Game.

“Community Facilities District (“CFD”) Funds” means special taxes paid by developers of the former Fort Ord property, as adopted as a base-wide tax to pay for environmental impacts of the former Fort Ord development.

“Cooperative” means the Fort Ord Regional Habitat Cooperative established by this Agreement.

“Endowment” means a) the HCP Endowment Fund, b) the Fort Ord Natural Reserve Endowment Fund (“FONR Endowment”), c) the Implementation Assurances Fund (“IAF”), and d) Borderlands Endowment Fund described in HCP Chapter 9.

“Cooperative Endowment Manager” means the entity, which will be approved by CDFG as the endowment manager to hold the collected CFD Funds or other capital resources, in the form of the HCP Endowment Fund, the IAF, and Borderlands Endowment Fund, to pay to the Cooperative according to the terms described herein, and to collect and temporarily hold CFD Funds that are to be transferred to the UC to fund the FONR Endowment.

“FONR Endowment” means the endowment held and managed by the UC and funded by FONR or the Cooperative for the purpose of adequately funding all HCP-related costs on the FONR.

“HCP” means the Installation-Wide Multispecies Habitat Conservation Plan.

“HMA” means Habitat Management Area as defined within the HCP.

“Implementing Agreement” means the **“Implementing Agreement for the Former Fort Ord Regional Habitat Cooperative**

Fort Ord Installation-Wide Multispecies Habitat Conservation Plan.”

“Habitat Reserve System” means the Habitat Reserve System as set forth in the HCP.

“USFWS” means the United States Fish and Wildlife Service.

2.0 PURPOSE

This Agreement achieves the following objectives:

- A. Establishes the Cooperative to fulfill duties and obligations of the Implementing Agreement and the HCP, including the management and expenditure of funds that are derived from fees/exactions collected by the Parties for implementing the HCP.
- B. Requires the Cooperative to:
 - 1) oversee, monitor, and report on HCP implementation;
 - 2) manage the Habitat Reserve System as defined in the HCP;
 - 3) secure or receive funding for conservation management;
 - 4) provide HCP public information and outreach; and
 - 5) exercise the powers described in Section 6 of this agreement.

3.0 TERM, TERMINATION, AND WITHDRAWAL

3.1. Effective Date. This Agreement becomes effective when ratified by 2/3's (two-thirds) of the endorsing Parties. It will continue until terminated. The Agreement may be terminated by a majority of the Parties after 90-day advance written notice to the other Parties. The Agreement may be terminated immediately by a written supplemental mutual agreement of the Parties.

3.2. Withdrawal. Any Party may withdraw from this Agreement upon 90 days written notice to the other Parties. The withdrawing party remains obligated, to the same extent, if any, that the remaining Parties are obligated, to contribute money to pay any Cooperative debts, liabilities, and obligations arising from or related to Cooperative actions taken while the withdrawing party was a party to the Agreement.

3.3. Effect of Withdrawal. Upon withdrawal, the withdrawing party shall no longer be a Party, and the term “Parties” as used in this Agreement shall thereafter mean the remaining Parties. Withdrawing parties cease to enjoy the regulatory benefits conferred upon Parties by USFWS and CDFG.

4.0 COOPERATIVE

4.1. Cooperative Establishment. There is hereby established under the Act an agency and public entity to be known as the “Fort Ord Regional Habitat Cooperative.” As provided in the Act, the Cooperative is a public entity separate from its Parties. Debts, liabilities and obligations of the Cooperative are its own and not those of the Parties.

Fort Ord Regional Habitat Cooperative

4.2. State Filing. Within 30 days after the effective date of this Agreement or any amendment hereto, the Cooperative will cause a notice of this Agreement and any amendment hereof to be filed with the office of the Secretary of State of the State of California as provided in Section 6503.5 of the Act.

4.3. Governing Board. The Cooperative will be governed by a Governing Board. The Board shall consist of one representative from each of the twelve Parties, unless otherwise specified. The Board shall consist of voting and non-voting members as described under Section 4.4 of this Agreement. Each Party's legislative body shall appoint that Party's representative(s) and may also appoint alternate representative(s), of whom shall serve at the pleasure of the appointing body. The term of office of each Board member and alternate terminates when the member or alternate is replaced by his/her appointing body or when the member or alternate ceases to be an elected official of the appointing body. Each Party's governing city council or board shall appoint a new representative to the Board whenever the Party's seat on the Board becomes vacant.

