FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933
Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

ADMINISTRATIVE COMMITTEE MEETING

8:15 a.m. Wednesday, November 5, 2014
920 2nd Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

AGENDA

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
   a. Infrastructure Financing Districts Legislation

4. **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.

5. **NOVEMBER 14, 2014 BOARD MEETING AGENDA REVIEW** INFORMATION/ACTION

6. **BUSINESS ITEMS**
   a. Review 2015 Fort Ord Reuse Authority Legislative Agenda INFORMATION
   b. Pollution and Legal Liability Insurance Policy INFORMATION/ACTION
      i. First named Insured Designee After 2020
      ii. Individual Insurance Coverage Amounts
      iii. Insurance Cost Reimbursement Agreements

7. **ITEMS FROM MEMBERS**

8. **ADJOURNMENT**

Next Meeting Date: November 19, 2014

For information regarding items on this agenda or to request disability related modifications and/or accommodations please contact the Deputy Clerk 48 hours prior to the meeting.
Agendas are available on the FORA website at www.fora.org.

Real Estate, Land Use & Environmental Law Blog
Up-to-date Information on Real Estate, Land Use & Environmental Law SheppardMullin

Governor Signs Off on New Tax-Increment Financing Structure

By Alfred Fraijo Jr. and Kira Teshima on October 7, 2014

Posted in New Rules and Legislation, Recent Redevelopment News and Analysis

On September 29, Governor Brown signed legislation that is seen as creating a robust new financing tool which will expand the existing mechanism of Infrastructure Financing Districts ("IFDs") and replicate some of the functions of the state's abolished local redevelopment agencies. SB 628 (Beall; D-San Jose) authorizes local officials to create Enhanced IFDs and issue bonds to finance capital improvement projects and other specified projects of communitywide significance. Enhanced IFDs may include any portion of a former redevelopment project area.

The tax-increment financing structure could be used to finance, among other initiatives:

- The acquisition and redevelopment of industrial structures for private use
- Parks
- Recreational facilities
- Open space
- Environmental cleanups
- Low and moderate-income housing
- Sewage treatment and water reclamation plants
- Transit priority projects

Significantly, the new financing authority can also use eminent domain powers previously exercised solely by the now defunct redevelopment agencies under the Polanco Redevelopment Act.

Enhanced IFDs require a city or county to establish a governing board for the authority and adopt an infrastructure financing plan with project eligibility requirements. A city or county can create an Enhanced IFD without a vote; however, approval of 55% of the voters in the district is required to issue bonds. Authorization for creating the Enhanced IFDs depends on the completion of certain repayment obligations by successor agencies of the former redevelopment agencies formed by the city or county seeking to create the new district. In response to concerns from affordable housing advocates, successor agencies must remit to the state any low and moderate income housing funds. However, the precise scope and schedule of the repayment obligations remains to be determined by the Department of Finance ("DOF") through the required notice of completion from DOF and the state office of the Controller. This prerequisite may impact the timing of implementation of the districts.

prerequisite may impact the timing of implementation of the districts.

Local governments may now have an opportunity to build and repair infrastructure by utilizing the tax-increment financing tools they had under redevelopment. Enhanced IFDs will not only support the development of public infrastructure, but can also provide a foundation for the private sector to help build California infrastructure through public-private partnerships.

FORT ORD REUSE AUTHORITY

ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, October 1, 2014 | FORA Conference Room
920 2nd Avenue, Suite A, Marina CA 93933

1. CALL TO ORDER

Co-chair Houlemard called the meeting to order at 8:18 a.m. The following were present (**voting members)*:

John Ford, County of Monterey*
John Dunn, City of Seaside *
Elizabeth Caraker, City of Monterey *
Layne Long, City of Marina*
Vicki Nakamura, MPC
Anya Spear, CSUMB
Lisa Rheinheimer, MST
Patrick Breen, MCWD
Brian Lee, MCWD
Tim O'Halloran, City of Seaside

Graham Bice, UC MBEST
Donna Blitzer, UCSC
Steve Matarazzo, UCSC
Lyle Shurtleff, Fort Ord BRAC
Kathleen Lee, Sup. Potter's Office
Bob Schaffer
Don Hofer, Shea Homes
Brian Boudreau, Monterey Downs
Chuck Lande, Marina Heights

FORA Staff:
Michael Houlemard
Steve Endsley
Jim Arnold
Crissy Maras
Jonathan Garcia
Josh Metz
Lena Spilman

Voting Members Absent: Dan Dawson (City of Del Rey Oaks)

2. PLEDGE OF ALLEGIANCE

John Ford led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Associate Planner Josh Metz stated that a staff working group, primarily comprised of Seaside City and Monterey County staff, was meeting to discuss compliance with Base Reuse Plan policies across jurisdictional boundaries. Executive Officer Michael Houlemard announced that Congressman Farr and Senator Monning had held a joint press conference that Monday to announce that the $6.7 million federal grant for construction of the California Central Coast Veterans Cemetery had been awarded to the State of California. Cemetery groundbreaking was anticipated to take place in February. Graham Bice explained that Donna Blitzer and Steve Matarazzo would be attending Administrative Committee meetings in his place for the next several months as he worked on another project.

4. PUBLIC COMMENT PERIOD

None.

5. APPROVAL OF MEETING MINUTES

a. September 10, 2014 Administrative Committee Meeting Minutes

The meeting minutes were approved by unanimous consent.

6. OCTOBER 10, 2014 BOARD MEETING - AGENDA REVIEW

Mr. Houlemard provided an overview of items on the October 10th Board meeting agenda, noting that item 7b would be pulled at the City of Marina's request and that other agenda items could be removed if the Executive Committee determined the agenda was too full. Mr. Houlemard added that item 8b would become an "information/action" item. The Committee discussed the challenges of prevailing wage compliance and Layne Long requested that Mr. Houlemard's letter to him be removed from the item 8g attachments.

7. **BUSINESS ITEMS**

   a. **California Department of Toxic Substances Control (DTSC) Annual Land Use Covenant (LUC) Reporting - Combined FY 12-13 and FY 13-14 Report Request Letter**
   Mr. Houlemard stated that one jurisdiction had yet to submit their FY 12-13 LUC Report, but FORA staff had received assurances it would be forthcoming. He emphasized the importance of submitting FY 13-14 reports in a timely manner.

   b. **Regional Urban Design Guidelines (RUDG) - Draft Interview List**
   Mr. Metz announced that staff had begun preparations for the November 12-19th consultant site visit, during which the consultants would conduct a series of stakeholder meetings and interviews. He requested jurisdictions forward the names of any staff members that should be included in the process.

8. **ITEMS FROM MEMBERS**
   None.

9. **ADJOURNMENT**
   Co-Chair Houlemard adjourned the meeting at 9:03 a.m.

-START-

DRAFT
BOARD PACKET

FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933
Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

REGULAR MEETING
FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Friday, November 14, 2014 at 2:00 p.m.
910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **CLOSED SESSION**
   a. Public Employment , Gov Code 54959.7(b) - Executive Officer

   b. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – 2 Cases
      i. Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961
      ii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856

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

5. **ROLL CALL**

6. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

7. **CONSENT AGENDA**
   a. Approve October 10, 2014 Board Meeting Minutes — ACTION

   b. FORA-City of Marina Reimbursement Agreement Amendment #1 — ACTION

8. **BUSINESS ITEMS**
   a. Environmental Services Cooperative Agreement Update — INFORMATION

   b. Regional Urban Design Guidelines (RUDG) Presentation — INFORMATION

   c. Update on Prevailing Wage Compliance — INFORMATION

   d. Base Reuse Plan Reassessment Report Categories 1 and 2 Update — INFORMATION

   e. Approve Contract with Monterey Business Council for Economic Development Services — ACTION

   f. Approve 2015 Fort Ord Reuse Authority Legislative Agenda — INFORMATION/ACTION

g. 2nd Vote: Preston Park Operating and Capital Budgets — ACTION

h. 2nd Vote: Executive Officer Compensation Adjustment — ACTION

i. Authorize Purchase of Pollution and Legal Liability Insurance Coverage — ACTION

j. City of Del Rey Oaks Land Sales Transaction
   i. Land sales Transaction Summary — INFORMATION
   ii. Del Rey Oaks/FORA Insurance Repayment Agreement Amendment — ACTION

k. Appeal of Marina Coast Water District Determination - Bay View Community Annexation — ACTION

9. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Board on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes. Comments on agenda items are heard under the item.

10. EXECUTIVE OFFICER'S REPORT

a. Outstanding Receivables — INFORMATION

b. Habitat Conservation Plan Update — INFORMATION

c. Administrative Committee — INFORMATION

d. Finance Committee — INFORMATION

e. Post Reassessment Advisory Committee — INFORMATION

f. Regional Urban Design Guidelines Task Force — INFORMATION

g. Travel Report — INFORMATION

h. Public Correspondence to the Board — INFORMATION

i. Administrative Consistency Determination for Entitlement: City of Marina's Marriott Hotel Project — INFORMATION

11. ITEMS FROM MEMBERS

12. ADJOURNMENT

NEXT BOARD MEETING: DECEMBER 12, 2014

Persons seeking disability related accommodations should contact FORA 48 hrs prior to the meeting. This meeting is recorded by Access Monterey Peninsula and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Chanel 25. The video and meeting materials are available online at www.fora.org.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	FORA-City of Marina Reimbursement Agreement Amendment #1	
Meeting Date:	November 14, 2014	**ACTION**
Agenda Number:	7b	

RECOMMENDATION(S):

Authorize the Executive Officer to execute amendment #1 to the Fort Ord Reuse Authority (FORA)-City of Marina (Marina) Reimbursement Agreement according to the attached term sheet (**Attachment A**).

BACKGROUND/DISCUSSION:

Marina Community Partners, Limited Liability Company (LLC), is the developer for the Dunes on Monterey Project. Marina Community Partners is proceeding with Phase 1C of their project, which is the residential housing component. Marina Community Partners, working with Marina, previously completed a portion of 8th Street from 2nd Avenue to 3rd Avenue. The estimated value of this work is $1,018,890. 8th Street is an on-site FORA Capital Improvement Program (CIP) roadway project, which is subject to the existing FORA-Marina Reimbursement Agreement. In this existing agreement, FORA agreed to reimburse Marina for completion of 8th Street, Salinas Avenue, Crescent Avenue, and Abrams Drive.

Marina and Marina Community Partners request that FORA amend its Reimbursement Agreement with Marina to provide fee credits directly to Marina Community Partners for the $1,018,890 in roadway work completed on 8th Street (see attached letter, **Attachment B**). These fee credits would be applied to the first 70 residential unit permits in Phase 1C, a credit of $14,555.57 would be applied against the $22,560 per unit rate. Therefore, $8,004.43 would be collected on each of the first 70 residential unit permits. Thereafter, the regular rate of $22,560 per unit would apply.

FISCAL IMPACT:

Reviewed by FORA Controller _____

A lower total amount of FORA Community Facilities District Special Tax revenue would be collected ($1,018,890) for these first 70 housing units as a part of this action, which would be offset by retiring a portion (the same amount) of FORA's roadway obligation for 8th Street. Staff time for this item is included in the approved FORA budget.

COORDINATION:

Marina, Marina Community Partners, Authority Counsel, Administrative and Executive Committees.

Prepared by_____ Approved by_____

Jonathan Garcia Michael A. Houlemard, Jr.

Attachment A to Item 7b
FORA Board Meeting, 11/14/2014

Term Sheet

For Amendment #1 to the

Marina-FORA Reimbursement Agreement

Amendment Terms:

1. Marina assigns $1,018,890 of eligible 8th Street reimbursements to Marina Community Partners, LLC.

2. Marina Community Partners, LLC, accepts this assignment.

3. FORA agrees to reimburse Marina Community Partners, LLC, $1,018,890 for partial completion of the 8th Street roadway improvement by providing FORA Community Facilities District (CFD) special tax credits to the first 70 residential unit permits in Phase 1C at a credit of $14,555.57 per unit.

4. Marina Community Partners, LLC, accepts FORA CFD special tax credits of $14,555.57 per residential unit for the first 70 units.

MARINA
COMMUNITY
PARTNERS, LLC

Attachment B to Item 7b
FORA Board Meeting, 11/14/14

September 10, 2014

Fort Ord Reuse Authority
Attn: Michael Houlemard
920 2nd Ave., Suite A
Marina, CA 93933

Subject: FORA Fee Credits – The Dunes Phase 1C

Mr. Houlemard,

Marina Community Partners ("MCP") and Shea Homes Limited Partnership ("SHLP") are very close to beginning construction of new homes in The Dunes – 1C area. Once underway, this will be the first for-sale housing constructed on the former Fort Ord in the City of Marina since base closure, and realization of a significant economic development goal within the Fort Ord Reuse Authority (FORA). At this point it is critical to now finalize arrangements for realization of credits associated with infrastructure construction (FORA Fee Credits) in order to ensure that go forward economics of home construction meet financial viability thresholds. In specific, reimbursements/fee credits for 8th Street improvements between 2nd and 3rd Avenue (constructed in 2007 by MCP) need to be confirmed and made available as fee credits at the time of residential building permits. This letter will outline the background related to this roadway construction and our proposal for how critical reimbursements need to be accomplished in order to allow residential for-sale housing to move forward in the near term.

- **Reimbursement Agreement** – FORA and The City of Marina entered into a reimbursement agreement on May 3, 2007 that covered roadway improvements. The City agreed to take the lead in constructing some roadways that were covered by the FORA Capital Improvement Program including 8th Street and the portion of roadway for which MCP/SHLP has constructed and is now requesting credit. A copy of this agreement is attached hereto for your reference.

- **Construction of Improvements** - Existing 8th Street from 2nd to 3rd Avenue is 950 feet in length and was constructed as part of the Dunes 1C project in 2007 by MCP (also known as the "Interim Improvements"). Any reimbursements as a result of the construction of these improvements have been transferred by MCP to SHLP as part of the Purchase and Sale Agreement between the parties.

- **FORA Capital Improvement Program** - The Fort Ord Reuse Authority Capital Improvement Program Fiscal year 2014/2015 includes current estimates for each improvement in the FORA CIP program. FORA CIP Project #FO5 has a total budget of $6,161,859 to improve 8th Street

100 Twelfth Street
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Marina, CA 93933
Tel: 831.384.0220
Fax: 831.384.0443

from 2nd Avenue to Inter-Garrison Road. The portion of 8th Street from 2nd to 3rd Avenue constructed by MCP has an estimated value of $1,018,890 in the FORA CIP.

- **Proposed Fee Credits** – MCP/SHLP has requested that the City of Marina assign rights to reimbursements derived from the May 3rd 2007 Reimbursement Agreement noted above to SHLP in the form of fee credits realizable at the time of permit. Fee credits requested amount to $1,018,890; the total amount carried in the FORA CIP as noted above for improvement of the noted section of 8th Street. As the current FORA Fees are $22,560 per single family residential unit, this translates into 45.16 units of fee credit or 45 residential units at the Dunes 1C not paying FORA Fees with the remaining fee credit balance of $3,690 applied to the 46th residential unit, therefore reducing the FORA Fee to $18,870 for this unit.

Further in support of this request, it should be noted that capital was outlaid for the construction of 8th Street with the understanding that FORA Fee Credits would be issued in like value. At this point on The Dunes project in particular, realization of these credits is critically important financially and key to residential portion of this project moving forward.

In order to ensure SHLP is able to recognize these credits, we have requested that the City provide a simple letter to FORA transferring the rights of reimbursement for 8th Street Construction from 2nd to 3rd Avenue made available under the above noted agreement between the City and FORA to SHLP. We trust that this will satisfy all FORA fee requirements for the initial 46 units of the residential development at The Dunes. In the future, as we continue to put in place infrastructure related to the FORA CIP program we will continue to work with FORA regarding the timing of improvement cost offsets.

