



# FORT ORD REUSE AUTHORITY

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

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## REGULAR ADMINISTRATIVE COMMITTEE MEETING

8:15 a.m. Wednesday, June 18, 2014

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

### AGENDA

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
4. **APPROVAL OF MEETING MINUTES**
  - a. June 4, 2014 Administrative Committee Minutes ACTION
5. **PUBLIC COMMENT PERIOD**

Individuals wishing to address the Committee on matters within its jurisdiction, but not on this agenda, may do so during this period for up to three minutes. Comments on specific agenda items are heard under that item.
6. **JUNE 13, 2014 BOARD MEETING FOLLOW-UP** INFORMATION/ACTION
7. **BUSINESS ITEMS**
  - a. FY 2014/15 Marina Coast Water District (MCWD) Ord  
Community Water/Wastewater Budget
    - i. Review Identified Policy Issues INFORMATION/ACTION
    - ii. Provide Board Budget Recommendation ACTION
  - b. Habitat Conservation Plan Joint Power Authority Agreement INFORMATION
  - c. Regional Urban Design Guidelines Task Force Update INFORMATION
8. **ITEMS FROM MEMBERS**
9. **ADJOURNMENT**

*Next Administrative Committee Meeting: July 2, 2014*

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# FORT ORD REUSE AUTHORITY

## ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, June 4, 2014 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933

### 1. CALL TO ORDER

Co-chair Dawson called the meeting to order at 8:15a.m. The following were present:

Dan Dawson, City of Del Rey Oaks\*  
Carl Holm, County of Monterey\*  
Elizabeth Caraker, City of Monterey\*  
John Dunn, City of Seaside\*  
Layne Long, City of Marina\*  
Vicki Nakamura, MPC  
Anya Spear, CSUMB  
Graham Bice, UCMBEST  
Diana Ingersoll, City of Seaside  
Patrick Breen, MCWD  
Kelly Cadiente, MCWD

Lyle Shurtleff, BRAC  
Mike Zeller, TAMC  
Doug Yount, ADE  
Tim O'Halloran, City of Seaside  
Kathleen Lee, Supervisor Potter  
Bob Schaffer  
Andy Sterbenz, Schaaf & Wheeler  
Chuck Lande, Marina Heights  
Wendy Elliott, MCP  
Brian Boudreau, Monterey Downs  
Beth Palmer, Monterey Downs

FORA Staff:  
Steve Endsley (via phone)  
Jim Arnold  
Crissy Maras  
Jonathan Garcia  
Josh Metz

\*voting members

### 2. PLEDGE OF ALLEGIANCE

Carl Holm led the Pledge of Allegiance.

### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Senior Planner Jonathan Garcia announced that the Regional Urban Design Guidelines Task Force had held a pre-proposal conference on Monday, at which staff had provided participants a tour of Fort Ord.

### 4. APPROVAL OF MEETING MINUTES

- a. **May 7, 2014 Joint Administrative/CIP Committee minutes**
- b. **May 21, 2014 Administrative Committee minutes**
- c. **May 21, 2014 Joint Administrative/WWOC Committee minutes**

MOTION: Diana moved, seconded by Carl Holm, to approve the minutes with an amendment to the May 21, 2014 Joint Admin/WWOC minutes to reflect the Joint Committee's decision not provide a FY 2014/15 Marina Coast Water District Ord Community Budget recommendation to the Board.

MOTION PASSED: unanimous

### 5. PUBLIC COMMENT PERIOD

None.

### 6. JUNE 13, 2014 BOARD MEETING AGENDA REVIEW

Mr. Garcia led a review of the June 13, 2014 FORA Board meeting agenda packet.

### 7. BUSINESS ITEMS

#### a. **Marina-Salinas Multimodal Corridor Plan Presentation**

Ariana Green, Transportation Agency for Monterey County, presented the item, explaining that the first phase of the project was achieving alignment consensus. She reviewed the proposed alignment, based on recent community input, and noted that the next step was to receive local

agency approvals for the alignment. Once received, the design phase of the project would begin. Ms. Green answered questions from the Committee and public.

**b. Provide Board Recommendation Regarding the FY 2014/15 Draft Capital Improvement Plan (CIP)**

Mr. Garcia discussed the draft CIP Board package and received input regarding the draft staff report and the presentation for the June 13, 2014 meeting.

MOTION: Carl Holm moved, seconded by John Dunn to 1) recommend Board approval of the FY 2014/15 Capital Improvement Program, and 2) direct staff to amend the staff report to clarify water issues, per Administrative Committee discussions.