4.4 Voting. The initial Governing Board structure shall include twelve voting members as follows: City of Del Rey Oaks (1), City of Monterey (1), City of Marina (2), City of Seaside (2), County of Monterey (2), MPC (1), UC (1), CSUMB (1), and MCWD (1). Each voting Board member has one vote for all decisions relating to the governance, budget, and administration of the Cooperative. The Board may choose to enact a decision making policy that is weighted by population, the amount of financial contributions by each member, or by land mass affected regarding extension of the authorization of Take. Decisions require a majority vote of the Board.

4.4.1 Non-Voting Member Assurances. The non-voting members agree to fulfill their responsibilities in compliance with the HCP, the permits, and the Implementing Agreement.

4.4.2 Voting Member Assurances. Since voting members have the responsibility of ensuring HCP compliance through habitat management activities, coordination with other HMA managers, annual monitoring and reporting, and the HCP concurrence process, the voting members agree to: (1) perform habitat management activities in compliance with the HCP and (2) reserve ___ number of acres for non-voting members' development needs, in compliance with the HCP stay-ahead provision, until those ___ acres are completely utilized by non-voting members, or all HCP HMAs have transferred from the Army to the ultimate recipient and are in active habitat management, allowing planned development buildout under the HCP.

4.5 Pay. Board members serve without compensation, but may be entitled to reimbursement for expenses incurred on behalf of the Cooperative at the direction of the Board.

4.6 Staff Costs. FORA shall provide staff support to the Cooperative until the Board elects otherwise or FORA sunsets. The Cooperative shall reimburse FORA for staff support costs according to a Board approved annual budget. Upon FORA's sunset, scheduled for

June 30, 2014, any remaining FORA HCP obligations will be transferred to the Cooperative.

4.7 Meetings of Board.

4.7.1 *Regular Meetings.* The Board shall hold regular meetings at least twice per year at dates and times established by the Board. The Board may establish a meeting schedule at more frequent intervals. The Board Chair may call, cancel or reschedule meetings.

4.7.2 *Legal Notice.* Meetings of the Board shall be called, noticed, held, and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code, [Sections 54950–54961]).

4.7.3 *Minutes.* The Cooperative Program Administrator shall cause minutes of meetings of the Board to be kept and shall, as soon as possible after a meeting, cause a copy of the minutes to be forwarded to members of the Board.

4.7.4 *Quorum.* A majority of the members of the Board constitutes a quorum for the transaction of business, except that less than a quorum may adjourn meetings.

4.8 Officers; Duties; Bonding.

4.8.1 *Chair.* The Board shall elect from its members a Chair who shall serve as Chair of the Cooperative and a Vice Chair who shall serve as Vice Chair of the Cooperative. The Chair and the Vice Chair shall have the duties assigned by the Board or set forth in by-laws adopted by the Board.

4.8.2 *Administrator.* The FORA Executive Officer will serve as Program Administrator of the Cooperative until the sunset of FORA or until Board replacement. The Program Administrator, or designee: a) is the custodian of Cooperative records, b) prepares minutes to be submitted for Board review, c) acts as Secretary at meetings, d) keeps a Cooperative Proceedings journal record, and e) performs duties incident to the office as assigned by the Board.

4.8.3 *Grant Officer.* The FORA Senior Planner will act as Senior Grant Specialist of the Cooperative until Board replacement. The Senior Grant Specialist is the custodian of Cooperative revenue, from whatever source, and, as such, has the powers, duties and responsibilities specified in Section 6505.5 of the Act.

4.8.4 *Manager.* The FORA Controller will be the Accounting Manager of the Cooperative until the Board appoints a replacement. The Accounting Manager has the powers, duties, and responsibilities specified in Section 6505.5 of the Act. The Accounting Manager shall draw checks to pay demands against the Cooperative under the direction of the Board.

4.8.5 *FORA Expenses.* The Cooperative shall reimburse FORA for providing the services of the Program Administrator, Senior Grant Specialist, and Accounting Manager, as applicable, according to an annual budget approved by the Board.

4.8.6 *Bonded Officers.* The Cooperative Senior Grant Specialist and Accounting Manager are designated as the public officers or persons who have charge of, handle, or have access to Cooperative property. Such officers shall file an official bond in the amount such officers determine is necessary as required by Section 6505.1 of the Act, provided, that such bond shall not be required if Cooperative property or funds has an aggregate value less than \$1,500.00.