Please let me know if you have any questions or comments, or if you would like to discuss anything contained herein in more detail.

Sincerely,

Donald A. Hofer
Vice President
Shea Homes – Northern California
Marina Community Partners

Attachments:

1. Reimbursement Agreement – City of Marina and FOR A, May 3, 2007
2. FORA Capital Improvement Program, FY 2014-2015, Table 1 – Obligatory Project Offsets and Remaining Obligations
3. Draft Fee Credit Assignment Letter

EXHIBIT A

REIMBURSEMENT AGREEMENT BETWEEN THE FORT ORD REUSE AUTHORITY AND THE CITY OF MARINA FOR STREET IMPROVEMENTS TO CRESCENT STREET EXTENSION, ABRAMS DRIVE, EIGHTH STREET AND SALINAS AVENUE

THIS AGREEMENT is made and signed on this 3rd day of May 2007, by and between the CITY OF MARINA, hereinafter called "City" and the FORT ORD REUSE AUTHORITY, hereinafter called "FORA".

RECITALS

A. In June 1997, the FORA Board adopted a Final Environmental Impact Report ("FEIR") and a Fort Ord Base Reuse Plan ("Plan"). The Plan defines a series of project obligations of the Plan as the Public Facilities Implementation Plan ("PFIP"). The PFIP serves as the baseline Capital Improvement Program ("CIP") for the Plan. The FORA Board annually revisits, reviews and considers a modified CIP that includes reprogramming of projects or other modifications deemed appropriate and necessary, such as the inclusion of the Transportation Agency for Monterey County's ("TAMC") most recent study that reallocated transportation mitigation funds. The FORA Board endorsed that study, entitled "FORA Fee Reallocation Study," on April 8, 2005.

B. In 1999 the FORA Board adopted Resolution 99-1 to establish a base-wide special tax levy for the funding of FORA obligations under the BRP. In June 2002 the FORA Board approved the formation of the Community Facilities District ("CFD") and adopted Ordinance #02-01 to clarify and define the funding of FORA obligations under the BRP. In November 2005 the FORA Board amended Ordinance #02-01 through the adoption of Ordinance #05-01 amending the special taxes levy. In February 2007 the FORA Board adopted Resolution #07-05 to modify Resolution 99-1. The portion of the special taxes collected under these FORA ordinances that are applicable to mitigating infrastructure are determined each year and adopted by the FORA Board in the adoption of the FORA CIP.

C. The "FORA Fee Reallocation Study" programmed $1,018,004 in FORA fees for the preliminary engineering, design, environmental, construction, and construction management of the "Crescent Street extension to Abrams Drive" project. The $1,018,004 in funds is currently programmed in FY 2007-2008 through FY 2009-2010 inclusive, with project completion programmed in FY 2009-2010.

D. The "FORA Fee Reallocation Study" programmed $852,578 in FORA fees for the preliminary engineering, design, environmental, construction, and construction management of the "Abrams Drive 2 lane arterial from 2nd Avenue easterly to Crescent Street extension" project. The $852,578 in funds is currently programmed in FY 2007-2008 and FY 2008-2009 with project completion programmed in FY 2008-2009.

E. The "FORA Fee Reallocation Study" programmed $4,871,433 in FORA fees for the preliminary engineering, design, environmental, construction, and construction management of the "8th Street upgrading and construction of a new 2 lane arterial from 2nd Avenue to Intergarrison Road" project, including the intersection with Intergarrison Road. The $4,871,433

in funds is currently programmed in FY 2007-2008 and FY 2008-2009 with project completion programmed in FY 2008-2009.

F. The "FORA Fee Reallocation Study" programmed $3,410,313 in FORA fees for the preliminary engineering, design, environmental, construction, and construction management of the "Salinas Avenue construction of a new 2 lane arterial from Reservation Road to Abrams Drive" project. The $3,410,313 in funds is currently programmed in FY 2007-2008 and FY 2008-2009 with completion programmed in 2008-2009.

G. Together, the individual projects described in C., D., E. and F. above are referred to as "the Projects." FORA's funding obligation to "the Projects" shall not exceed $10,152,328, (Attachment 1) in total less FORA's engineering and accounting fee of 0.1%.

H. On June 9, 2006, the FORA Board approved the FY 2006-2007 through FY 2021-2022 CIP, which programmed the Project components in the fiscal years noted in recitals C., D. E. and F. above. This CIP further programmed the receipt, by FORA, of CFD "Maximum Special Tax Rates" in fiscal years to support the performance of the CIP as adopted.

I. The City compiles and maintains a Capital Improvement Program ("City CIP") including construction and design of streets within the City. Under this City CIP, $4,700,000 is programmed to fund the construction of 2nd Avenue from Patton Parkway to the northerly limits of the University Village development project. This project is referred to as the "completion project".

J. The purpose of this Agreement is to establish the extent and manner in which City will be entitled to reimbursement by FORA for the FORA CIP programmed portion of the Project costs and the timing of the reimbursement by FORA.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Design, Consulting, Construction and Initial Financing of Project.

1.1 Lead Agency. The City shall, in compliance with the City's request of April 27, 2005, replace FORA as lead agency and shall serve as lead agency for the Projects, and shall continue as lead agency for the "completion project".

1.2 Engineering, Design, Environmental, Construction, Construction Management, and Other Services. The City shall retain necessary services and prepare all studies and documents required for environmental clearance for the Projects. The City shall also provide all required engineering, design, environmental, and other services for environmental clearance, permitting, design, construction, bidding, and construction management of the Projects. The City shall prepare the design documents in full conformance with the design requirements for the Projects approved by the City and in full conformance with the provisions of the applicable state and local codes. The Projects' design, engineering and construction must also meet the minimum carrying capacity and design requirements noted in the "FORA Fee Reallocation Study" Scenario C. The City shall commence preliminary engineering, design, environmental, and other services in FY 2006/2007.

1.3 Funding of City Provided Pre-Construction Services: Dependant upon market conditions and the issuance of building permits within the developable lands of the former Fort Ord, FORA will honor and pay invoices for services rendered by City and/or its consultants in providing the services enumerated in paragraph 1.2 above. The maximum amount payable to the project is as stated in paragraph 3 Amount of Reimbursement below. No payment will be made prior to the first day of the fiscal year in which the work is programmed to be performed. The FORA fiscal year is July 1 through June 30. The amounts payable, as indicated herein, will be adjusted annually, following approval of the FORA Board, by the Construction Cost Index as published each January by the Engineering News Record (ENR) commencing with the first such publication following the effective date of this agreement. FORA shall have sole discretion as to the source of funds for use in satisfying its obligation under this agreement.

1.3.1 8th Street. Pre-construction services are to begin and be completed in FY 2007-2008. The amount payable for these services shall not exceed 20% of the programmed project cost ($974,287 of $4,871,433 in FY 2006-2007 CIP).

1.4 Project Reprogramming. FORA shall not reprogram the Project to a later period unless development is delayed by market conditions as noted in Article 2 below.

2. Reimbursement to City. FORA's obligation to reimburse the City is contingent upon the development market and FORA's corresponding collection of development fees from former Fort Ord development projects. Development fees collected under the FORA CFD are the only source of funds obligated for reimbursement under this Agreement. FORA shall reimburse the City for costs incurred from initiation through Project completion and in accord with the amounts of reimbursement not to exceed the aggregate total for the projects as outlined in the CIP. The City may advance the construction of the "completion project" to coincide with construction of the projects.

3. Amount of Reimbursement. FORA, under this agreement with the City, shall reimburse the City for an amount not to exceed FORA's share of the total project cost, as presented in the FORA CIP, as the CIP may be updated from year to year, less 0.1% to be retained by FORA to fund its cost of engineering and accounting. The total reimbursement payable by FORA to City shall not exceed FORA's total combined obligations to the projects and shall include design and construction of the 2nd Avenue "completion project" for funding within this stated limitation.

FORA may from time to time, prior or subsequent to this agreement, enter other funding agreements, in conformance with its CIP, for the purpose of mitigating traffic impacts resulting from the redevelopment and reuse of the former Fort Ord. The timing of reimbursements to the City shall honor such other agreements and the total reimbursement amount payable to the City shall be reduced by FORA's reimbursements or other compensation paid to or allowed developers constructing any portions of the Projects as herein defined.

4. Invoices to FORA. The City shall submit invoices to FORA on a no more frequent than monthly interval, at a mutually agreeable date. The final invoice shall include a copy of a Notice of Completion filed with the City Recorder's office for the project.

5. Timing of Reimbursement. FORA shall commence reimbursement payments to the City when development fees programmed to fund the Projects become available with the first payment due in a month when projected development fees are collected by FORA. Other reimbursement agreements of record shall be paid concurrent to this Agreement.

6. Audit. The City agrees that the City's books and expenditures related to the Projects shall be subject to audit by FORA.

7. Amendment by Written Recorded Instrument. This Agreement may be amended or modified in whole or in part, only by a written and recorded instrument executed by both of the parties.

8. Indemnity and Hold Harmless. City agrees to indemnify, defend and hold FORA harmless from and against any loss, cost claim or damage directly related to City's actions or inactions under this Agreement.

9. Governing Law. This Agreement shall be governed by and interpreted by and in accordance with the laws of the State of California.

10. Entire Agreement. This Agreement along with any exhibits and attachments hereto, constitutes the entire agreement between the parties hereto concerning the subject matter hereof.

11. Interpretation. It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

12. Attorney's Fees. If a proceeding is brought to enforce any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year set out opposite their respective signatures.

Date: MAY 3, 2007

CITY OF MARINA
"CITY"

By: _____
City Manager
Anthony Altfeld

APPROVED AS TO FORM:

By: _____
City Attorney
Rob Wellington

Pursuant to Resolution No. 2007-65
ATTEST:

By: _____
Joy P. Junsay, City Clerk
5/4/07

FORT ORD REUSE AUTHORITY
"FORA"

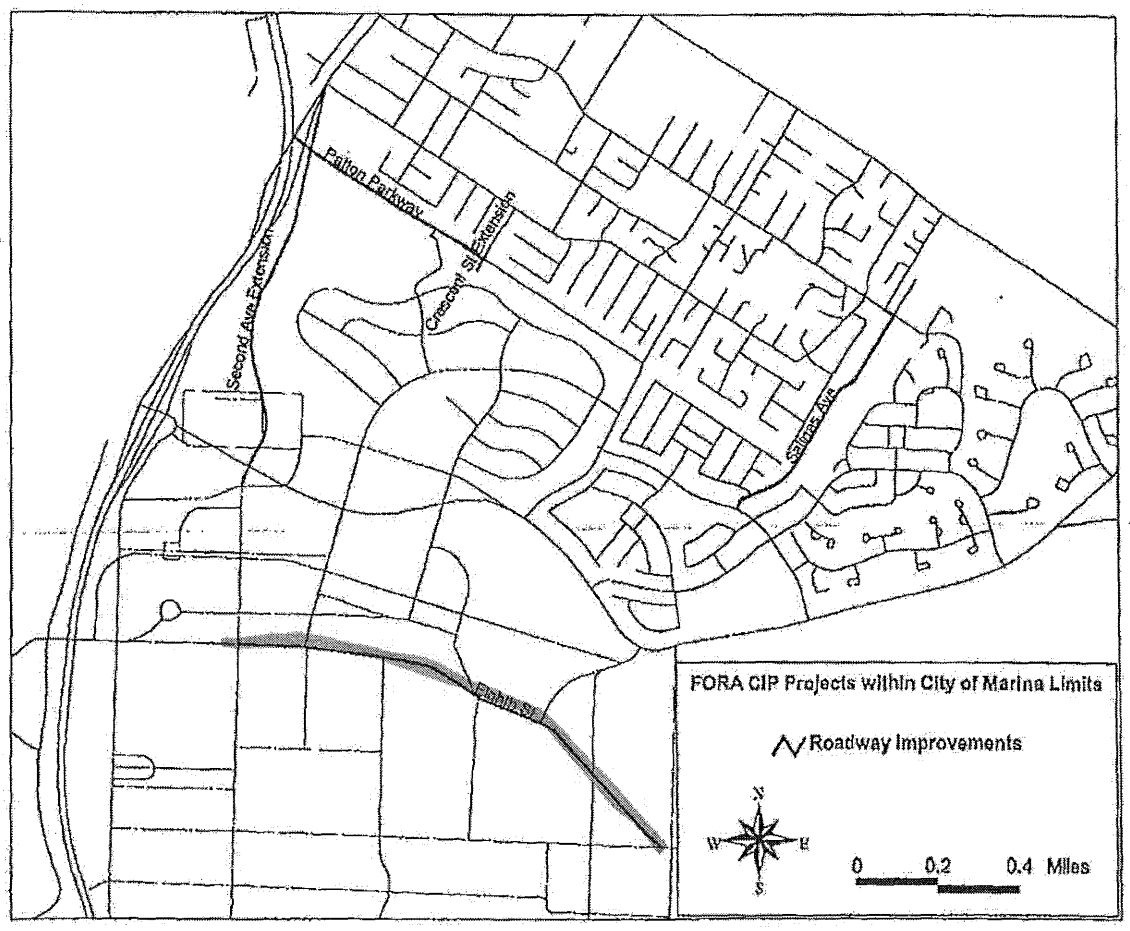
Date: May 30 07

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

APPROVED AS TO FORM:

By: _____
FORA Counsel
Gerald D. Bowden, Esq.

ATTACHMENT 1



RESOLUTION NO. 2007-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING REIMBURSEMENT AGREEMENT BETWEEN FORT ORD REUSE AUTHORITY (FORA) AND CITY OF MARINA FOR STREET IMPROVEMENTS TO CRESCENT STREET EXTENSION, ABRAMS DRIVE (PATTON PARKWAY), EIGHTH STREET AND SALINAS AVENUE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE REIMBURSEMENT AGREEMENT SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the City has determined that it is in their best interest to be the lead agency for design and construction for FORA CIP funded projects within the City of Marina; and

WHEREAS, the purpose of the proposed Reimburse Agreement is to establish the extent and manner in which City will be entitled to reimbursement by FORA for the CIP program that includes Crescent Street extension, Abrams Drive (Patton Parkway), Eighth Street and Salinas Avenue costs; and the timing of the reimbursement to the City by FOR A; and

WHEREAS, the agreement will allow the City to design and build all four (4) projects so long as connectivity is maintained and costs do not exceed the aggregate total of funds allocated; and

WHEREAS, The reimbursements shall be made each month as the costs are incurred dependent on FORA receiving the funds and the fiscal year the project is programmed in its CIP; and

WHEREAS, funding for costs incurred by the City to construct the approved projects will be provided by reimbursement from FORA.