MOTION PASSED: unanimous

**c. Consistency Determination: Consider Certification, In Whole or In Part, of the City of Seaside Zoning Code Amendments Related to the 2013 Zoning Code Update as Consistent with 1997 Fort Ord Reuse Plan.**

Rick Medina, City of Seaside, provided background information, summarized the process used to develop the zoning code text amendments, and reviewed the changes. He stated the changes were to the text only and that no changes had been made to zoning maps.

MOTION: Carl Holm moved, seconded by Elizabeth Caraker to recommend the Board find the the City of Seaside Zoning Code amendments related to the 2013 Zoning Code update as Consistent with 1997 Fort Ord Reuse Plan.

MOTION PASSED: unanimous

**d. Regional Urban Design Guidelines Task Force (RUDG) Update**

Associate Planner Josh Metz explained that the RUDG was currently in the process of a consultant solicitation for development of the regional Urban Design Guidelines. The proposal deadline was 12 pm on June 12<sup>th</sup> and proposals would be publicly presented on June 20<sup>th</sup>.

**e. FY 2014/15 Marina Coast Water District (MCWD) Ord Community Water/Wastewater Draft Budget**

Mr. Garcia summarized Board discussion of the item from the May 30, 2014 Board meeting, noting that the Board had taken action to refer the item back to the Administrative Committee for a recommendation, with the hopes that they could reconsider the item at the next Board meeting.

MOTION: Carl Holm moved, seconded by Graham Bice, to approve the FY 2014/15 MCWD Water/Wastewater Budget.

The Committee discussed the need to resolve outstanding policy issues related to the budget.

MOTION WITHDRAWN BY THE MAKER

MOTION: John Dunn moved, seconded by Layne Long, to 1) recommend the Executive Committee defer Board consideration of the item to the July Board meeting to provide time for further coordination between FORA and MCWD staff regarding 8 identified policy areas, and 2) return the item for Administrative Committee consideration prior to the July Board meeting.

MOTION PASSED: unanimous

**8. ITEMS FROM MEMBERS**

None.

**9. ADJOURNMENT**

Co-Chair Dawson adjourned the meeting at 10:07 a.m.

DRAFT

6-12-2014

**JOINT EXERCISE OF POWERS AGREEMENT**

**ESTABLISHING THE  
FORT ORD REGIONAL  
HABITAT COOPERATIVE**

**DRAFT**

2014

(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 March \_\_\_\_\_, 2014 ("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"),
- l. Marina Coast Water District ("MCWD"), and
- m. Bureau of Land Management ("BLM").

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 with the principal purpose and activity of the direct protection and stewardship of natural resources and endangered species habitat through the implementation of the **Installation-Wide Multispecies Habitat Conservation Plan** ("HCP") for the former Fort Ord, California. 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 ("ESA") and California Endangered Species Act ("CESA"). With regards to the state Permit, the HCP is intended to provide the framework and procedure for minimizing and fully mitigating the impacts of the authorized take in accordance with CESA. 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 the HCP. These include, without limitation, collection of the Community Facilities District (“CFD”) Special Tax established by FORA and making HCP concurrence determinations prior to Take within their jurisdiction.

## **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.

“CDFW” means the California Department of Fish and Wildlife.

“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 Fort Ord Natural Reserve (“FONR”) Endowment Fund (collectively, “FONR Endowment”) and b) the Cooperative Endowment Fund, described in HCP Chapter 9.

“Cooperative Endowment Manager” means the entity, which will be approved by CDFW 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.

“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.

“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 Installation-Wide Multispecies Habitat Conservation Plan.”**

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

“Take” means both:

- A. In regard to a federal Permit, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted HCP species.
- B. In regard to a state Permit, to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture or kill under Fish and Game Code Section 86. FGC Section 2080 prohibits commerce and taking of species listed as endangered or threatened under the CESA.

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

## **2.0 PURPOSE**

This Agreement achieves the following objectives:

- A. Establishes the Cooperative with the principal purpose and activity of the direct protection and stewardship of natural resources and endangered species habitat; and as such is intended to fulfill 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 CDFW.