4.8.7 *Audits.* The Senior Grant Specialist and Accounting Manager of the Cooperative are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required by Government Code Section 6505 every year during the term of this Agreement; and (b) a report in writing on the first day of February, May, August, and November of each year to the Board and the Parties. The report shall: (a) describe the amount of money held by the Senior Grant Specialist and Accounting Manager of the Cooperative, (b) the manner in which the money is held and invested, (c) include the income received since the last such report, and (d) the amount paid out since the last such report.

4.8.8 *Other Officers.* The Board may: (a) appoint such other officers and employees as it may deem necessary; and (b) retain independent counsel, consultants and accountants.

4.8.9 *FORA's Termination.* Upon sunset of FORA, the Cooperative shall assume FORA's liabilities, obligations, and responsibilities under this agreement and the Cooperative shall select its own employees and officers. The Cooperative shall remain liable for performing FORA's obligations under this Agreement. The Cooperative shall have the authority to hire a management firm to implement its responsibilities. This agreement shall not authorize FORA, or its successors, to assign its responsibilities or obligations under this Agreement to a third party without the prior approval of USFWS and CDFG, which approval shall not be unreasonably withheld.

5.0 COMMITTEES

5.1 Coordinated Resource Management and Planning Program. Technical guidance for implementing the HCP will be provided through the Fort Ord Coordinated Resource Management and Planning (CRMP) program, which was established after adoption of the 1997 Installation-Wide Multispecies Habitat Management Plan as a discussion forum for jurisdictions with natural lands management responsibilities at the former Fort Ord. The objectives of the Fort Ord CRMP program are to provide a forum for information and resource exchange on habitat related issues; to develop standards for habitat management, monitoring and reporting; to provide input on the adaptive management program; and to coordinate the implementation of the HMP. CRMP program involvement is voluntary and; thus, implementation of the recommendations made by the CRMP program is not required.

6.0 POWERS AND RESPONSIBILITIES

6.1 Specific Powers. The Cooperative has the powers granted to joint powers authorities in Articles 2 and 4 of the Act. The Cooperative may do acts necessary to exercise those specific powers including any of the following: (a) make contracts; (b) employ agents

and employees; (c) receive, collect, manage, and disburse funds; (d) receive grants contributions and donations of property, funds, and services; (e) sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to HCP implementation.

6.2 HCP Concurrence. Each Permit Applicant has primary responsibility to determine whether projects subject to its review and approval are in concurrence with the HCP. Such determinations are final unless appealed to the Cooperative within 30 (thirty) days of the Permit Applicant's decision. The Cooperative, its members, or a member of the public may appeal a Permit Applicant's concurrence decision to the Cooperative. The Cooperative shall establish a process for filing an appeal that ensures a complete appeal will provide the Cooperative with adequate information to determine if a project is in concurrence with the HCP. If appealed, the Cooperative must review and determine HCP concurrence for projects funded or implemented by Permit Applicants and projects for which there are private (i.e., non-signatory, third-party) applicants, which require entitlements from a Permit Applicant. For all projects requesting take coverage under the HCP, the Permit Applicant, and the Cooperative on appeal, will compare terms of the HCP as contrasted with project elements to make the concurrence determination. The project proponent must submit an application package (described in Section 7.5.2.1 of the HCP) that evaluates compliance with the HCP. Once the application package is deemed complete, the Permit Applicant, and the Cooperative on appeal, may decide whether it is in concurrence with the HCP. That determination will be made based on the four following criteria. The Permit Applicant, and the Cooperative on appeal, will find a project in concurrence with the HCP if it:

- is conducted by, or is subject to the jurisdiction of, a Permit Applicant;
- is a type of covered activity described in Section 3.3 of the HCP;
- is consistent with the amount of take coverage assumed by the Plan and sufficient take coverage under the permits remains available for other covered activities; and
- does not preclude achieving the biological goals and objectives of the Plan (see Chapter 5, *Conservation Strategy*, of the HCP).

6.3 Data and Compliance Tracking. The Cooperative will develop and maintain a comprehensive data repository to track permit compliance and all other aspects of the HCP including land management and monitoring. The Cooperative's compliance monitoring and data tracking responsibilities are listed in Sections 6.2 and 7.9.2 of the HCP and are incorporated by reference.