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

1. Approve a reimbursement agreement between the Fort Ord Reuse Authority (FORA) and the City of Marina for street improvements to Crescent Street extension, Abrams Drive (Patton Parkway), Eighth Street and Salinas Avenue, and;

2. Authorize the City Manager to execute the reimbursement agreement subject to final review and approval by the City Attorney.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on April 3, 2007, by the following vote:

AYES: Council Members: Gray, McCall, Morrison, Wilmot and Mettee-McCutchon
NOES: Council Members: None
ABSENT: Council Members: None
ABSTAIN: Council Members: None

Ila Mettee-McCutchon, Mayor

ATTEST:

Joyce Sunsay, City Clerk

OBLIGATORY PROJECT OFFSETS AND REMAINING OBLIGATIONS

Project #	Project Title	Project Limits	TAMC Reallocation Study 2005 TOTAL COST	TAMC Reallocation Study 2005 FORA PORTION	FORA Offsets 2005-2014	FORA Remaining Obligation	FORA Remaining Obligation Inflated
Regional Improvements							
R3	Hwy 1-Seaside Sand City	Widen highway 1 from 4 lanes to 6 lanes from Fremont Avenue Interchange south to the Del Monte Interchange	45,000,000	15,282,245	-	21,332,350	21,844,328
R10	Hwy 1-Monterey Rd. Interchange	Construct new interchange at Monterey Road	10,100,000	2,495,648	-	3,485,049	3,568,699
R11	Hwy 156-Freeway Upgrade	Widen existing highway to 4 lanes and upgrade highway to freeway status with appropriate interchanges. Interchange modification as needed at US 156 and 101	167,600,000	7,092,199	-	9,699,696	10,137,494
R12	Hwy 68 Operational Improvements	Operational improvements at San Benancio, Laureles Grade and at Corral De Tierra including left turn lanes and improved signal timing	9,876,000	223,680	312,205	-	-
	Subtotal Regional		270,976,000	25,094,722	312,205	34,717,295	35,550,519
Off-Site Improvements						-	
1	Davis Rd n/o Blanco	Widen to 4 lanes from the SR 183 bridge to Blanco	3,151,000	506,958	-	707,858	724,642
2B	Davis Rd s/o Blanco	Widen to 4 lanes from Blanco to Reservation; Build 4 lane bridge over Salinas River	22,565,000	8,564,502	462,978	11,664,107	11,672,368
4D	Widen Reservation-4 lanes to WG	Widen to 4 lanes from existing 4 lane section East Garrison Gate to Watkins Gate	10,100,000	3,513,918	476,584	4,747,829	4,861,777
4E	Widen Reservation, WG to Davis	Widen to 4 lanes from Watkins Gate to Davis Rd	5,500,000	2,216,321	-	3,069,742	3,157,990
8	Crescent Ave extend to Abrams	Extend existing Crescent Court Southerly to join proposed Abrams Dr (FO2)	906,948	906,948	-	1,260,004	1,286,385
	Subtotal Off-Site		42,212,948	16,098,645	939,562	21,449,537	21,923,161
On-Site Improvements							
FO2	Abrams	Construct a new 2-lane arterial from intersection with 2nd Ave easterly to intersection with Crescent Court extension	769,669	769,669	-	1,060,275	1,085,722
FO5	8th Street	Upgrade/construct new 2-lane arterial from 2nd Ave to Intergarrison Rd	4,340,000	4,340,000	-	6,017,440	6,161,858
FO6	Intergarrison	Upgrade to a 4-lane arterial from Eastside Rd to Reservation	4,260,000	4,260,000	1,559,459	4,079,999	4,177,827
FO7	Gigling	Upgrade/Construct new 2-lane arterial from General Jim Moore Blvd easterly to Eastside Rd	5,722,640	5,722,640	353,510	7,542,368	7,723,388
FO8B (Ph-II)	GJM Blvd-Normandy to McClure	Widen from 2 to 4 lanes from Normandy Rd to McClure	24,065,000	24,065,000	6,252,156	-	-
FO9B (Ph-II) [1]	GJM Blvd-s/o McClure to s/o Coe	Widen from 2 to 4 lanes from McClure to Coe			3,476,974	-	-
FO9C	GJM Blvd-s/o Coe to S Boundary	Widen from 2 to 4 lanes from s/o Coe to South Boundary Rd			13,898,745	986,813	1,010,497
FO11	Salinas Ave	Construct new 2 lane arterial from Reservation Rd southerly to Abrams Dr	3,038,276	3,038,276	-	4,241,102	4,342,888
FO12	Eucalyptus Rd	Upgrade to 2 lane collector from General Jim Moore Blvd to Eastside Rd to Parker Flats cut-off	5,800,000	5,800,000	5,328,855	485,159	496,803
FO13B	Eastside Pkwy (New alignment)	Construct new 2 lane arterial from Eucalyptus Rd to Parker Flats cut-off to Schoonover Dr	12,536,370	12,536,370	510,000	16,960,540	17,367,353
FO14	S Boundary Road Upgrade	Upgrade to a 2 lane arterial, along existing alignment from General Jim Moore Blvd to York Rd	2,515,064	2,515,064	338,996	3,078,087	3,149,833
	Subtotal On-Site		63,036,919	63,036,919	31,517,895	44,439,573	45,506,225
	Transportation Totals		376,225,867	104,230,286	32,769,663	100,606,305	102,979,886

[1] Remaining construction may be phased in future CIP documents based on available funds and habitat/environmental clearance.

Transit Capital Improvements							
T3	Transit Vehicle Purchase/Replace	15 busses	15,000,000	5,298,254	378,950	8,344,527	8,544,798
T22	Intermodal Centers	(PFIP T-31) includes 3 elements: 1. Intermodal Transportation Center @ 1st. Avenue South of 8th. Street 2. Park and Ride Facility @ 12th Street and Imlin, and 3. Park and Ride Facility @ 8th. Street and Gigling	3,800,000	4,796,673		6,681,573	6,855,674
	Transit Totals		18,800,000	11,094,926	378,950	15,026,099	15,290,479
	Transportation/Transit Totals		395,025,867	115,315,212	33,148,613	115,592,505	118,180,366

Previous Offsets 1995 - 2004

1. Transportation/Transit - TAMC Study 1995

FORA offsets against obligations for transportation/transit network per 1995 TAMC Study from 1995-2004. Funded by EDA grant funds, state and local matching funds, revenue bond proceeds, development fees.	32,235,648
2. Storm Drainage System	
Retain/Percolate stormwater; eliminate discharge of stormwater to Monterey Bay Sanctuary. Project completed/financial obligation met in 2004. Funded by EDA grant proceeds.	1,531,951
TOTAL CUMULATIVE OFFSETS AGAINST TRANSPORTATION/TRANSIT AND STORM DRAINAGE PROJECTS TO DATE	67,016,212

Fee Credit Assignment

September 9, 2014

Regarding: FORA Fee Credits – The Dunes Phase 1C

Marina Community Partners
2630 Shea Center Drive
PO Box 5064
Livermore, CA 94551
Attn: Don Hofer

Regarding the Reimbursement Agreement Between the Fort Ord Reuse Authority and the City of Marina for Street Improvements to Crescent Street Extension, Abrams Drive, Eighth Street and Salinas Avenue dated May 3rd, 2007, this documents will confirm that credits equal to a total of $1,018,890 are available to Marina Community Partners(MCP) for constructing 8th Street from 2nd to 3rd Avenue. These credits will be assigned to Shea Homes Limited Partnership, a California Limited Partnership, for the Dunes 1C, to offset Fort Ord Reuse Authority (FORA) fees for development in Marina. The Fee Credit assignments are detailed below:

FORA Fee Reimbursements for 45 lots:

45 lots @ $22,560 = $1,015,200

1 lot @ $3,690 = $3,690

Total FORA Fee Credits = **$1,018,890**

The Assignment may be evidenced by MCP's execution of this letter and its distribution to Shea Homes Limited Partnership, a California Limited Partnership. A copy of this letter shall be submitted to FORA at the time of building permit application to receive credit.

City of Marina

by: _____

Dear Mr. Hofer:

Assignment:

MCP hereby assigns to Shea Homes Limited Partnership, a California Limited Partnership FORA fee credits of $1,018,810. The assignment shall be effective immediately.

Marina Community Partners

by: _____

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Environmental Services Cooperative Agreement Update	
Meeting Date:	November 14, 2014	**INFORMATION**
Agenda Number:	8a	

RECOMMENDATION:

Receive an Environmental Services Cooperative Agreement (ESCA) status report.

BACKGROUND:

In Spring 2005, the U.S. Army (Army) and the Fort Ord Reuse Authority (FORA) entered into negotiations toward an Army-funded Environmental Services Cooperative Agreement (ESCA) for the removal of remnant Munitions and Explosives of Concern (MEC) on the former Fort Ord. Under the terms of this ESCA contract, FORA accepted transfer of 3,340 acres of former Fort Ord land prior to regulatory environmental sign-off. In early 2007, the Army awarded FORA approximately $98 million to perform the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) munitions cleanup on the ESCA parcels. FORA also entered into an Administrative Order on Consent (AOC) with U.S. Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (DTSC) defining contractual conditions under which FORA completes Army remediation obligations for the ESCA parcels.

In order to complete the AOC defined work, after a competitive selection process, FORA entered into a Remediation Services Agreement with LFR Inc. (now ARCADIS) to provide MEC remediation services and executed a Cost-Cap insurance policy for this remediation work through American International Group (AIG). FORA received the "ESCA parcels" after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer on May 8, 2009.

The ESCA Remediation Program (RP) has been underway for seven (7) years. Currently, the FORA team has completed known ESCA RP field work, pending regulatory review.

DISCUSSION:

The ESCA requires FORA, acting as the Army's contractor, to address safety issues resulting from previous munitions training operations conducted at the former Fort Ord. This allows the FORA ESCA RP team to successfully implement cleanup actions that address three major past concerns: 1) the requirement for yearly appropriation of federal funding that delayed cleanup and necessitated costly mobilization/demobilization expenses; 2) state and federal regulatory questions about protectiveness of previous actions for sensitive uses; and 3) local jurisdictional/community/FORA's desire to reduce, to the extent possible, risk to individuals accessing the property.

Under the ESCA grant contract with the U.S. Army, FORA received approximately $98 million grant to clear munitions and to secure regulatory approval for the former Fort Ord ESCA parcels. FORA subsequently entered into a guaranteed fixed-price contract with LFR (now

ARCADIS) to complete the work as defined in the Technical Specifications and Review Statement (TSRS) appended to the ESCA grant contract. As part of a contract between FORA and ARCADIS, insurance coverage was secured from AIG for which FORA paid $82.1 million upfront from grant funds. This policy provides a commutation account which holds the funds that AIG uses to pay ARCADIS for the work performed.

The AIG coverage also provides for up to $128 million to address additional work for both known and unknown site conditions, if needed. That assures extra funds in place to complete the scope of work to the satisfaction of the Regulators. AIG monitors/approves ARCADIS expenditures in meeting AOC/TSRS grant requirements.

Based on the Army ESCA grant contract, the EPA AOC requirements and AIG insurance coverage provisions, AIG controls the ARCADIS/AIG $82.1 million Commutation Account. The full amount was provided to AIG in 2008 as payment for a cost-cap insurance policy where AIG reviews ARCADIS' work performed and makes payments directly to ARCADIS. FORA oversees that the work complies with grant/AOC requirements.

Item	Originally Allocated	Accrued through June 2014
FORA PLL Self-Insurance/Policy Purchase	$ 916,056	$916,056
Reimburse Regulators & Quality Assurance	4,725,000	2,419,311
State of California Surplus Lines Tax, Risk Transfer, Mobilization	6,100,000	6,100,000
Contractor's Pollution Liability Insurance	477,344	477,344
Work Performed ARCADIS/AIG Commutation Account	82,117,553	68,693,628
FORA Administrative Fees	3,392,656	2,907,644
Total	**$97,728,609**	**$81,513,982**
	ESCA Remainder	**$16,214,627**

It is important to highlight that data collected during the ESCA investigation stage remains under review by the regulatory agencies who determine when the remediation work is complete. They will only issue written confirmation that CERCLA MEC remediation work is complete (regulatory site) closure when they are satisfied the work is protective of human health and that the Final Proposed Plan, Record of Decision, Land Use Control Operation and Maintenance Plan are completed and approved. The process of completing the review and documentation is dependent on Army and regulatory agency responses/decisions. Until regulatory site closure is received, the ESCA property remains closed to the public. When regulatory site closure is received, FORA will transfer land title to the appropriate jurisdiction. To date, the ESCA RP has provided the stewardship for 3,340 ESCA acres. The ESCA team continues to actively monitor biological resources and track restoration activities on the ESCA property.

The ESCA RP team's major effort is on the required CERCLA documentation to gain regulatory certification of completion. Two significant issues have impacted the document delivery schedule. First was an issue between the Army and EPA concerning the definition of MEC as hazardous substances under CERCLA. After months of formal and informal discussions, EPA and the Army resolved their dispute in July 2014. The second significant issue concerns documenting FORA's Residential Quality Assurance (RQA) process as

developed under a pilot study in accordance with the terms of the ESCA. DTSC has required reporting, in addition to the CERCLA documentation, on the RQA process which is likely to further impact the ESCA document schedule. FORA staff and the ESCA RP team are closely monitoring these issues to efficiently execute the documentation phase of the program.

For the County North and Parker Flats Phase 1 ESCA properties, FORA received written confirmation from the regulatory agencies that CERCLA MEC remediation work is complete. For these properties, ARCADIS commuted ESCA insurance coverage for related clean-up costs for coverage for unknown conditions.

Per the existing FORA/Jurisdiction Implementation Agreements (2001) and Memorandum of Agreement (2007) regarding property ownership and responsibilities during the period of environmental services, deeds and access control for these properties has been transferred to the new land owner. At the County's request, FORA staff is working with County staff to adjust the former ESCA property signage based on a signage plan being developed under the joint direction of Monterey County staff, Monterey County Sheriff's Department and the Bureau of Land Management, with review by the FORA ESCA team.

Regulatory approval does not determine end use. Underlying jurisdictions are empowered to impose or limit zoning, decide property density or make related land use decisions in compliance with the FORA Base Reuse Plan.

FISCAL IMPACT:
Reviewed by FORA Controller _____

The funds for this review and report are part of the existing FORA ESCA funds.

COORDINATION:
Administrative Committee; Executive Committee; FORA Authority Counsel; ARCADIS; U.S. Army EPA; and DTSC

Prepared by_____ Approved by_____
Stan Cook Michael A. Houlemard, Jr.

Placeholder for Item 8b

Regional Urban Design Guidelines Presentation

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Update on Prevailing Wage Compliance	
Meeting Date: **Agenda Number:**	November 14, 2014 8c	**INFORMATION**

RECOMMENDATION:

Receive a prevailing wage requirements report on the former Fort Ord.

DISCUSSION:

Over the years, the Fort Ord Reuse Authority (FORA) Board has received several presentations regarding the applicability and enforcement of prevailing wage on the former Fort Ord. Recently, the FORA Board and staff received correspondence from an organized labor representative indicating concern regarding enforcement of the prevailing wage requirement within the City of Marina. FORA and City of Marina staff meet and as a result of this meeting look forward to a swift resolution of this matter, but it does present an excellent opportunity to review the prevailing wage requirement and both FORA's and the jurisdictions' role in enforcement.

BACKGROUND:

Adoption of prevailing wage as a base-wide policy originally surfaced during the legislative debates around the creation of FORA. While the FORA enabling legislation did not include provisions for prevailing wage, the initial FORA Board meeting explored the policy question in the exchanges about adoption of a procurement code. In fact, the FORA Board's first action in setting prevailing wage policy occurred on July 14, 1995, with the adoption of Ordinance No. 95-01. This Ordinance established FORA's Procurement Code, which requires prevailing wage to be paid to all workers employed on FORA's construction contracts. The FORA Master Resolution was adopted on March 14, 1997. Article 3.03.090 of the Master Resolution requires that prevailing wage be paid for all first generation projects occurring on parcels subject to the Base Reuse Plan.

Discussion regarding application of prevailing wage continued and was included in Base Reuse Plan compliance actions through 2006, when the Board engaged in further policy clarification actions. In August 2006, the Board received a status report on the jurisdiction's efforts to adopt and implement prevailing wage policies consistent with Chapter 3 of the Master Resolution. That report was the result of FORA Executive Committee and Authority Counsel's examination of FORA's role in implementing prevailing wage policies on the former Fort Ord. Since 2006, the FORA Board has heard compliance concerns expressed by the Labor Council, received several additional reports, slightly modified a section of Chapter 3 of the Master Resolution, and directed staff to provide information to the jurisdictions about compliance.