#### **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.

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, or if no legislative body, the Executive Director, shall appoint that Party's representative(s) and may also appoint alternate representative(s). The term of office of each Board member and alternate terminates when the member or alternate is replaced by his/her appointing body or, in the case where the member is an elected official, when the member or alternate ceases to be an elected official of the appointing body. Each Party's governing city council or board or Executive Director shall appoint a new representative to the Board whenever the Party's seat on the Board becomes vacant. Each member shall serve for a four year term; new members shall be appointed to complete the unserved term of the previous member and reappointed when that term is over. Members shall not serve more than two full terms. Each party shall maintain their own records of member terms.

4.4. Voting. The initial Governing Board structure shall include thirteen 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), State Parks (1), 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.



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) refrain from engaging the Cooperative in any expenses or financial obligations that could accrue to the Parties until at least 90 days after all parties have signed the HCP Implementing Agreement; and (3) reserve 20 acres of allowable take for non-voting members' development needs, in compliance with the HCP stay-ahead provision, until those 20 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, 2020, any remaining FORA HCP obligations will be transferred to the Cooperative. Annual funding for Cooperative staff is provided through the Cooperative Endowment Fund and included in "Table 9-2. Average Annual Costs by Management Entity (excludes start-up costs)." The Cooperative staff are described in HCP Section "9.2.1.5 Program Administration and Reporting Requirements."

#### 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 CDFW, 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 Permittee has primary responsibility to determine whether projects subject to its review and approval are in concurrence with the HCP and the state Permit. Such determinations are final unless appealed to the Cooperative within 30 (thirty) days of the Permittee's decision. The Cooperative, its members, or a member of the public may appeal a Permittee's concurrence decision to the Cooperative. The member of the public shall show the nature of the harm and the reasonable relationship to their situation (standing) to bring such an appeal. 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 and the state Permit. If appealed, the Cooperative must review and determine HCP/state Permit concurrence for projects funded or implemented by Permittees and projects for which there are private (i.e., non-signatory, third-party) applicants, which require entitlements from a Permittee. For all projects requesting Take coverage under the HCP and the state Permit, the Permittee, and

the Cooperative on appeal, will compare terms of the HCP and the state Permit 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 and the state Permit. Once the application package is deemed complete, the Permittee, and the Cooperative on appeal, may decide whether it is in concurrence with the HCP and the State Permit. That determination will be made based on the four following criteria. The Permittee, and the Cooperative on appeal, will find a project in concurrence with the HCP and the State Permit if it:

- is conducted by, or is subject to the jurisdiction of, a Permittee;
- is a type of covered activity described in Section 3.3 of the HCP and a type of covered activity in the State Permit;
- 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
- for the HCP, 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 within eighteen (18) months of the effective date of the Agreement. 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 Permittees 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 Permittee 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 Permittees 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. The annual report shall be submitted within ninety (90) days of the first day of the subsequent year.

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 its 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). UC, CSUMB, and MPC will adopt Implementing Policies to ensure the proper collection of CFD fees. 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 FONR Endowment Fund and (b) the Cooperative Endowment Fund, described in HCP Chapter 9 and the Implementing Agreement, 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 and the state Permit. CFD Funds and annual appropriations as funds are available 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, 2020) and the Cities and County will collect CFD Funds after FORA's expiration date to fund the Endowment, which includes: (a) the FONR Endowment Fund and (b) the Cooperative 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 as funds and resources are available 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 \$84,000 annually to UC to support UC's continued operation 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**

In managing the Endowment, the Cooperative is subject to Gov. Code 65965-65968. The Board shall assure that revenue from the Endowment is accounted for in the manner required by law.

## **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 or appropriate conservation non-profit. The funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside.

## **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 and MPRPD, 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 under 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. HCP Section "9.2.3.2 Outside Legal and Financial Assistance" describes a cost assumption of an average of 50 hours per year of attorney time on behalf of the Cooperative. If these cost assumptions are exceeded, per HCP Section "9.3.1.1.1 HCP Endowment Fund," the Cooperative Endowment includes a 5% contingency for annual operating costs.