6.4 Reporting. All Permit Applicants and the BLM will submit annual land use status and HCP Compliance Monitoring data to the Cooperative Program Administrator (see Section 6.2, *HCP Compliance Monitoring*, of the HCP) for HCP annual report compilation. Each Permit Applicant and BLM will also report its HCP-related activities for the year to the Cooperative. The Cooperative will be in charge of compiling the information from all Permit Applicants and the BLM and preparing the annual report for submittal to the Wildlife Agencies. This will allow one annual report to be prepared and filed with the Wildlife Agencies rather than many separate reports. The Cooperative will ensure that the annual reporting

section includes a requirement to report all known take occurrences cumulatively each year. The Cooperative's reporting responsibilities are listed in Section 7.9.3 of the HCP and are incorporated by reference.

6.5 Schedule. To successfully implement the HCP, the Cooperative will need to make progress on a variety of tasks simultaneously. Task completion during the first several years of HCP implementation will allow early compliance with HCP terms and conditions. Reporting requirements by entity are presented in Table 7-2 of the HCP and tasks designated to the Cooperative and its Governing Board in this table are incorporated as Cooperative responsibilities by reference.

6.6 Limitations. Cooperative powers are limited only by restrictions on the Parties for exercise of similar powers as provided in Section 6509 of the Act.

7.0 TERMINATION OF POWERS

The Cooperative shall continue to exercise the powers until the termination of this Agreement.

8.0 DISBURSEMENTS AND DEPOSITS OF FEES

8.1 Fee Collection. The Implementing Agreement requires Marina, Seaside, Del Rey Oaks, Monterey (collectively the "Cities") and the County to enforce the collection of FORA Community Facilities District ("CFD") Funds (Special Tax). Any such separate development fee to fund the HCP also shall be included in the definition of "CFD Funds."

8.2 Fee Disbursement. FORA, the County and the Cities shall enforce CFD Special Tax collection. The County and Cities shall disburse to the Cooperative Endowment Manager twenty-five percent (25%) of any such revenues quarterly, on or about December 31, March 30, June 30, and September 30. The Cooperative Endowment Manager shall hold such revenues in an investment account under the Mitigation Fee Act (Gov. Code §66000 et seq.) until disbursement or expenditure according to this Agreement. The Cooperative shall use CFD Funds for the purposes for which they were imposed, and for no other purpose.

9.0 ENDOWMENT

Funds generated by a portion of CFD Funds will capitalize: (a) the HCP Endowment Fund; (b) the FONR Endowment Fund; (c) the Implementation Assurances Fund; and (d) the Borderlands Endowment Fund described in HCP Chapter 9 to offset both capital and operational HCP costs.

9.1 Funding Sources. HCP Chapter 9, *Cost and Funding* describes HCP implementation costs, funding sources, and assurances. The HCP cost model (Appendix N to the HCP) is a planning-level estimate of total HCP costs. The cost model was developed to conservatively estimate HCP implementation expenses of the Cooperative, UC/NRS, State Parks, and BLM over the permit term. The cost model was designed to demonstrate that all costs were accounted for and reasonably estimated. In the Implementing Agreement, the Parties commit to adequately fund the costs associated with the HCP. CFD Funds and

annual appropriations from state and federal budgets will be the primary HCP funding sources.

9.2 Endowment Amount. FORA will continue to collect CFD Funds until it expires (current expiration date is June 30, 2014) and the Cities and County will collect CFD Funds after FORA's expiration date to fund the Endowment, which includes: (a) the HCP Endowment Fund; (b) the FONR Endowment Fund; (c) the IAF; and (d) the Borderlands Endowment Fund. FORA, the Cities, and the County will contribute 25% of CFD Funds collected to the Cooperative Endowment Manager until the endowments are fully funded.

9.3 Stay-Ahead Provision Funding. Initial conservation resource demands to support HCP services or other HCP needs will be provided through FORA, BLM, and State Parks to meet HCP requirements, and by separate agreement between FORA and UC/NRS. FORA will continue to collect funding as noted herein and will seek grant or contract award support where applicable. BLM and State Parks are committed to meeting the HCP conservation demands on their property through federal or state management and resource processes. HCP Section 7.6, *Stay-Ahead Provision* states that the proportion of dedicated reserve acreage for each HCP species' habitat transferred from the Army shall be at least 5% higher than the proportion of allowable development-related impacts on each species' habitat. In order to meet the stay-ahead provision, reserve lands in HMAs must also have funding to ensure management according to the conservation strategy (see Section 9.3.4.1 of the HCP). The HCP is designed so that habitat and habitat management funding are provided prior to impact on an HCP species' habitat.

9.4 Habitat Management and Monitoring Funding. The Cooperative shall use funds from the HCP Endowment Fund to implement HCP-required actions on HMA land to be held by County, MPRPD, MPC, and Marina. The Cooperative shall also use funds from the HCP Endowment Fund for monitoring on HMAs within the HCP area, regardless of ownership (i.e., including BLM, State Parks, and UC/NRS lands).