In September 2013, FORA Executive Officer provided an informational overview of prevailing wage requirements on the former Fort Ord. Attached to this report is PowerPoint presentation which attempts to further clarify prevailing wage policy implementation and enforcement (**Attachment A**). Staff expects to provided added comment and anticipates comments from labor, developers and the public at the November meeting.

FISCAL IMPACT:
Reviewed by FORA Controller _____

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

COORDINATION:
FORA Board, City of Marina, FORA Authority Counsel

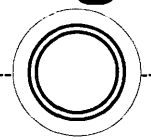
Prepared by _____ Approved by: _____
Robert J Norris, Jr. Michael A. Houlemard, Jr.

Attachment A , Item 8c
FORA Board Meeting, 11/14/14

Fort Ord Prevailing Wage
Application and Enforcement

Fort Ord Reuse Authority

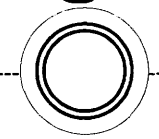
Prevailing Wage - Definition



The hourly wage, including benefits and overtime, paid to the largest group of, laborers, mechanics, and tradesmen within a particular region.

Prevailing Wage (PW) Rate law is based upon the premise that government is a major public client in the local economy and should use its buying power and state contract law to provide adequate wages.

Prevailing Wage In California



- California Labor Code establishes PW requirements for public works projects.
- "Public works" includes, "construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds." (Labor Code § 1720)
- The general prevailing rate of hourly wages is determined by the California Department of Industrial Relations.
- California is divided into Northern and Southern regions. (Monterey County is in Area 2 of Northern California)

Prevailing Wage - FORA History

Jul. 1995	FORA Procurement Code Adopted (Ord. 95-01)
Apr. 1996	FORA Master Resolution – Chapter 3
Mar. 2006	FORA Counsel Clarifies PW Policy
Jul. 2006	Trades Council Requests PW Reports
Oct. 2006	FORA Counsel Opinion – PW Enforcement
Nov. 2006	Executive Committee/Board PW Review
Nov. 2006 - Jan. 2007	FORA Board Debates PW Policy
Feb. 2007	Trades Council Sues for PW Enforcement
Feb. 2007	Special PW Board Workshop
Mar. 2007	Master Resolution Amendment (Res. 07-4) – Clarifies 1st Generation Construction

FORA Master Resolution Requirements

3.03.90 PREVAILING WAGES

- Shall be paid to all workers for 1st generation construction on parcels subject to the Base Reuse Plan.
- Applies to work performed under development entitlements and by contract with a FORA member agency, including their transferees, agents, successors-in-interest, developers or building contractors.
- Member agencies shall provide notice of the policy in all contracts and deeds.
- FORA determines member agency compliance through consistency determinations (Master Resolution Chapter 8).

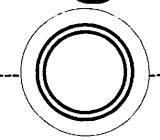
FORA Master Resolution Exceptions

3.03.90 PREVAILING WAGES

"In addition to the exceptions enumerated…in §1.01.050…this policy does not apply to:

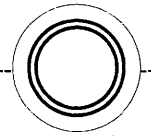
- FORA/member jurisdiction construction workforce.
- Developer full-time employee construction work, unless performing work of a contractor.
- Post-occupancy permit construction improvements.
- Affordable housing as exempted under California law.
- Facilities constructed for charitable purposes and owned by a 501(c)(3) non-profit organization."

How is Prevailing Wage Applied?



- All FORA bid documents contain information regarding the applicability of PW rates, either state or federal.
- Bidders are also informed that the applicable PW rate applies to all subcontractors performing work valued at more than 5% of the total contract.
- PW rates apply to workers assigned to the contracted project, and do not extend to workers who are ancillary to the construction (e.g., drivers delivering materials).

Enforcement



FORA is the enforcement agency for contracts to which FORA is a direct party. The member agency is responsible for enforcement of all other contracts.

FORA Enforcement Measures:

- During construction, contractors submit monthly certified payroll(s) for their labor force and that of each subcontractor.
- FORA compares # of workers to the certified payroll(s) and ensures compliance with the current PW rate per trade.
- Failure of the contractor/subcontractor to meet prevailing wage obligations is addressed is several ways, from issuance of a Correction Notice to referral to the Department of Industrial Relations for action and resolution.

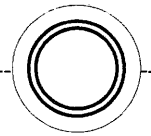
FORA Board Report Example

FORT ORD REUSE AUTHORITY BOARD REPORT		
NEW BUSINESS		
Subject:	Consistency Determination: The Promontory at California State University, Monterey Bay	
Meeting Date:	August 9, 2013	INFORMATION/ACTION
Agenda Number:	7a	

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

The submittal does not modify prevailing wage requirements for development within Marina's former Fort Ord footprint.

Reference Documents



- California Labor Code (Sections 1720-1743)
- California Health & Safety Code (past)
- Jurisdictional Requirements
- FORA Resolution #07-4 (PW Policy)
- FORA Master Resolution
- FAQs on FORA website at www.fora.org

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Base Reuse Plan Reassessment Report Categories 1 and 2 Update	
Meeting Date:	November 14, 2014	**INFORMATION**
Agenda Number:	8d	

RECOMMENDATION(S):

Receive Base Reuse Plan Reassessment Report Categories 1 and 2 Update

BACKGROUND/DISCUSSION:

The Board approved the 2014 Work Plan at its February 13, 2014 meeting, which included completion of Reassessment Report Category 1-3 items. Category 1 focuses on Reuse Plan text and figure changes; Category 2 focuses on Prior Board Actions and Regional Plan consistency; and Category 3 focuses on Implementation of Policies and Programs (**Attachment A).**

During 2013, the Post Reassessment Advisory Committee (PRAC) reviewed the Category 1 Reassessment Report items and made recommendations for improvements. Subsequently, Special Counsel Waltner reviewed the PRAC progress and recommended hiring a consultant to complete an Initial Study to determine what if any California Environmental Quality Act (CEQA) processing may be necessary.

The Fort Ord Reuse Authority (FORA) Board directed staff to obtain legal review of prior Board actions. Special Counsel Waltner completed this review in 2013 and found past Board actions legally defensible (**Attachment B**). He further recommended inclusion of past Board actions in the scope of the CEQA Initial Study. Once the initial study and any subsequent CEQA processing is underway, updates of the Reuse Plan Land Use Concept and Circulation maps could be completed.

Ensuring Reuse Plan Consistency with regional plans including the Transportation Agency of Monterey County (TAMC), the Monterey County Air District (MCAD), and the Regional Water Quality Control Board (RWQCB) is within the scope of the 2014 Work Plan. Staff is holding meetings with the relevant agencies to evaluate changes to plans since 1997. Policy development to address any changes will be included in the scope of work under the new Request for Proposals.

Staff notes that progress is underway on addressing many of the cross-jurisdictional items identified in Category 3 including the development of Regional Urban Design Guidelines, planning for Oak Woodlands conservation, and a host of other jurisdiction specific items. Staff has met with each of the relevant jurisdictions and expects to have jurisdiction-specific Category 3 item updates shortly. These status updates will be used to determine what additional steps are needed to bring these items to completion.

In response to the progress made by the PRAC and reviews and recommendations from Special Counsel Waltner, Staff has prepared a DRAFT Scope of Work and Request for Proposals (RFP) (**Attachment C**) to:

a) Complete a CEQA Initial Study of the recommended Category 1 & 2 items changes
b) Produce updated Land Use Concept and Circulation maps
c) Evaluate policy options for regional plan consistency

Once approved, the Scope of Work and RFP would be released and a proposal review and contracting process would follow.

FISCAL IMPACT:
Reviewed by FORA Controller _____

Staff time for this item is included in the approved FORA budget. FY 2014-2015 Reuse Plan Implementation budget includes funding to pay for consultant services.

COORDINATION:
Administrative Committee, Post Reassessment Advisory Committee, RUDG Task Force

Prepared by_____ Approved by_____
Josh Metz Michael A. Houlemard, Jr.

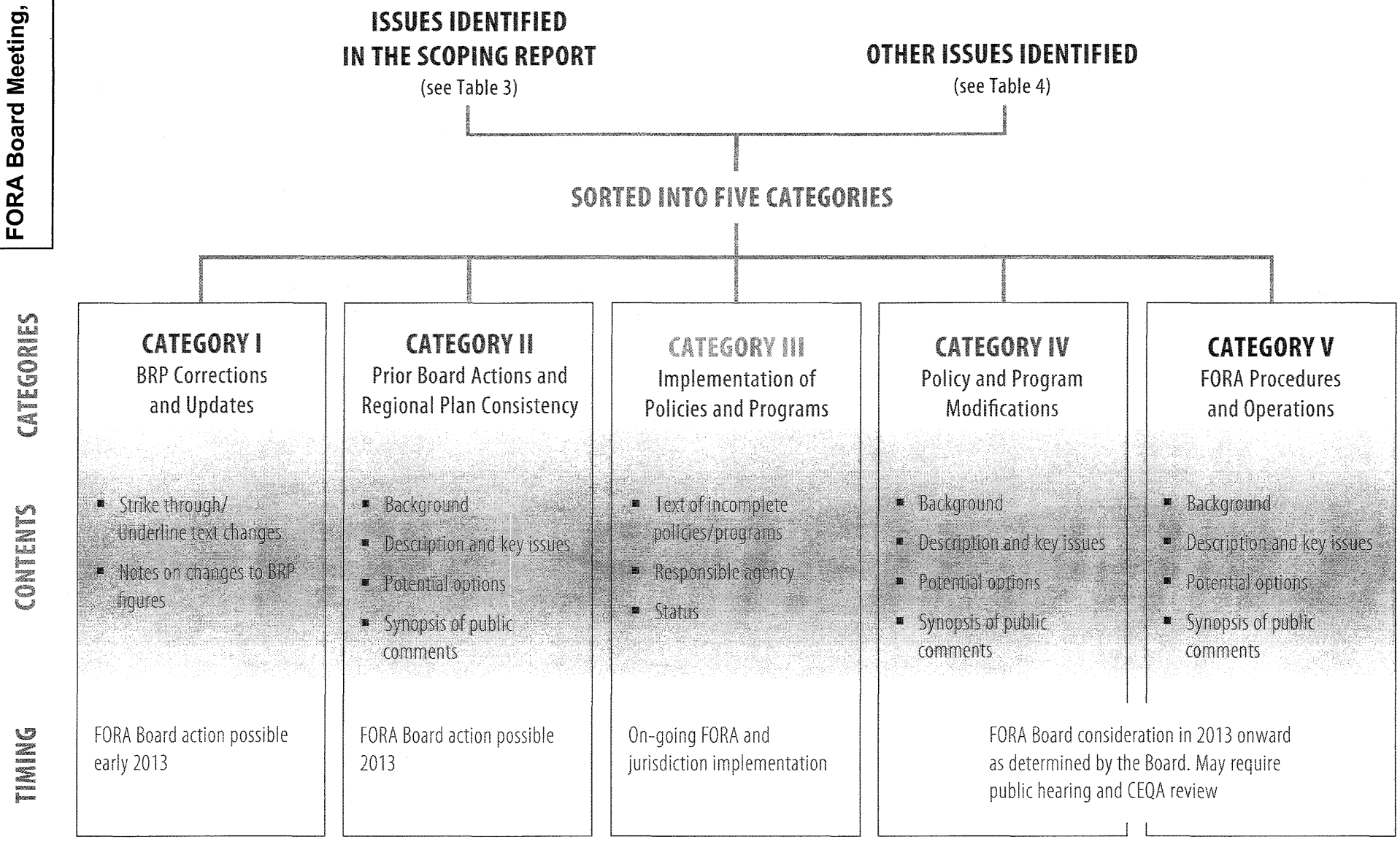


Figure 2
Visual Key to Reassessment Report

LAW OFFICES OF ALAN WALTNER

779 DOLORES STREET
SAN FRANCISCO, CALIFORNIA 94110
TEL (415) 641-4641 · FAX (415) 738-8310
WALTNERLAW@GMAIL.COM

Memorandum

Date: July 3, 2013

To: Fort Ord Reuse Authority
Board of Directors
Mayor Jerry Edelen, Board Chair
Michael Houlemard, Executive Officer

From: Alan Waltner, Esq.

RE: CEQA and Land Use Implications of Potential Revisions to the Fort Ord Reuse Authority Base Reuse Plan

I. INTRODUCTION

This memorandum addresses the implications under the California Environmental Quality Act ("CEQA") of potential revisions of the FORA-adopted Base Reuse Plan ("BRP"). This memorandum also addresses how changes to the BRP are affected by the guidelines implementing CEQA and land use law. The current BRP was adopted in 1997 and supported by a programmatic environmental impact report prepared under CEQA ("1997 EIR"). A legal challenge to the adequacy of the 1997 EIR was resolved through a settlement agreement with the Ventana Chapter of the Sierra Club ("Sierra Club settlement").

As required by the Sierra Club settlement, which was memorialized in Article 8.10.010(h) of the FORA Master Resolution, FORA completed a "reassessment" of the 1997 BRP in December 2012 and produced a report dated December 14, 2012 memorializing that reassessment ("Reassessment Report"). The Reassessment Report divided its evaluation into five categories. Category I consists of various corrections and updates to the 1997 BRP, largely in the form of minor errata to the text of the BRP. Category II consists of changes that would conform the BRP to the substance of previous FORA Board actions, particularly "consistency" determinations, as well as changes that would improve consistency of the BRP with regional plans that have evolved since 1997. Category III evaluates the compliance of various member jurisdictions with certain policies and programs in the 1997 BRP. Category IV is a discussion of more substantive modifications to BRP policies and programs that could be considered by the FORA Board in response to the reassessment. Category V discusses various potential changes to FORA's governance, including procedures and operations.

At this time, FORA is still in the process of public outreach and is considering a broad range of possible changes to the BRP as reflected in these five categories. In particular, it is anticipated that a colloquium and workshop process will occur during the second half of this year to obtain additional public input and provide a context for additional conversations about potential BRP revisions.

As discussed below, the appropriate CEQA document needed to support these changes will depend on the changes ultimately proposed. Near-term activities such as the colloquium and workshop process are anticipated to remain exempt planning and feasibility studies. Beyond that point, the nature and scope of the appropriate CEQA document should be evaluated through an initial study process. Given the relatively long lead-time required for certain CEQA compliance options, we recommend that this initial study process be initiated soon.

II. CEQA IMPLICATIONS OF POTENTIAL BRP REVISIONS

This section of the memorandum addresses three key issues:

- when is additional CEQA review required?
- what is the appropriate form of a new CEQA document, if any? and
- what is the recommended procedure for determining the appropriate CEQA document?

Land use considerations are discussed in the next section.

A. When is Additional CEQA Review Required?

In situations such as this, where an EIR for a program (or project) has already been prepared, certified, and judicial review has been completed, Section 21166 of CEQA, and Section 15162 of the CEQA Guidelines, establish the criteria for any additional required environmental review under CEQA. Distilled down to its essence, there must be a discretionary action[1], and there must also be one or more of the following: changes in the project (or program), changes in circumstances, or new information.

CEQA Section 21166 describes the three events that trigger the need for preparation of a supplemental environmental impact report as follows: "(a) Substantial changes . . . in the project which will require major revisions of the environmental impact report. (b) Substantial

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[1] The discretionary action trigger is described in the CEQA Guidelines as follows:

> Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

Guidelines Section 15162(c). If there is no future discretionary action, the CEQA Guidelines are clear that the agency is not required to reopen the previous approval and CEQA process. See also Guidelines Sections 15002 and 15357.

changes . . . with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [and] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." CEQA Section 21166.