## **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**

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 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933

ATTN: Economic  
Development Director  
County of Monterey  
168 W. Alisal St., 3<sup>rd</sup> 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

60 Garden Court, Suite  
325  
Monterey, CA 93940

168 W. Alisal Street, 3rd  
Floor  
Salinas, CA 93901

ATTN: Regional Park  
District Superintendent

ATTN: Monterey County  
Administrative Officer

**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.

**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: \_\_\_\_\_, 2014

COUNTY OF MONTEREY

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

CITY OF MARINA

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

CITY OF SEASIDE

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

CITY OF DEL REY OAKS

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

CITY OF MONTEREY

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

Approved as to form:

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

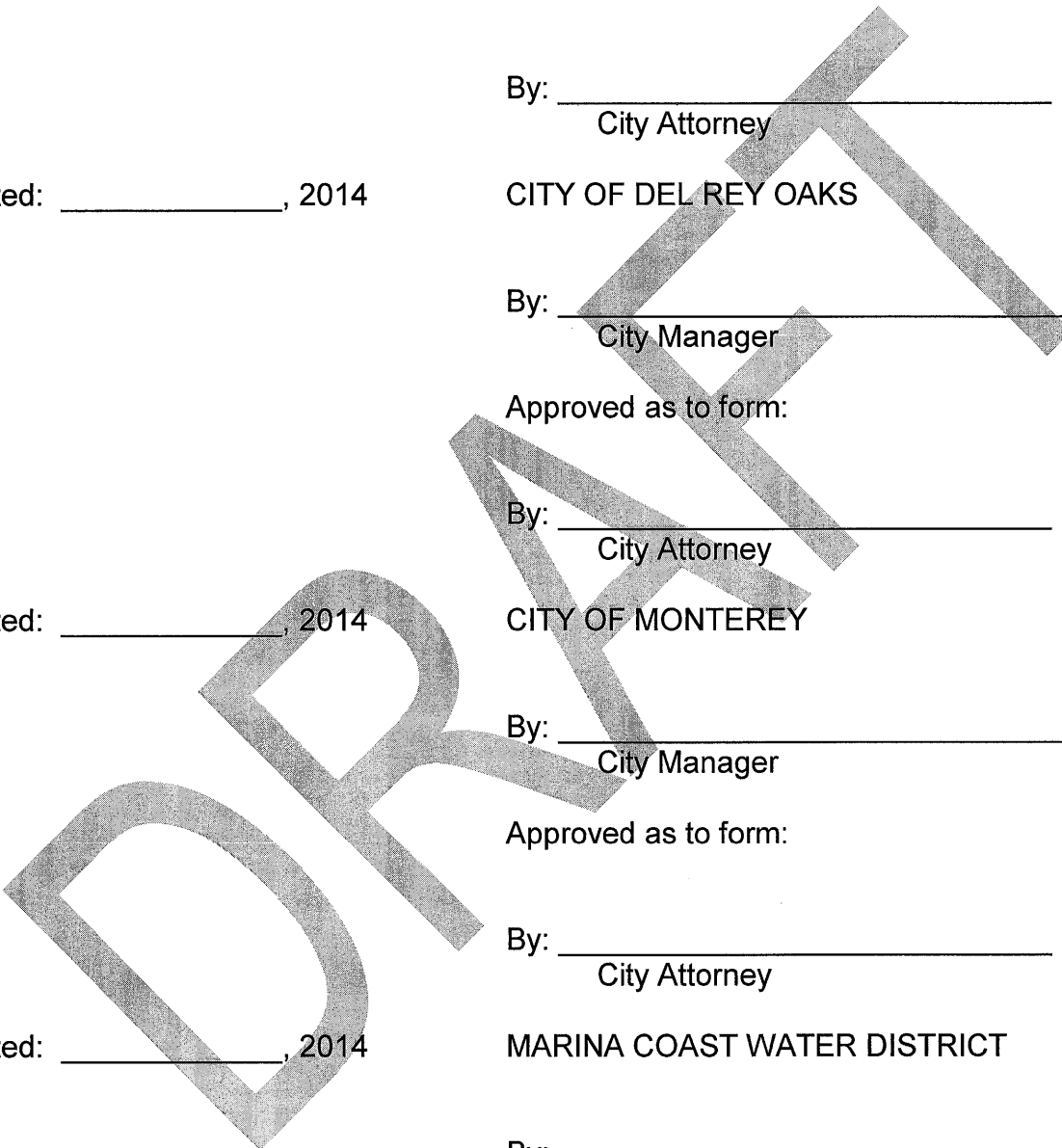
Dated: \_\_\_\_\_, 2014

MARINA COAST WATER DISTRICT

By: \_\_\_\_\_  
General Manager

Approved as to form

By: \_\_\_\_\_  
District Attorney



Dated: \_\_\_\_\_, 2014

UNIVERSITY OF CALIFORNIA

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

CALIFORNIA STATE UNIVERSITY

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

MONTEREY PENINSULA COLLEGE

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

Approved as to form:

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

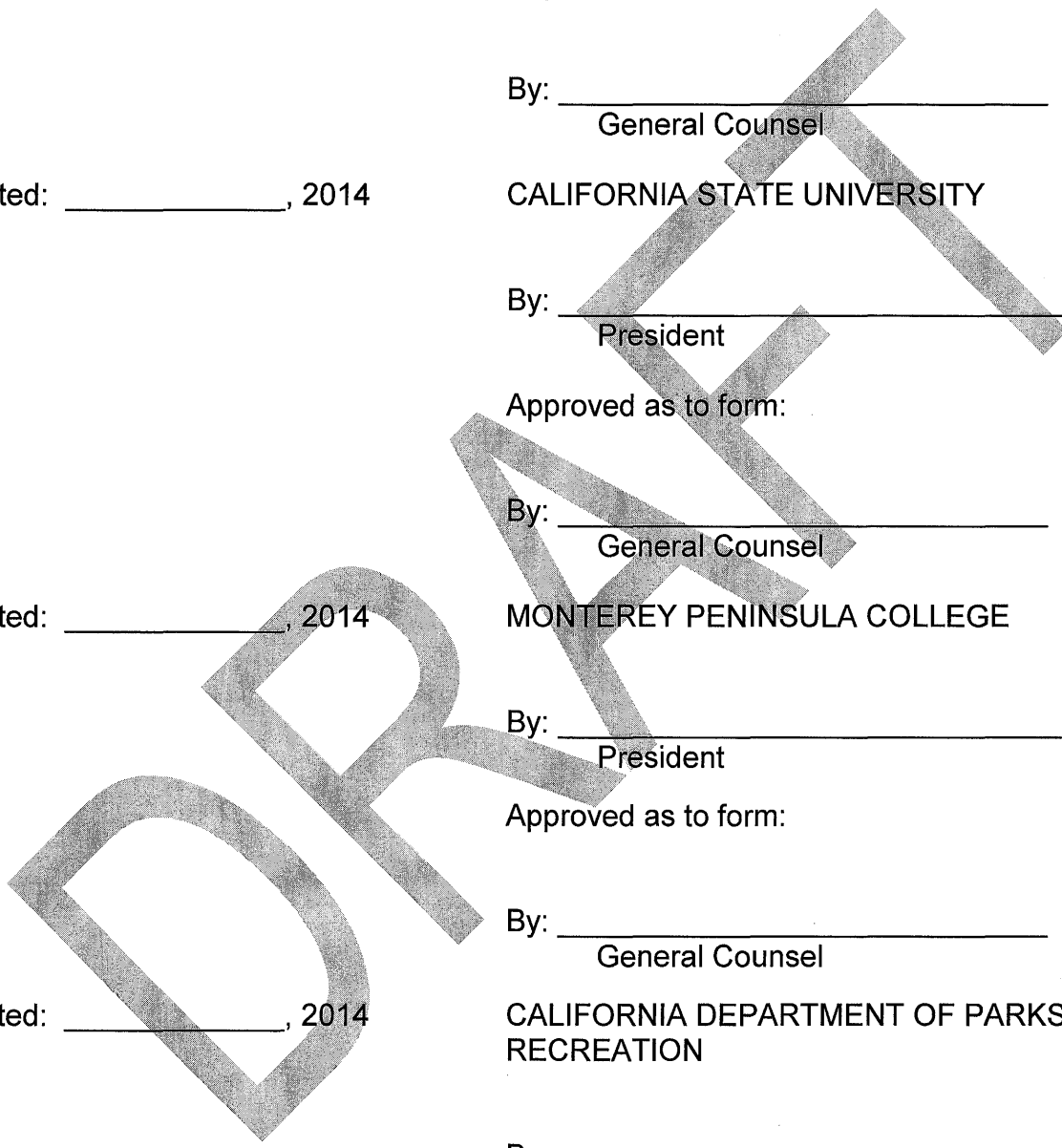
Dated: \_\_\_\_\_, 2014

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

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

Approved as to form:

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



Dated: \_\_\_\_\_, 2014

MONTEREY PENINSULA REGIONAL PARK DISTRICT

By: \_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

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

Dated: \_\_\_\_\_, 2014

FORT ORD REUSE AUTHORITY

By: \_\_\_\_\_  
Chair, Board of Directors

Approved as to form:

By: \_\_\_\_\_  
Authority Counsel

Dated: \_\_\_\_\_, 2014

BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
Field Manager  
Hollister Field Office  
Hollister, California