9.5 Fort Ord Natural Reserve Funding. FORA provides approximately \$82,000 annually to UC for its interim management of the 606-acre FONR to meet FONR's annual costs of complying with the Habitat Management Plan for the former Fort Ord. The Cooperative will provide annual funding to UC sufficient to meet the annual costs of complying with the HCP on FONR lands, which funding will be increased annually to reflect increases in the Consumer Price Index San Francisco Bay Area, All Urban Consumers, published by the United States Department of Labor, Bureau of Labor Statistics until 1 year after FORA or the Cooperative has fully funded the FONR Endowment. As CFD Funds are transferred to the Cooperative Endowment Manager pursuant to Section 9.2 above, the Cooperative Endowment Manager thereupon will transfer those funds to the Regents of the University of California General Endowment Pool. The proportionate rate by which the FONR Endowment is funded will equal the proportionate rate by which the HCP Endowment Fund is funded. These transfers shall continue until both endowments have been fully funded.

9.6 Implementation Assurances Funding. The Cooperative will use funds from the IAF to ensure adequate funding of necessary remedial measures to address any of the changed circumstances described in HCP Section 8.1.1.2. The Cooperative will also use funds from the IAF to augment HCP annual revenues if CFD Funds do not keep pace with

HCP funding needs or federal or state appropriations unexpectedly decline. The Endowment Manager will reinvest interest from this fund to ensure that it keeps pace with inflation and the rising costs of HCP implementation.

10.0 COOPERATIVE ACCOUNTABILITY

The Cooperative is accountable for revenue from the Endowment Manager disbursed to the Cooperative and must report receipts and disbursements. No later than July 31 of each year, the Cooperative, County, and Cities shall prepare and furnish to each other an annual report of their respective collection, disbursement, and expenditures of, and any interest earned on, revenue from the Fees. The Cooperative is solely responsible for compliance with requirements of the Mitigation Fee Act as they pertain to revenue from the Endowment Manager that has been disbursed to the Cooperative.

11.0 FISCAL YEAR

Unless and until changed by majority vote of the Board, the fiscal year of the Cooperative shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

12.0 DISPOSITION OF ASSETS AND REAL PROPERTY

Upon termination of this Agreement, and after the repayment of advances and contributions in accordance with Section 14, assets acquired as the result of the joint exercise of powers under this Agreement, other than real property and funding for the restoration or management of real property, shall be distributed to the Parties in proportion to an individual Member's overall unreimbursed contribution of assets to the Cooperative. The Cooperative shall transfer any real property, and any funding for the restoration or management of real property, acquired by the Cooperative as the result of the joint exercise of powers under this Agreement to one or more public agencies.

13.0 CONTRIBUTIONS AND ADVANCES

With the Board's approval, any Party may contribute or advance public funds, personnel services, equipment, materials, or property to the Cooperative for any of the purposes of this Agreement. Such advances must be recorded and repaid in the manner agreed upon in writing by the Cooperative and the Party making the advance prior to when it is made. Except as otherwise expressly provided in this Agreement, no Party is obligated to pay the Cooperative's administrative expenses. With the exception of State Parks, no Party may be compelled to obligate its General Fund to satisfy its financial obligations under this Agreement.

14.0 ACCOUNTS AND REPORTS

14.1 Accounts. The Cooperative shall establish and maintain such funds and accounts as may be required by good accounting practice and as may be required by the terms of any state or federal grant that the Cooperative may receive. The books and records of the

Cooperative shall be open to inspection at reasonable times by the Parties and their representatives. The Cooperative shall give an audited written report of financial activities for the fiscal year to the Parties within 6 months after the close of the fiscal year.

14.2 Audits. To the extent required by Section 6505.6 of the Act, the Accounting Manager of the Cooperative shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Cooperative in compliance with Section 6505.6 of the Act. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the Parties and, if required by Section 6505.6 of the Act, with the Auditor Controller of the County. Such report shall be filed within twelve months of the end of the fiscal year or years under examination. The Cooperative may replace the annual special audit with an audit covering a 2-year period.

14.3 Audit Costs. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Cooperative and shall be a charge against any unencumbered funds of the Cooperative available for the purpose.

15.0 CONFLICT OF INTEREST CODE

The Cooperative shall adopt a conflict of interest code as required by law and shall comply with the terms of Fair Political Practices Commission Ethics Training requirements.