Section 15162 of the CEQA Guidelines elaborates on these tests, generally requiring that the changes or new information create the need for "major revisions" relating to "new significant environmental effects" or a "substantial increase" in those effects. This requirement establishes a fairly high bar for reopening the EIR. Ultimately, this question turns on "whether, subsequent to the certification of the EIR, circumstances have changed to the extent that reliance on the EIR is unwarranted. (See *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1073 ["section 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation], and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process"].)" *Concerned Citizens of Dublin v. City of Dublin*, Slip Op., at 17 (March 7, 2013; certified for publication March 28, 2013).

Case law has been relatively generous in finding additional environmental review unnecessary to support program changes. For example, a reallocation of 100 residential units from one site to another was not considered a significant change to a specific plan in *Concerned Citizens of Dublin*. Slip Op. at 17. In that case, the EIR analyzed environmental impacts based on the maximum residential units in the program area as a whole, and the Court concluded that shifting 100 units to a different location was not a significant change. Likewise, the Court in *Bowman* considered the rerouting of project traffic from one street to another not to be a significant change.

B. What is the Appropriate Form of a New CEQA Document, if Any?

The next question that needs to be addressed is the form of the CEQA document that will be used to support future actions relating to the Base Reuse Plan. Here there are at least six options: exemption for planning and feasibility studies, categorical exemption, negative declaration, supplemental EIR, subsequent EIR, or addendum. The appropriate document will depend on the timing, scope and nature of the BRP-related activities, in particular any BRP revisions.

First, the CEQA Guidelines contain an exemption for planning and feasibility studies that do not have a legally binding effect on later activities. CEQA Guidelines Section 15262. This was the basis for preparing the BRP reassessment without an accompanying CEQA document. The anticipated colloquium and workshop process also will qualify for this exemption so long as no legally binding actions are taken and the process includes a "consideration of environmental factors." *Id.*

Second, the CEQA Guidelines contain a categorical exemption that applies to "changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised." CEQA Guidelines Section 15320. This categorical exemption would be potentially applicable to the Category V changes to FORA's governance.

Third, CEQA generally allows a negative declaration to be prepared, rather than an EIR, where there is no "fair argument" that a significant effect on the environment would result from a program or other project. CEQA Guidelines Section 15063. Guidelines Section 15162, however, makes this "fair argument" standard inapplicable in the supplemental EIR context, and instead asks whether substantial evidence supports the agency's decision not to undertake addition environmental review under CEQA Section 21166. If the initial study recommended below shows that supplemental environmental review has not been triggered for any impact, a negative declaration memorializing that conclusion may be utilized.

Fourth, CEQA Guidelines Section 15163 provides that an agency may choose to prepare a supplemental EIR rather than a subsequent EIR if, among other things, "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." CEQA Guidelines Section 15163. Therefore, a key consideration in determining whether to prepare a subsequent or supplemental EIR is a fact-based determination of whether the additions or changes to the previous EIR are only minor.

A supplemental EIR does not require recirculation of the previous draft or final EIR and need only contain the information necessary to make the previous EIR adequate for the project as revised. However, when an agency decides whether to approve a future project, it must consider the previous EIR, as revised by the supplemental EIR. CEQA Guidelines Section 15163.

Fifth, if major changes are required to make a previous EIR adequate, the agency must prepare a subsequent EIR. Although there is only limited guidance in the State CEQA Guidelines, Section 15162 states that a subsequent EIR should be prepared if it is necessary to do more than supplement the previous EIR. There is no requirement for the lead agency to consider the original EIR when it considers the subsequent EIR, although CEQA Guidelines Section 15162(d) requires the original EIR to be made available.

Sixth, the CEQA Guidelines authorize the preparation of an addendum in certain circumstances, where the conditions triggering a subsequent EIR under Guidelines Section 15162, as described above, have not occurred, and "only minor technical changes or additions are necessary . . . ." CEQA Guidelines Section 15164.

C. What is the Recommended Procedure for Determining the Appropriate CEQA Document?

Neither CEQA nor the CEQA Guidelines clearly specify a procedure for determining whether a certified program EIR, such as the 1997 EIR for the BRP, remains valid for continued use. However, CEQA and the guidelines suggest the use of an initial study in several related contexts. For example, in determining whether to use a program EIR for a subsequent project-level[2] approval, CEQA Section 21094 (c) states: "For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report." See also Guidelines Sections 15153 and 15168. CEQA Section 21157.1

[2] Guidelines Section 15168(a) suggests that a program such as the BRP "can be characterized as one large project." Therefore, these "tiering" sections of CEQA and the Guidelines could be considered applicable.

similarly provides for the use of an initial study in determining whether a subsequent project is within the scope of, and adequately covered by, a master environmental impact report. CEQA Section 21157.6 provides for use of an initial study to determine whether a master environmental impact report remains effective beyond an initial five year period.

CEQA practitioners have filled this gap in direct guidance by using a modified initial study checklist for the purpose of evaluating the continuing effectiveness of an EIR. Mechanically, this generally involves the addition of one or more new questions to the initial study checklist that ask whether there have been changes requiring additional analysis. This flexible use of the initial study method is supported by several CEQA guidelines. First, Guidelines Section 15063(f) states that, although example initial study checklists are included in Appendices G and H to the guidelines: "These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project." The use of an initial study in this context is further supported by the definition of an initial study in Guidelines Section 15365: "'Initial Study' means a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR."[3]

We therefore recommend the preparation of an initial study to determine whether additional environmental review is required in connection with the anticipated BRP revisions, and to determine the appropriate scope of that review. As the guidelines above show, the format and contents of the initial study can be adapted to the particular situation. The ultimate format and contents of this initial study should be determined after further consultation with FORA and its consultants.

III. LAND USE CONSIDERATIONS

The BRP is not subject to the same state planning and zoning law requirements that apply to general and specific plans. Specifically, the broad state law requirements for a comprehensive general plan with specified plan elements that are internally consistent, do not apply to FORA's BRP. Instead, the Authority Act specifies the required elements in very broad terms, and there are no state regulations that constrain FORA's BRP in the ways that local general plans are constrained.

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[3] Likewise, CEQA Guidelines Section 15063(c) states that the purposes of an initial study are to:

> (3) Assist in the preparation of an EIR, if one is required, by:
> (A) Focusing the EIR on the effects determined to be significant,
> (B) Identifying the effects determined not to be significant,
> (C) Explaining the reasons for determining that potentially significant effects would not be significant, and
> (D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.
> ***
> (6) Eliminate unnecessary EIRs;
> (7) Determine whether a previously prepared EIR could be used with the project.

The Authority Act contains a number of requirements for the BRP that will need to be satisfied in connection with any BRP revisions. These requirements are specified in Government Code Section 67675, which states that the BRP (including revisions) is required to include all of the following elements:

(1) A land use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space, and other natural resources within the area of the base. The land use plan shall designate areas of the base for residential, commercial, industrial, and other uses, and may specify maximum development intensities and other standards and criteria. The land use plan shall provide for public safety.

(2) A transportation plan for the integrated development of a system of roadways, transit facilities, air transportation facilities, and appurtenant terminals and other facilities for the movement of people and goods to, from, and within the area of the base.

(3) A conservation plan for the preservation, development, use, and management of natural resources within the area of the base, including, but not limited to, soils, shoreline, scenic corridors along transportation routes, open spaces, wetlands, recreational facilities, historical facilities, and habitat of, or for, exceptional flora and fauna.

(4) A recreation plan for the development, use, and management of the recreational resources within the area of the base.

(5) A five-year capital improvement program that complies with the requirements of Section 65403. The program shall include an allocation of the available water supply, sewage treatment capacity, solid waste disposal capability, and other limited public service capabilities among the potential developments within the area of the base. The program shall also identify both of the following:

(A) Base-wide facilities identified pursuant to Section 67679.

(B) Local facilities that are in the county or a city with territory occupied by Fort Ord and that primarily serve residents of the county or that city.

Since the 1997 BRP was subject to these same requirements, it contains all of the required elements. Generally, we recommend that the existing structure of the BRP be retained in order to carry forward all of these mandatory elements, as well as to provide a familiar structure and contents.

The BRP is also authorized to include any element or subject specified in Government Code Section 65302, relating to local general plans, such as a safety or housing element. (Government Code Section 67675(d)), but is not required to do so. The Authority Act contains no other references to the Planning and Zoning Law (Government Code Section 65000 *et seq.*), supporting the view that the Authority Act contains a "stand-alone" set of land use requirements that do not adopt or otherwise imply the application of parallel provisions of the Planning and Zoning Law.

The BRP is also required to be consistent with: "approved coastal plans, air quality plans, water quality plans, spheres of influence, and other county-wide or regional plans required by federal or state law, other than local general plans, including any amendments subsequent to the enactment of this title . . . ." The plan must also consider: "(1) Monterey Bay regional plans.

(2) County and city plans and proposed projects covering the territory occupied by Fort Ord or otherwise likely to be affected by the future uses of the base. (3) Other public and nongovernmental entity plans and proposed projects affecting the planning and development of the territory occupied by Fort Ord." Government Code Section 67675(f).

Once the BRP has been adopted, all of the local jurisdictions with territory in Fort Ord are required to submit both the then-current general plan as well as general plan amendments to the FORA Board, accompanied with a certification that the plan "applicable to the territory of Fort Ord is intended to be carried out in a manner fully in conformity with [the Authority Act]." Government Code Section 67675.2. The FORA Board then approves and certifies the general plans and amendments applicable to the territory of Fort Ord if it finds that the plan "meets the requirements of [the Authority Act] and is consistent with the [BRP]. Government Code Section 67675.3. Following that approval, zoning ordinances and "other implementing actions" are required to be submitted to the FORA Board, which the Board can only reject "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified general plan applicable to the territory of Fort Ord." Government Code Section 67675.5. Following the original general plan certification, amendments to that local plan only take effect upon certification by the FORA Board. Government Code Section 67675.7.

Government Code Section 67675 also states that the FORA Board "shall . . . revise from time to time, and maintain" the BRP. As discussed above, however, under the Authority Act, FORA retains considerable discretion regarding the contents of the BRP

IV. RECOMMENDATIONS AND NEXT STEPS

As described above, we recommend as an initial step that an initial study be commenced to evaluate the potential BRP revisions and the continuing ability of the 1997 BRP to support those revisions. An initial study could provide a framework for public participation, provide substantial evidence and a concrete description of FORA's analysis, and help focus a future environmental document. It will be important for this effort that the anticipated list of BRP revisions be developed as quickly and accurately as possible, in order to provide an accurate, stable and finite "project description." However, understanding that this is an ongoing process, a "framework" initial study could be prepared, based upon the information that currently is known (i.e. plan contents such as those in Categories I and II that are anticipated to be included, context changes and/or new information such as population, traffic, economic and other factors, and those Category IV items that are the most likely to be included). The framework would include an initial study checklist adapted to this situation, a summary of how the 1997 BRP EIR addressed each environmental impact, and an evaluation of the implications of those program changes, changed circumstances and new information that can currently be anticipated. With this framework initial study, ongoing discussions about the BRP revisions would be informed by the framework analysis and appropriate revisions to the initial study made as the BRP revision evolves.

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Memorandum

Date: September 3, 2013

To: Fort Ord Reuse Authority
Board of Directors
Mayor Jerry Edelen, Board Chair
Michael Houlemard, Executive Officer

From: Alan Waltner, Esq.

RE: Evaluation of FORA Legislative Land Use Decisions and Development Entitlement Consistency Determinations

I. INTRODUCTION

This memorandum describes the requirements applicable to legislative land use decisions and development entitlement consistency determinations made by the Fort Ord Reuse Authority ("FORA") under the FORA Base Reuse Plan ("BRP"). It evaluates as examples two previous actions – the Seaside General Plan consistency certification, and approval of the East Garrison – Parker Flat "land swap."

We conclude that FORA's procedures for determining consistency correctly interpret and apply the Fort Ord Reuse Authority Act ("Authority Act"), Government Code Sections 67650-67700 and the FORA Master Resolution. Generally, so long as the overall development restrictions of the BRP (such as water use limits, housing units, etc.) are not exceeded, the resulting land uses on an overall basis are generally consistent with those in the BRP, specific requirements of the BRP and Master Resolution are satisfied, and substantial evidence supports these conclusions, FORA consistency determinations and other land use actions would likely be upheld by a reviewing court.[1]

[1] We note that most of the actions taken by FORA to date can no longer be challenged in light of the applicable statutes of limitations. Challenges brought under the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA"), must be commenced within 30 days if a notice of determination has been filed, or within 180 days of the agency decision if no notice has been filed. CEQA Section 21167. Where no such action has been brought, the environmental document is conclusively presumed adequate for purposes of its use by responsible agencies, unless the provisions of CEQA Section 21166 apply. CEQA Section 21167.2. Under Section 8.01.070 of the Master Resolution, FORA is considered to be a responsible agency for most of these decisions, with the local member agency serving as lead agency. Other claims against FORA would need to be brought within four years of the action under the "catch all" statute of limitations in Civil Procedure Code Section 343. The two specific actions evaluated as examples in this memorandum were each taken over four years ago. Chapter 8 of the Master Resolution, and the existing BRP, were also adopted over 4 years ago and are not subject to challenge unless modified.

II. OVERVIEW OF APPLICABLE REQUIREMENTS

Actions taken by FORA are governed by the Authority Act and the Master Resolution. In particular, Chapter 8 of the Master Resolution, which served as the basis for the settlement in 1998 of a lawsuit brought by the Sierra Club, contains most of the pertinent provisions.

Many of these requirements are unique to FORA, and any litigation challenging actions by FORA or others would likely present issues of first impression. However, the Authority Act, Master Resolution, and Sierra Club settlement can be analyzed using general principles of statutory construction and contractual interpretation. Case law under analogous provisions of the Planning and Zoning Law, Government Code Section 65000 et seq., is also informative and is presented below. In addition, the validity of FORA actions would be highly fact-specific, and depend upon the nature of, and evidentiary support for, the particular decision. As a result, future actions will need to be evaluated on a case-by-case basis in light of the general principles discussed below.[2]

The Authority Act provides for FORA's involvement in local land use decisions primarily in two contexts. The first is the review and certification of local general plans under the "consistency" standards of Government Code Section 67675.3. The second is the consideration of specific land use entitlements under FORA's appeal jurisdiction set out in Government Code Section 67675.8. The standards for each type of action are distinct and are analyzed separately below.[3]

A. Consistency Certifications

Under the Authority Act, the BRP is to include, among other things, "[a] land use plan for the **integrated arrangement and general location and extent of**, and the criteria and standards for, the uses of land, water, air, space, and other natural resources within the area of the base." Government Code Section 67675(c)(1). (Emphasis added). This language closely mirrors the analogous provision of Section 65302 of the Planning and Zoning Law (a general plan must include a "land use element that designates the proposed **general distribution and general location and extent** of the uses of the land . . . ." (Emphasis added).

Thus, under the Authority Act, only the general locations and extent of land uses need be shown in the BRP. There is nothing in the Authority Act requiring FORA to plan at a

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[2] This memorandum is provided for the benefit of FORA. Third parties, such as local agencies, land owners, developers, and financers, should obtain the advice of their own legal counsel with respect to any specific actions being considered by them.

[3] Section 1.01.050 of the Master Resolution describes the distinction as follows: "'Legislative land use decisions' means general plans, general plan amendments, redevelopment plans, redevelopment plan amendments, zoning ordinances, zone district maps or amendments to zone district maps, and zoning changes." Other local land use approvals such as subdivisions, building permits, etc. are defined and labeled as "Development Entitlements." Specific plans are not included in either definition. However, Master Resolution 8.01.010 includes specific plans with the other legislative land use decisions that are subject to consistency review.

level of detail analogous to that of the zoning ordinances and zoning maps prepared by local jurisdictions under the Planning and Zoning Law. Instead, at the former Fort Ord, this more detailed planning is the responsibility of the local jurisdictions. Government Code Section 67675.5.

Following the adoption of the BRP, all of the local jurisdictions with territory in Fort Ord were required to submit both the then-current general plan as well as general plan amendments to the FORA Board, accompanied with a certification that the plan "applicable to the territory of Fort Ord is intended to be carried out in a manner fully in conformity with [the Authority Act]." Government Code Section 67675.2.[4]

The FORA Board then holds a noticed public hearing and approves and certifies the general plans and amendments applicable to the territory of Fort Ord if it finds that the plan "meets the requirements of [the Authority Act] and is consistent with the [BRP]." Government Code Section 67675.3. The approval and certification is mandatory under the Authority Act if these findings are made. *Id.* ("The board **shall** approve and certify . . .).

Following that approval, zoning ordinances and "other implementing actions" are required to be submitted to the FORA Board, which the Board can only reject "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified general plan applicable to the territory of Fort Ord." Government Code Section 67675.5. Note that the benchmark for this review of local implementing actions is the certified general plan, not the BRP.[5] Following the original general plan certification, amendments to that local plan only take effect upon certification by the FORA Board. Government Code Section 67675.7.

Section 8.02.010 of the Master Resolution elaborates on the criteria for legislative land use consistency determinations, as follows:

> (a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that
>
> > (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan **for the affected territory**;

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[4] The corresponding section of the Master Resolution, Section 8.01.020(b)(3), adds a reference to the BRP to this conformity provision.

[5] Section 8.01.060 of the Master Resolution includes a "supercession" provision making Chapter 8 of the Master Resolution "supreme" over the BRP and other FORA documents. However, this supercession clause does not purport to override the Authority Act. This is most likely in recognition of the fact that provisions inconsistent with the Authority Act would not be authorized or effective. Specifically, Section 67675.8(b)(1) of the Authority Act authorizes the Board **only** to adopt regulations "to ensure compliance with the provisions of this title." (Emphasis added).

(2) Provides for a development more dense than the density of uses permitted in the Reuse Plan **for the affected territory**;

(3) Is not in **substantial conformance** with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.

(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;

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

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

(b) **FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased.** [6]

(Emphasis Added).

The Master Resolution also allows FORA to apply a "substantial compliance" standard for certification of legislative land use decisions. Section 8.02.010. A similar "substantial conformance" standard also applies to the local agency's compliance with BRP policies, as well as with the programs and mitigation measures listed in Master Resolution Section 8.02.020. Master Resolution Section 8.01.010(a)(3).

The standards for consistency certifications set forth in the Master Resolution are similar to those applied in case law under the analogous Planning and Zoning Law. Although FORA is governed by the Authority Act and is not subject to the Planning and Zoning Law, key terms chosen by the Legislature, such as "consistent" should be interpreted similarly. In referring to "consistency," the Legislature is presumed to have been applying the plain meaning of the word, which is: "agreement or harmony of parts or features to one another or a whole: correspondence; *specifically*: ability to be asserted together without contradiction." Websters-Merriam Online Dictionary. The analogy to the Planning and Zoning Law is further reinforced by the similarity of Section 65302 of

[6] The term "affected territory" is defined by Section 1.01.050 of the Master Resolution to mean "property within the Fort Ord Territory that is the subject of a legislative land use decision or an application for a development entitlement **and such additional territory within the Fort Ord Territory that may be subject to an adjustment in density or intensity of allowed development to accommodate development on the property subject to the development entitlement.**" (Emphasis Added).

the Planning and Zoning Law and Section 67675(c)(1) of the Authority Act as discussed above.

Under the Planning and Zoning Law, general plans must be internally consistent, and subsequent land use actions, such as zoning ordinances and project entitlements, must be consistent with the general plan. Applying that standard, "A project is consistent with the general plan 'if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' 'A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan.'" *FUTURE v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336. See also *Orange Citizens for Parks and Recreation v. Superior Court*, (July 10, 2013) California Court of Appeal for the Fourth District, Slip Opinion, No. G047013 (city's interpretation of its general plan land use map given substantial deference, even where specific land uses differ).

"[S]tate law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that the proposed project be '*compatible* with the objectives, policies, general land uses, and programs specified in' the applicable plan. [Citation.] The courts have interpreted this provision as requiring that a project be 'in agreement or harmony with' the terms of the applicable plan, not in rigid conformity with every detail thereof." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678.). "[A] given project need not be in perfect conformity with each and every [general plan] policy," and "no project could completely satisfy every policy stated in [a general plan]." *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719. The agency "has broad discretion to weigh and balance competing interests in formulating development policies, and a court cannot review the wisdom of those decisions under the guise of reviewing a general plan's internal consistency and correlation." *Federation of Hillside Associations v. Los Angeles* (2004) 126 Cal.App.4th 1180, 1196.

This is particularly true for broad plan provisions that do not set out specific requirements. *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 996. For example, in *Sequoyah,* there was substantial evidence that a subdivision project was consistent with 14 of 17 pertinent policies. The three remaining policies were amorphous in nature—they "encouraged" development "sensitive to natural land forms, and the natural and built environment." 23 Cal.App.4th at 719. The Board's consistency finding in that case was upheld.

This contrasts with situations such as that faced in *Murrieta Valley Unified School Dist.* v. *County of Riverside* (1991) 228 Cal. App.3d 1212. There, where the applicable general plan required the local agency to incorporate specific nonmonetary school mitigation measures, the requirement of internal consistency required the adoption of such measures in a general plan amendment. Thus, "the nature of the policy and the

nature of the inconsistency are critical factors to consider." *FUTURE v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1332, 1341.

A Board's determination of general plan consistency carries a strong presumption of regularity. *Sequoyah Hills, supra,* 23 Cal.App. 4th at 717. This determination can be overturned only if the Board abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. (*Ibid.*) "We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) "'It is, emphatically, *not* the role of the courts to micromanage these development decisions.' [Citation.] Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether *we* would have made that determination in the first instance." (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638.). The challenger has the burden of showing that the agency's consistency determination was unreasonable. *Id.* at 639.

"[C]ourts accord great deference to a local governmental agency's determination of consistency with its own general plan." *San Franciscans Downtown Plan v. City of San Francisco* (2002) 125 Cal. Rptr. 2d 745, 759. "[T]he body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role `is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" *Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 142.

The programs and mitigation measures listed in Master Resolution Section 8.02.020 generally only require that those programs and measures be included in the applicable general plan or be considered during development entitlement reviews. Section 8.02.020 does not require full implementation of all of these programs and measures as a condition for either consistency certifications or development entitlement approvals. Most of those programs and measures are also stated in relatively subjective and flexible terms, generally qualified by terms such as "encourage" or "appropriate." Only some of the programs and measures are described in more specific, prescriptive or proscriptive, language.

B. Appeals of Project-Level Entitlements

The certification of local general plans generally transfers land use entitlement authority to the local jurisdiction, subject to appeals to the FORA Board:

> Except for appeals to the board, as provided in Section 67675.8, after the portion of a general plan applicable to Fort Ord has been certified and all implementing actions[7] within the area affected have become effective[8], the development review authority shall be exercised by the respective county or city over any development proposed within the area to which the general plan applies.

Government Code Section 67675.6(a). The Authority Act further provides:

> Subject to the consistency determinations required pursuant to this title, each member agency with jurisdiction lying within the area of Fort Ord may plan for, zone, and issue or deny building permits and other development approvals within that area. Actions of the member agency pursuant to this paragraph may be reviewed by the board on its own initiative, or may be appealed to the board.

Government Code Section 67675.8(b)(2).

The corresponding provision in the Master Resolution, Section 8.01.030, states that:

> After the portion of a general plan applicable to Fort Ord Territory has become effective, development review authority within such portion of territory shall be exercised by the land use agency with jurisdiction lying within the area to which the general plan applies. Each land use agency may issue or deny, or conditionally issue, development entitlements within their respective jurisdictions so long as the land use agency has a general plan certified pursuant to Section 8.01.020 and the decisions issuing, denying, or conditionally issuing development entitlements are consistent with the adopted and certified general plan, the Reuse Plan, and is in compliance with CEQA and all other applicable laws.

After the BRP has been adopted, "no local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is not consistent with the plan as adopted or revised pursuant to [the Authority Act]." Government Code Section 67675.8(b). However, this project-level consistency review only occurs if an appeal is filed or the board reviews the action on its own initiative. Id.

The Master Resolution describes the standards to be applied to development entitlement consistency determinations in Section 8.02.030(a):

> (a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section

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[7] The Authority Act does not define the term "implementing actions." The Master Resolution likewise does not define or make reference to "implementing actions," including in Section 8.01.030(a), which is the provision of the Master Resolution corresponding to this section of the Authority Act.

[8] All that is required is that the implementing actions "have become effective . . . ." The term "effective" means "ready for service or action" or "being in effect." Websters-Merriam Online Dictionary.

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;**
>
> **(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;**
>
> (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.
>
> **(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.**
>
> (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.
>
> (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
>
> (7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.
>
> (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.

(Emphasis Added). Under subparagraphs (1) and (2) of this provision of the Master resolution, the intensity of land uses and the density of those uses are measured for consistency against the certified general plan. Under subparagraph (4), more general questions of conflict or compatibility are measured against the BRP.

As a result, local development entitlements can still proceed without revisions to the BRP, even if the land uses and densities differ from those identified in the BRP's land use map, so long as those uses and densities are consistent with the certified general plan and the project satisfies the more general provisions of the BRP and Master Resolution, as supported by substantial evidence in the record. [9]

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[9] There is also a provision in Sub-Section 8.01.010(h) of the Master Resolution stating that:

III. EVALUATION OF THE SEASIDE GENERAL PLAN CONSISTENCY CERTIFICATION AND EAST GARRISON – PARKER FLATS "LAND SWAP"

A. Seaside General Plan Consistency Certification

The Seaside General Plan was certified by the FORA Board in 2004 as being consistent with the BRP. The Seaside General Plan itself was supported by an Environmental Impact Report under CEQA, which the FORA Board utilized as a responsible agency under the Master Resolution. Detailed findings were also made by Seaside under CEQA. The FORA Board's action was also supported by extensive additional documentation submitted by the City of Seaside, including a staff report evaluating consistency with the BRP and compliance with the Master Resolution. In certifying the Seaside General Plan as consistent with the BRP, the FORA Board appropriately relied on these submissions.

The FORA Staff Report on the Seaside General Plan action applied the appropriate legal standards under the Authority Act and the Master Resolution. November 19, 2004 Agenda, Item 7d. Specifically, the Staff Report recognized that: "there are thresholds set in the resource-constrained BRP that may not be exceeded, most notably 6101 new

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> No development shall be approved by FORA or any land use agency or local agency after the time specified in this subsection [i.e., no later than January 1, 2013] unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources **to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted** as required by CEQA, the Authority Act, the Master Resolution, and all applicable environmental laws.

(Emphasis Added). Note that this provision does not require consideration of infrastructure beyond that needed for the particular project, and that it also does not require that the infrastructure have been completed at the time of the decision.

Master Resolution Sub-Section 8.02.020(a) states that:

> Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord territory by **including** the open space and conservation **policies and programs** of the Reuse Plan, applicable to the land use agency, **into their respective general, area, and specific plans.**

(Emphasis Added). Master Resolution Sub-Section 8.02.040 includes a similar but somewhat differently worded limitation:

> No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken **appropriate action**, in the **discretion** of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

(Emphasis Added).

residential housing units, and a finite water allocation." *Id.*, page 2. The Seaside General Plan was evaluated in detail in relation to these constraints.

The supporting materials also included an analysis of ten specific differences in the land use designations for specific parcels in the Seaside General Plan as compared to the BRP. Those materials acknowledged that the intensities and density of land uses for those specific parcels differed from the BRP, but that the changes reflected a shift in uses and densities rather than an overall change as compared to the BRP. The supporting materials adequately supported the FORA Board's conclusions.

If FORA's consistency certification for the Seaside General Plan had been challenged, it would have been reviewed under very deferential standards as described above. Of course, the applicable statutes of limitation have passed as discussed in footnote 1 above. However, even if they had not, we conclude that FORA's certification action would likely have been upheld by a reviewing court if a challenge had been brought.

B. East Garrison - Parker Flats "Land Swap"

In 2005, FORA entered into a memorandum of understanding with the U.S. Army, Bureau of Land Management, County of Monterey, and Monterey Peninsula College providing for a shift in land uses between the East Garrison and Parker Flats regions. Specifically, a public safety officer training facility was moved to the Parker Flats region from the East Garrison region of former Ford Ord, and residential land uses were moved to the East Garrison region from Parker Flats. This action has been described as the East Garrison – Parker Flats "Land Swap." From a land use perspective, the anticipated uses were in effect modified in these two areas located in Monterey County.

The land swap was supported by an "Assessment East Garrison – Parker Flats Land Use Modifications Ford Ord, California" prepared by Zander Associates in May 2002 ("Assessment"). The Assessment primarily evaluated the effects of the land swap on the "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord." ("HMP"). The Assessment concluded that: "The goals, objectives and overall intent of the HMP would not be altered and the protections afforded those species addressed in the HMP . . . would not be reduced as a result of the proposed modifications." Assessment, page 1. In fact, the Assessment concluded that the net effects of the land swap on habitat would be beneficial.

The land swap itself was a somewhat novel action not directly contemplated by the Master Resolution. However, the Assessment considered consistency with the BRP and concluded that the modifications for East Garrison would generally conform by providing a mixed-use development plan with a central core village theme. Assessment at 9. Likewise, the Assessment concluded that the land swap would only result in minor adjustments to Parker Flats land uses. Id. at 11. Overall, the land swap reflected a shift in uses and densities, rather than a significant change in comparison to the overall BRP. [10]

[10] Subsequently the land swap was recognized through the certification of Monterey County's East Garrison Specific Plan.

IV. PROSPECTIVE RECOMMENDATIONS, INCLUDING CEQA COMPLIANCE

FORA has not revised the BRP land use map to reflect the differences between that map and most of the certified general plans that have been considered to date. Similarly, the East Garrison – Parker Flats land swap and associated East Garrison Specific Plan consistency approval is not reflected in revisions to the BRP map. In the December, 2012 Final Reassessment Report, under "Category II," a number of potential revisions to the BRP land use map were identified in order to update that map to reflect the uses and densities reflected in consistency certifications and other FORA actions such as the land swap that have occurred since the BRP was adopted. In order to provide a more usable document, FORA is considering updating the BRP's land use map.

Our July 3, 2013 memorandum discussed the actions recommended in connection with potential BRP revisions. The recommendation in that memorandum still applies – that an initial study be prepared to evaluate the environmental effects of those revisions in comparison to the analysis in the BRP EIR (as well as other EIRs supporting FORA actions such as the consistency determinations). As stated in our July 3 memorandum, the ultimate CEQA compliance obligations will need to be based on the specifics of the BRP revisions adopted, which can best be evaluated through an initial study considering the resulting environmental effects in relation to the existing CEQA documentation.

Interested Consultants
Distributed via email

Re: Request for Professional Proposals (RFP) to complete Initial Study of Category 1 and 2 items identified during the Fort Ord Reuse Plan Reassessment for consideration under CEQA

The Fort Ord Reuse Authority's (FORA's) mission is to prepare, adopt, finance, and implement a plan for the former Fort Ord, including land use, transportation systems, conservation of land/water, recreation and business operations. In order to meet these objectives, the Fort Ord Reuse Plan (Reuse Plan) was adopted in 1997.

FORA adopted the Reuse Plan as the official local regional plan to enhance and deliver promised economic recovery, while protecting designated natural resources.

The Reuse Plan underwent a comprehensive reassessment process that concluded in December 2012. The reassessment process was a community-wide regional effort that identified a range of policy options for the FORA Board's subsequent consideration. The identified policy options are discussed in the final Reassessment Report (**Attachment A**). The Post Reassessment Advisory Committee (PRAC) was charged with reviewing Categories 1 and 4 options from the Reuse Plan reassessment report and offered recommendations on Category 1 text corrections (**Attachment B**) and figure corrections (**Attachment C**).