16.0 DISPUTE RESOLUTION

16.1 Mediation. The parties must submit any disputes arising under this Agreement to non-binding mediation before filing suit to enforce or interpret this Agreement. Upon request by any party to the dispute, the parties will within 10 days select a single mediator, or if the parties cannot agree, they shall ask the then presiding Judge of the Monterey County Superior Court to select a mediator to mediate the dispute within 15 days of such selection.

16.2 Attorney Fees. If legal proceedings are brought to interpret or enforce this Agreement, the prevailing party shall be awarded reasonable attorney fees and costs, including reasonable costs of experts reasonably engaged by the attorney.

17.0 LIABILITY AND INDEMNIFICATION

The Parties shall defend, hold harmless and indemnify the other Parties and their officers, agents, and employees against claims, demands, damages, costs, expenses or liability to the extent they shall arise out of the indemnifying parties' actions and inactions under this Agreement for which the indemnifying party has accepted responsibility pursuant to a written agreement to which it is a party.

17.0 BREACH

Fort Ord Regional Habitat Cooperative

Breaches to this Agreement do not excuse further breaches by the party in breach. The remedies given to the Parties hereunder or by law are cumulative and not elective. The exercise of one right or remedy does not impair other rights and remedies.

18.0 SEVERABILITY

If a court finds any term of this Agreement to be unenforceable, the remaining provisions will be unaffected.

19.0 SUCCESSORS; ASSIGNMENT

This Agreement binds and benefits successors to the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

20.0 AMENDMENT OF AGREEMENT

This Agreement may be amended only by supplemental written agreement executed by the Parties.

21.0 FORM OF APPROVALS

Approvals required in this Agreement, unless the context specifies otherwise, must be given by resolution of the Cooperative Board. When consent or approval is required in this Agreement, it may not be unreasonably withheld.

22.0 NOTICES

Notices to the Parties shall be sufficient if delivered to the chief executive of the Party at the Party's principal location within 5 working days prior to any action to be taken or any meeting to be called. The following notice list contains the notification addresses of the Parties:

ATTN: Executive Officer
Fort Ord Reuse Authority
100 12th St., Bldg. 2880
Marina, CA 93933

ATTN: Economic
Development Director
County of Monterey
168 W. Alisal St., 3rd Floor
Salinas, CA 93901

ATTN: City Manager
City of Marina
211 Hillcrest Ave.
Marina, CA 93933

ATTN: State Parks,
Monterey District
Superintendent
2211 Garden Road
Monterey, CA 93940

ATTN: City Manager
City of Seaside
440 Harcourt Ave.
Seaside, CA 93955

ATTN: City Manager
City of Del Rey Oaks

650 Canyon Del Rey
Del Rey Oaks, CA 93940

ATTN: City Manager
City of Monterey
City Hall
Monterey, CA 93940

ATTN: Assistant Director
UCSC Real Estate Office
c/o REO/MBEST
1156 High Street
Santa Cruz, CA 95064

ATTN: Director, UCSC
Natural Reserves
Physical & Biological
Sciences
c/o ENVS
1156 High Street
Santa Cruz, CA 95064

ATTN: President
California State University
Monterey Bay
100 Campus Center,
Building 1
Seaside, CA 93955-8001

ATTN:
Superintendent/President
Monterey Peninsula
College
980 Fremont Street
Monterey, CA 93940-4799

ATTN: General Manager
Marina Coast Water
District
11 Reservation Road
Marina, CA 93933

ATTN: Regional Park
District Superintendent
60 Garden Court, Suite
325
Monterey, CA 93940

ATTN: Monterey County
Administrative Officer
168 W. Alisal Street, 3rd
Floor
Salinas, CA 93901

23.0 SECTION HEADINGS

Section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

24.0 COUNTERPARTS

This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon the Parties. Electronic or photocopies of the fully executed Agreement are the same as duplicate originals.

Fort Ord Regional Habitat Cooperative

25.0 SIGNATURES

Persons signing this Agreement represent and warrant that: 1) they have read and understand the Agreement, 2) they are authorized to sign this Agreement, and 3) the Party on behalf of whom the signature is offered has agreed to be bound by its terms.