FORA hired special land use counsel Alan Waltner to review Category 2 modifications and recommend an approach. Mr. Waltner completed two memoranda (**Attachment D**), recommending that FORA hire a consultant to complete an Initial Study of Category 1, 2a, 2b, 2c, and 2d items (Table 1) for consideration under CEQA and, based on the initial study, perform appropriate CEQA on Category 1 and 2 items prior to Board consideration of Reuse Plan changes.

Table 1. Category 1 & 2 Reuse Plan Reassessment recommended corrections.

Category	*Topics*
1	**Reuse Plan Corrections & Updates**
	Text Corrections
	Figure Corrections
2	**Prior Board Actions & Regional Plan Consistency**
	a. Land Use Concept Map modifications based on prior FORA Board Consistency Determinations (map "re-publication" based on prior approvals)
	b. Land Use Concept Map modifications based on other actions
	c. Modify circulation related maps and text in the Reuse Plan and modify Capital Improvement Program (CIP)
	d. Reuse Plan Modifications regarding consistency with Regional and Local Plans

This RFP invites you to submit proposals for completion of an Initial Study of Category 1 and 2 changes listed above for consideration under CEQA and, based on the initial study, perform appropriate CEQA on Category 1 and 2 items prior to Board consideration of Reuse Plan changes.

RFP submittals will be evaluated on the following factors:

1) Demonstrated ability to competently and efficiently complete CEQA process for complex land use issues

2) Knowledge of public policy matters affecting the Monterey Bay region, and/or experience in military base reuse in the local area or elsewhere (desirable but not mandatory)

3) Merits of materials included in your proposal

Submitted proposals must be structured to address the skills, experience, and abilities needed to complete the required CEQA processes, as generally described in the attached Scope of Work. In your proposal, FORA requests that you provide:

1) A proposal describing how your firm will complete this work (20 pages or less),
2) Work completion timelines (Note: two timelines are required - one assuming an Initial Study and Mitigated Negative Declaration will be prepared and another one assuming an Initial Study and Environmental Impact Report will be prepared),
3) Proposed costs for completing work (Note: two cost estimates are required - one assuming an Initial Study and Mitigated Negative Declaration will be prepared and another one assuming an Initial Study and Environmental Impact Report will be prepared),
4) Qualifications,
5) Examples of relevant experience providing similar services, and
6) Three recent client references.

Submitting consultants must provide proposals to FORA as specifically described herein by **5:00 PM on Friday, October 31, 2014**. Please submit your proposal, with a cover letter, via email to FORA, attn: Josh Metz: josh@fora.org

The FORA Executive Officer will select one or more of the respondents to participate further in the selection process, if such is deemed necessary, and make the final selection of a consultant. FORA reserves the right to reject any and all proposals.

General Scope of Work

The FORA Board has identified Category 1 & 2 items within the Final Reuse Plan Reassessment Report that require completion of a CEQA process.

Deliverables:

a) After reviewing Category 1 text and figure corrections in the final reassessment report and specific recommendations offered by the PRAC, compile the text and figure corrections in final form for use in the initial study. This deliverable will require retention of original Reuse Plan figures for historical purposes and create 15 corrected figures. The consultant will use **Attachments A, B, and C** to support completion of this deliverable.
b) Based on review of Category 2 final reassessment report considerations and Special Counsel Alan Waltner's memoranda, complete modifications to Figure 3.3-1 Land Use Concept Ultimate Development based on prior FORA Board Consistency Determinations and other actions for use

in the initial study. The consultant will use **Attachments A and D** and receive advice from Special Counsel Alan Waltner to support completion of this deliverable.

c) Complete modified circulation related maps and text in the Reuse Plan for use in the initial study. The consultant will use **Attachment A** and receive advice from Special Counsel Alan Waltner to support completion of this deliverable.
d) Review proposed modifications regarding consistency of Regional and Local Plans (**Attachment E**). Create a final version of modifications regarding consistency of Regional and Local Plans for use in the initial study.
e) Document steps taken in completing deliverables a) through d) and present these deliverables to the FORA Board.
f) Complete an Initial Study under CEQA of deliverables a) through d).
g) Present findings in a presentation and written report.
h) Complete up to 5 iterations of the Reuse Plan Figure 3.3-1, Land Use Concept Ultimate Development map, and provide original GIS files to FORA staff.
i) Pending outcome of the Initial Study, complete appropriate CEQA on Category 1 and 2 items prior to Board consideration of Reuse Plan changes.
j) Complete all necessary CEQA documentation and present to FORA Board for consideration.

Desirable Qualifications:

a) Demonstrated expertise in completing CEQA documentation
b) Demonstrated ability to produce geographic information system data including delivery of FGDC compliant metadata
c) Familiarity with Fort Ord Reuse Plan, planning context, and Reuse Plan Reassessment
d) Ability to present complex land use issues in public forums
e) Demonstrated ability to work effectively within a multi-stakeholder environment including government agencies

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Approve Contract with Monterey Business Council for Economic Development Services	
Meeting Date:	November 14, 2014	**ACTION**
Agenda Number:	8e	

RECOMMENDATION(S):

Authorize the Executive Officer to execute an agreement, not to exceed $100,000 (**Attachment A**), to join the Monterey Bay Economic Partnership (MBEP).

BACKGROUND/DISCUSSION:

During the Fort Ord Reuse Plan Reassessment process, a significant number of comments expressed concern that the employment and other economic benefits were lagging behind and required attention. In response, many Board members and speakers at the Fort Ord Reuse Colloquium suggested strengthening Fort Ord job creation activities and developing a program of enhancing the intellectual property transfer and strengthening economic development connections to benefit the overall recovery program. In response, staff created a new position of Economic Development Specialist and the Fort Ord Reuse Authority (FORA) Finance Committee, Executive Committee and Board reviewed this proposal last spring. The Board specifically added accountability and performance measures to determine the success of such a position and limited funding to two years. On June 20, 2014 the FORA Board approved an Economic Development Specialist staff position and, in the position description, the total salary/benefits/support package was set not to exceed $164,000. FORA independent Human Resources consultant, Avery Associates, recommend a $90.7K to $115.8K salary range based on the Job Description reviewed by the Board in approving the creation of the position.

The recruitment effort yielded fifteen applications and four applicants were advanced for interviews by a panel comprised of representatives from the local jurisdictions, education, and business communities. After completing interviews, the top ranked candidates expressed reservations about the level of compensation, the employment term limitations, and short timeframe for performance assessment and elected not to accept or not respond to employment offers.

Staff coordinated with members of the interview panel and explored alternatives to address this unsuccessful recruitment effort. In the past few weeks, several ideas have surfaced. Interview panelists generated the following three options:

1. Re-initiate the position advertisement and extend the search to other states/ regions for the same staff position; purchase national executive search firm assistance;and consider increasing the compensation or Board directed term limitations.

2. Reconfigure the position advertisement to solicit consultant proposals to perform the same functions as an Economic Development Specialist; conduct a selection process for consultant services.

3. Representatives of MBEP (Mary Ann Leffel and Budd Colligan) have suggested FORA consider investing as a major contributor to the MBEP and acquire these services through that means. In particular, MBEP would provide to FORA:

    i. Data organization and stewardship
    ii. Opportunity site reporting
    iii. Clearing house for economic development and job creation opportunities

    Under this option, FORA would enter into an agreement with MBEP for Economic Development Specialist Services, not to exceed $100,000, potentially leveraging local investor(s) to match FORA's $100,000 contribution. FORA would reallocate the remaining $64,000 in available budget to support the economic development specialist work conducted by MBEP, which may include acquiring part-time administrative support and additional staff assignments.

In reviewing these three options, staff concluded that the MBEP has the greatest potential to benefit the overall Fort Ord recovery program and is uniquely qualified since it is the only entity performing this level of work with broad reach, community support, capacity, and economic development mission.

FISCAL IMPACT:

Reviewed by FORA Controller _____

The Board approved the Economic Development Specialist salary and related funding at the June 20, 2014 meeting. The MCBC contract will not exceed $100,000 and administrative support and staff reassignment will not exceed $64,000, resulting in net expenses within the approved budget.

COORDINATION:

MBEP, Authority Counsel, Executive and Administrative Committees.

Prepared by_____ Approved by_____

Jonathan Garcia Michael A. Houlemard, Jr.

Placeholder for Item 8e – Attachment A

Approve Contract with Monterey Business Council for Economic Development Specialist Services – ATTACHMENT A

This item will be included in the final Board packet.

Placeholder for Item 8f

Approve 2015 Fort Ord Reuse Authority Legislative Agenda

This item is scheduled for review by the FORA Legislative Committee on November 5, 2014 and will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
Subject:	2nd Vote: Preston Park Operating and Capital Budgets	
Meeting Date: **Agenda Number:**	November 14, 2014 8g	**ACTION**

RECOMMENDATION(S):

Original Motions from October 10, 2014 Board meeting:

i. Approve/Sustain Current Rental Rate Setting Policy/Formula, Directing staff to Provide Recommendations and a Written Summary of the Policy Prior to Consideration of the FY 2015/2016 Preston Park Budget.

ii. Approve FY 2014/2015 Preston Park Operating and Capital Improvement Budget, to Include a 2.4% rental Increase, Direct Staff to Extend the Rental Increase Noticing Period from 35 to 60 Days, and Require Meetings Between Alliance Management Company and the Preston Park Tenants Association.

BACKGROUND/DISCUSSION:

Please see the attached October 10, 2014 Board meeting staff report on this item for background information and links to pertinent materials (**Attachment A**).

Staff recommends approval of the Capital and Operating budgets for the Preston Park Housing project. Staff also recommends continuing with the existing method of establishing rents for the Preston Park Housing area, which sets rent increases/decreases at either 3% or the Consumer Price Index – whichever is lower.

Staff fully appreciates the attention provided by the FORA Board to this item at the June, July, August, and October Board meetings. Past Board materials are archived on the FORA website at http://fora.org.html

FISCAL IMPACT(S):

Reviewed by FORA Controller _____

See **Attachment A**

COORDINATION:

Executive Committee, Authority Counsel, and Alliance Management

Prepared by_____ Approved by_____
Robert J. Norris, Jr. Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
Subject:	Preston Park – Rent Rate Policy Questions	
Meeting Date: **Agenda Number:**	October 10, 2014 8b	**INFORMATION/ACTION**

RECOMMENDATION(S):

i. Receive a Preston Park Rental Rate/Policy Presentation in response to FORA Board questions (**Attachment A**).
ii. Approve the current formula and policy being used to set rents at the Preston Park.
iii. Approve the FY 2014/2015 Operating and Capital Improvement Budget with 2.4% percent rental rate increase.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (FORA) has overseen the management of the Preston Park Apartments since 1997, when it entered into an agreement with the United States Army (Army) to re-open the former Army housing area for civilian public occupancy. FORA has owned the Preston Park Apartments since June 2000, when the property was transferred from the Army to FORA, concurrent with the Economic Development Conveyance agreement escrow closing.

The FORA Board has requested a review of the background and policy for setting rental rates at the Preston Park Apartments. In addition, the Board members asked six specific questions regarding Preston Park rent and operations. These questions and responses are addressed below and in more detail in **Attachment A.**

The foundation for the Board's policy regarding Preston Park rental rate setting tracks back to the late 1990s. The following is a brief overview of current FORA Board policy related to the management of Preston Park, as established by previous Board actions:

- FORA will conduct a survey of local market rental rates to assist in establishment of rates for new move-ins.
- FORA will limit increases for in-place tenants to the lesser of the San Francisco Bay Area Consumer Price Index increase or 3%.
- FORA will rent 51 units as affordable (**Attachment B** - Deed Restriction and Regulatory Agreement between City of Marina and FORA 2007; Amended 2009).
- FORA will set rents near those being charged in privately owned properties to respond to community concerns and contain negative impact to the private rental market.
- FORA will manage the Preston Park Apartments to sustain Marina's share of rental income consistent with the Preston Park Rabobank financing Agreement adopted in 2011.

1. **The Army, FORA, City of Marina Preston Park management/leasing agreements and the History of Master Resolution-Chapter 8, Implementation Agreement, and impact of Preston Park Memorandum of Agreement (FORA/Marina) on rent determination.**

   The United States Army developed the Preston Park Housing Area (Preston Park) in the late 1980s as additional military family housing – primarily for soldiers assigned to the former Fort Ord Military Reservation. The property was vacated shortly after the 1991 Base Realignment

and Closure Act announcement of the downsizing of the former Fort Ord to the Presidio of Monterey Annex. The Preston Park complex remained vacant until the area was leased from the Army under a Finding of Suitability for Lease (FOSL) that enabled an Army/FORA Interim Lease (LEASE) between the Secretary of the Army and FORA. In 1997, the Mid-Peninsula Housing Coalition and FORA entered into a Sub-Lease/Management Agreement and Marina agreed to serve as FORA's Agent for Preston Park. The purpose of the FOSL and related agreements was to provide housing for public sector employees, military, and the general public in response to the area overcrowding noted by several agencies. The City of Marina was also concerned that these valuable assets would be lost if FORA did not step in to reoccupy the units and reduce rising vandalism and deterioration from lack of use.

The FOSL and the supporting documents set the terms for the general operation of the Preston Park area, including the process of rate setting for market rate units and, to the establishment of 70 "affordable" units at below market rates (minimum rates established).

2. FORA/ Preston Park commitments/policies regarding Preston Park rental rates.

The history of Preston Park rental rate setting is long and complex, intertwined between the City of Marina, FORA, the Army, the Mid-Peninsula Housing Corporation, and Alliance, its successor as rental manager of the property. After the property was conveyed by the Army to FORA, FORA continued to direct Preston Park activities (including rent setting) with the City of Marina, previously designated by agreement as FORA's agent.

More recently, the agreement establishing Marina as agent was terminated, and FORA, as owner of the property, began working directly with the rental management company. However, certain practices developed during the prior period have carried forward, such as the policy establishing a formula for annual rental rate increases. This policy originated in collegial discussions between the City of Marina and FORA during 2007-09, later taking the form of City of Marina Council approved amendments to Deed Restrictions and Regulatory Agreement—Preston Park, defining the mix of low and moderate income rents to be offered at the facility and FORA Board passed items regarding the Preston Park Budget, including rent increases, for both 2009-10 and 2010-11. (**Attachment B**). A market survey is performed to monitor the rents of privately owned rental units in the area (**Attachment G**).

The FORA Board actions concurred in the City of Marina's desire to "protect existing tenants from the impacts of increasing market rents," while allowing "adopted formulas" addressing allowable rent increases for both 'move-ins' and 'in-place tenants.' The latter rent increases limited to "the lesser of 3% or the Consumer Price Index for San Francisco-Oakland-San Jose."

A balance was achieved between tenant protections and incremental rent increases for market units that generate sufficient revenue to adequately maintain the facility. Application of the formulaic approach has made rental rate setting stable and less influenced by subjective considerations.

3. The City of Marina background context regarding Preston Park rental rate setting.

During public review of the Preston Park leasing transaction, multiple members of the public as well as Marina/Seaside real property owners expressed concern that public ownership of the Complex would unfairly compete with privately owned properties. It was further noted that the number of affordable units should be limited, so as to minimize concentrating families of limited income to the former Fort Ord and adding to the perception of income inequality amongst

Peninsula jurisdictions. Consequently, the Preston Park Management Agreement capped the number of below market units at Preston Park at 70. In 2007, this number was revised to 51 units and codified by a regulatory agreement/deed restriction by the City of Marina and FORA. The FORA Board approved the Sub Lease/Management Agreement, the Marina/FORA's agent agreement, and the Management agreement with the Mid-Peninsula Housing Coalition.