Dated: _____, 2012

COUNTY OF MONTEREY

By: _____
County Administrative Officer

Approved as to form:

By: _____
County/Deputy County Counsel

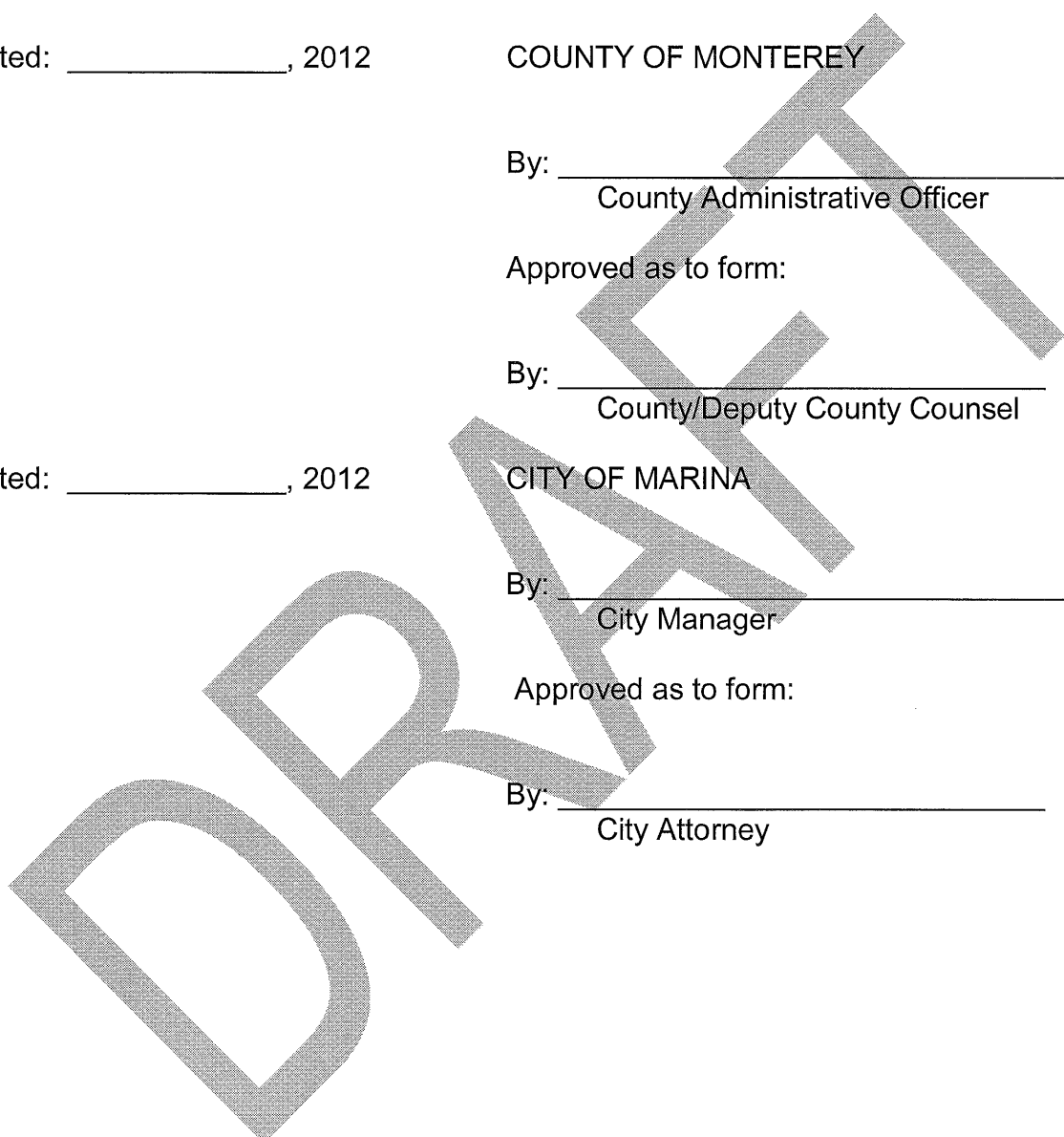
Dated: _____, 2012

CITY OF MARINA

By: _____
City Manager

Approved as to form:

By: _____
City Attorney



Dated: _____, 2012

CITY OF SEASIDE

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2012

CITY OF DEL REY OAKS

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2012

CITY OF MONTEREY

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

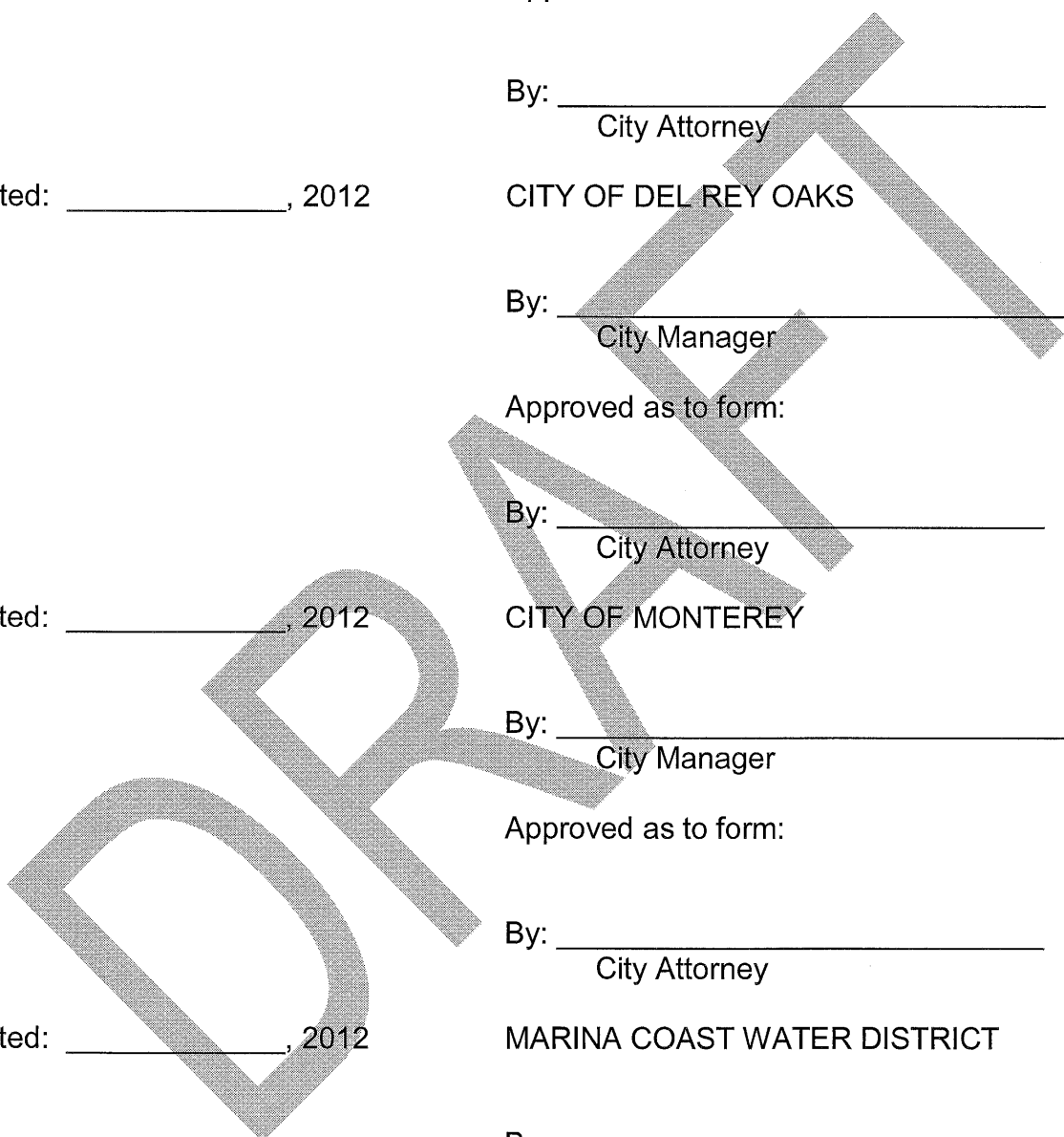
Dated: _____, 2012

MARINA COAST WATER DISTRICT

By: _____
General Manager

Approved as to form

By: _____
District Attorney



Dated: _____, 2012

UNIVERSITY OF CALIFORNIA

By: _____
Secretary to the Regents

Approved as to form:

By: _____
General Counsel

Dated: _____, 2012

CALIFORNIA STATE UNIVERSITY

By: _____
President

Approved as to form:

By: _____
General Counsel

Dated: _____, 2012

MONTEREY PENINSULA COLLEGE

By: _____
President

Approved as to form:

By: _____
General Counsel

Dated: _____, 2012

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: _____
Regional Manager

Approved as to form:

By: _____
General Counsel

Dated: _____, 2012

MONTEREY PENINSULA REGIONAL PARK DISTRICT

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
General Counsel

Dated: _____, 2012

FORT ORD REUSE AUTHORITY

By: _____
Chair, Board of Directors

Approved as to form:

By: _____
Authority Counsel

DRAFT