Under the terms of the Mid-Peninsula Housing Management Agreement, through the recommendation of the City acting as FORA's agent, Mid-Peninsula Housing financed and conducted Preston Park rehabilitation, occupancy, and management. The property was subsequently transferred from the Army to FORA in June 2000, and has been continuously owned by FORA since.

There is a long history between City of Marina and FORA, throughout which each has promised to hold Preston Park revenues constant for the other party. In the case of the City, FORA has recognized that the City budget relies upon receipt of base revenue from Preston Park to secure their General Fund and other obligations. The City recognized that FORA has had obligations to its bondholders and other financial creditors. Such principles were enshrined as early as 2000, when FORA issued a Revenue Bond secured by its share of Preston Park revenue, without endangering Marina's continued receipt of its expected revenue stream. As a rule of thumb, Preston Park base revenue after expenses was calculated to be $2 million annually, to be split 50-50, per state law. Over time, as rents increased incrementally or certain expenses were reduced, net revenues over expenses have increased. A rough estimate (for explanatory purposes only) of current net revenues available to FORA and Marina would now be $3 million, or $1.5 million each. This cushion allowed FORA to refinance its prior Preston Park secured debt in 2010 using only 46% of the then total Preston Park net revenues. A written agreement protecting Marina's 50% share of net Preston Park revenues was agreed to by Marina and FORA at the time. This cushion continues to increase gradually, providing the basis for numerous uses by both the City and FORA, including recent catch-up capital improvements to the apartments and emergency repairs. FORA has modeled for the City of Marina a methodology under which Marina might purchase FORA's 50% share of the Preston Park revenue stream utilizing Marina's increasing incremental share of net revenue.

4. Rental History and capital improvements at Preston Park

As briefly noted above, in 2007, FORA and the City of Marina agreed in the Preston Park regulatory agreement/deed restriction that fifty-one (51) of the total Preston Park units would be rented at below market rate. It was also agreed that these rents would be computed at a range from 50% to 60% of the median county income and that no more than twenty percent (20%) of the units on any one street would be rented at this level. Currently, fifty-one (51) Preston Park units are rented at the affordable level under this provision.

In addition, 30 units are currently rented with Section 8 financial support and the remaining units are rented at rates that are at or below the median income for Monterey County.

5. Federal/Section 8 Rents, State Programs Fair Market Rent setting explained.

The explanation of the formula and process for setting FY 2014 Monterey County Fair Market Rents (FMR) is detailed in (**Attachment C**). The full description covers eight pages and is used as a comparison to the current policy adopted by FORA and the City of Marina for Preston Park Apartments.

6. **Impact of capital program/health and safety requirements.**

The FORA Board has steadfastly maintained a policy of fully funding the capital program requirements to sustain the quality of the housing at Preston Park. In addition, the Board has encouraged on and off site investments for the past 15 years that exceed the minimum requirements to meet health and safety. This has included significant investment in the area parks, street maintenance, and upgrades. This past year all the roofing at Preston Park was replaced under the project's capital budget. There remain window and door replacements, unit exterior lighting will require additional funding in order to be fully accomplished. The Capital Expenditure Budget (**Attachment F**) details the multiyear plan for these items.

Since the Army's transfer of Preston Park to FORA in 2000, and until 2010, Marina and FORA shared the understanding that the FORA-Marina Implementation Agreement required Marina to purchase FORA's interest in Preston Park should Marina desire to acquire the property. Given this mutual understanding, Marina and FORA have coordinated since 2002 to use Preston Park and its revenue as collateral to finance vital FORA projects, many of which directly benefit Marina. This includes Revenue Bonds issued in 2002 to FORA for building removal and roadway construction in the City of Marina, a 2004 loan from Community Bank to pay FORA's Pollution Legal Liability Insurance Policy premium, and a 2006 line of credit from Rabobank to FORA to fund building/blight removal in the City of Marina and other capital projects. In 2007, Marina purchased FORA's interest in the apartment complex known as Abrams B for $7.7 million, which was half of the Abrams B property appraised value. After appointing an ad hoc Preston Park negotiating committee (composed of FORA Board members), in the Spring of 2010, Marina and FORA representatives entered into similar negotiations for Marina to purchase FORA's interest in Preston Park.

In 2010, FORA borrowed $19 million from Rabobank, secured by a note and deed of trust on Preston Park. Marina representatives on the FORA Board voted in favor of the loan. FORA entered into a loan agreement with Rabobank based on its reasonably held belief that FORA would be able to liquidate its interest in Preston Park in a timely fashion. One of the Rabobank-FORA loan agreement terms is that the remaining principal balance on the $19 million loan (approximately $18 million) is due on or before June 15, 2014. Now that the loan is extended, the loan will be due on or before December 15, 2014.

After an unsuccessful negotiation, including judicially supervised mediation, concerning Marina's potential purchase of Preston Park from FORA, in 2012, FORA initiated a sale process. On July 10, 2012, Marina filed a lawsuit against FORA, blocking FORA from selling the property. Since that lawsuit is still pending, at its May 16, 2014 meeting, the FORA Board approved a resolution to seek a Preston Park loan extension with Rabobank to avoid loan default and property foreclosure. Marina's Preston Park lawsuit has also prevented FORA from completing building/blight removal in the Cities of Seaside and Marina through FORA's 50% of Preston Park land sales proceeds.

While the lawsuit remains unresolved, as long as FORA owns Preston Park, FORA is responsible for approving annual operating budgets, setting rental rates, funding capital improvements, and funding facility maintenance. The court has set a November 19, 2014 trial date to hear the Marina v. FORA case.

In prior Preston Park Board reports, lengthy items such as the Market Survey **(Attachment G)** and Standard Operating Budgets were presented with only summary pages of the full reports. The full documents are available on the FORA website using the links provided below.

Attachment E:

http://fora.org/Board/2014/Packet/Additional/080814Item8aAttachBPPBudget-1stPageIncrease.pdf

Attachment G:

http://fora.org/Board/2014/Packet/Additional/080814Item8aAttachD-MarketSurvey.pdf

FISCAL IMPACT(S) Budget Recommendations:

Reviewed by FORA Controller

During the past several years, we have fallen behind the long standing policy of being comparable to the area rental market to avoid government out-competing private property owners for tenants. FORA and Alliance Management staff analyzed the option of recommending a rental increase closer to the 9.4% rental increase in the surrounding market rate apartments but have concluded that the recommended 2.4% rent increase will permit the property to meet all of the operational and capital improvement goals. The financial impacts of the rent increase are displayed by unit type in **(Attachment H).** The Budget Revenue summary displays budget variances by fiscal year (**Attachment I**).

FORA and Alliance Management staff reviewed the Alliance Management Budget Memorandum **(Attachment D)** on the Preston Park FY 2014-15 Operating Budget and Capital Improvement Program Assessment and recommend approving the Housing Operating (**Attachment E**) and Capital Replacement Program Budgets (**Attachment F**) with the 2.4% rent increase.

COORDINATION:

Executive Committee, Authority Counsel, and Alliance Management

Prepared by _____
Robert J. Norris, Jr.

Approved by _____
Michael A. Houlemard, Jr.

Placeholder for Attachments A-I to the 10/10/14 Staff Report

These items are voluminous and will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	2nd Vote: Executive Officer Compensation Adjustment	
Meeting Date:	November 14, 2014	**ACTION**
Agenda Number:	8h	

RECOMMENDATION:

Take a second vote to authorize an 8% merit salary adjustment to the Executive Officer's compensation, as recommended by the Executive Committee.

BACKGROUND:

At its October 2014 meeting, the Fort Ord Reuse Authority (FORA) Board voted on the Executive Officer's (EO) compensation adjustment. That first vote was not unanimous, and the item returns for a second vote as provided in State Law.

DISCUSSION:

During the October 10, 2014 meeting, the Board members posed several questions regarding other staff members' merit pay adjustments, type of salary increases received by the EO in the past, and the nature of the proposed adjustment (subject to PERS compensation or not), which were responded to by the EO/Authority Counsel/staff.

In addition, the Board members requested:

1. Detailed information regarding EO's past increases.
2. Fiscal impact of the proposed adjustment including PERS contributions by FORA.
3. Non-PERS options for the adjustment.

The information is detailed on Attachment A.

The Executive Officer's contract was re-written last December to memorialize in one document the terms of his existing employment contract, including contract amendments. The actual wording of the re-written contract does not mirror the terms of his prior contract exactly. It includes a provision consistent with current state law that alters his compensation downward by reducing FORA's health benefit share as noted in the October Board report. However, the provision that allowed for merit adjustments was inadvertently eliminated by new language (See Attachment B, Executive Officer Employment Agreement, page 2, Section 3(a)). The Board can approve an amendment to the re-written contract language to align it with the terms of the prior contract, and to allow implementation of the merit adjustment.

FISCAL IMPACT:

Reviewed by the FORA Controller_____

Detailed on Attachment A.

COORDINATION:

The Executive Committee, FORA Counsel

Prepared by _____ **Approved by** _____

Ivana Bednarik Jon Giffen, Authority Counsel

Attachment A to Item 8h
FORA Board Meeting, 11/14/14

EXECUTIVE OFFICER - COMPENSATION ADJUSTMENT

		Salary	2% COLA 7-1-14	Benefit Change/s
Old Contract	7/2000 - 6/2014	207,374		-
New Contract	**7/2014 - 6/2020**	**207,374**	**211,521**	**(2,516)**

PAST SALARY INCREASES	TYPE	FY	%
	Merit	98-99	3%
		05-06	5%
	Longevity	07-08	5%
		10-11	5%
	COLA	ALL FYs except 09-10, 10-11	1% - 3%

CURRENT BENEFIT PACKAGE

Time Off	Health/mo	Retirement (PERS)	Deferred Comp/mo	Car/Phone/mo
26 days/year - Vac 18 days/year - Sick 5 days/year - Management	1,320	2% @ 55	833	300

PROPOSED

8% Merit Increase	Salary Increase	Adjusted Salary	FORA Cost	Itemized
A permanent increase in salary	16,922	228,443	**20,955**	
			3,704	*PERS (21.488%)*
			245	*Medicare (1.45%)*
			84	*Workers' Comp (.5%)*
			4,033	

OTHER OPTIONS

A.

1/2 Merit, 1/2 Benefit Increase	Salary/Benefit Increase	Adjusted Salary	FORA Cost	Itemized
4% Merit	8,461	219,982	10,477	
			1,852	*PERS*
			123	*Medicare*
			42	*Workers' Comp*
			2,017	
700/mo Deferred Comp	8,460	219,982	8,583	
			123	*Medicare*
	16,921		**19,060**	

B.

100% Benefit Increase	Benefit Increase	Adjusted Salary	FORA Cost	Itemized
1,000/mo Deferred Comp	12,000	211,521	**12,174**	
			174	*Medicare*

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	2nd VOTE: Approve Executive Officer Contract Extension	
Meeting Date:	March 14, 2014	**ACTION**
Agenda Number:	8b	

RECOMMENDATION(S):

Approve extension of Executive Officer Employment Agreement until June 30, 2020.

BACKGROUND/DISCUSSION:

Executive Officer Michael Houlemard's existing employment contract is comprised of a September 21, 2000 agreement, with numerous extensions and supplements. In order to provide ease of review by the Board, the Executive Committee directed Authority Counsel to prepare an employment agreement that incorporated into one document all of the existing agreement terms, as extended and supplemented. The attached agreement (**Attachment A**) has been prepared by Authority Counsel to mirror the existing agreement terms, except that it commences July 1, 2014 and ends on June 30, 2020. Executive Officer Houlemard's current employment agreement terminates June 30, 2014.

The FORA Board received and reviewed the proposed agreement, and provided direction to Authority Counsel to set this item for February 13, 2014 Board meeting action. On February 13, 2014 the Board voted 10-2 (Morton and Parker dissenting) to approve extension of the Executive Officer contract until June 30, 2020. As the motion did not receive unanimous Board approval, the Board must conduct a second vote on this motion.

FISCAL IMPACT:

Reviewed by FORA Controller

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

COORDINATION:

FORA Board, FORA Executive Committee, Authority Counsel

Prepared by Lena Spilman for Jon Giffen

Approved by D. Steven Endsley
Steve Endsley

Executive Officer
Employment Agreement

Previous Contract
9/2000 - 6/2014

THIS AGREEMENT is made and entered into this 21st day of September, 2000, by and between the FORT ORD REUSE AUTHORITY, (hereinafter "FORA"), a public entity governed by a Board of Directors, and MICHAEL A. HOULEMARD, JR. (hereinafter "HOULEMARD"), an individual.

1. RECITALS. This Agreement is made and entered into with respect to the following facts:

a) HOULEMARD has successfully performed his duties as the Executive Officer of FORA since March 1997 and has demonstrated his ability to meet or exceed the expectations of the FORA Board of Directors; and

b) HOULEMARD has proven to have the experience, knowledge, and ability to continue to provide the executive and administrative leadership to ensure that FORA achieves its statutory goals and other expectations of the FORA Board of Directors; and

c) The parties hereto have determined that the terms and conditions of HOULEMARD's employment should be contained within an agreement between FORA and HOULEMARD; and

d) HOULEMARD agrees to continue in the position of Executive Officer of FORA and to perform the duties of Executive Officer of FORA as the same is described in the FORA Bylaws, and as may be determined by the FORA Board of Directors from time to time, subject to the terms and conditions of this written Agreement; and

e) The public interest, convenience, and necessity require the execution of this Agreement.

2. TERM. The term of this Agreement shall be for three (3) years, commencing on July 1, 2000 and shall terminate, unless otherwise extended by mutual agreement, no later than June 30, 2003.

3. COMPENSATION.

a) Salary. As compensation for services under this Agreement, HOULEMARD shall be entitled to an annual salary of One Hundred Thirty-Seven Thousand Nine Hundred Dollars ($137,900) payable in payroll installments in accordance with the FORA's general compensation program prorated for any partial payroll period. HOULEMARD shall not be entitled to have his salary reviewed ←

during the term of this Agreement, except as provided for under Section 4 herein.

b) Incentive Bonus. The FORA Board may award an incentive bonus to HOULEMARD for exemplary performance beyond that required under this Employment Agreement. The bonus shall not be considered to be salary to which HOULEMARD is entitled. On the contrary, the award of a bonus should not be expected. The Board has the sole and unbounded discretion to award or withhold a bonus, and to establish the amount of any such bonus. In considering whether to award a bonus, the Board should determine both whether HOULEMARD's performance exceeded the Board's expectations for the preceding year, and whether it did so in a manner that promoted FORA's long-range objectives. To be eligible for a bonus, HOULEMARD must be a FORA employee on the last day of the year for which the bonus is considered.

c) Employee Taxes. HOULEMARD is subject to all applicable Federal and State income tax withholdings from his income.

d) Retirement Contribution. FORA shall contribute to the Public Employees' Retirement System (General Employees) for HOULEMARD as is paid for all FORA employees.

e) Paid Leave. HOULEMARD shall be entitled to thirty-three (33) days per year as paid leave. Annual leave shall be allocated as follows: ninety-six (96) hours per year sick leave and one hundred sixty-eight (168) hours annual leave. Earned annual leave shall carry over from year to year. Except as provided in this section, HOULEMARD shall be entitled to be paid for unused annual leave at the rate of pay established as salary in this Agreement. Upon termination of this Agreement, HOULEMARD's entitlement to payment for unused sick leave shall be limited to one hundred (100) hours.

f) Car Allowance. FORA agrees to pay HOULEMARD Two Hundred Fifty Dollars ($250.00) per month as an allowance for use of his personal vehicle.

g) Additional Benefits. FORA agrees to pay HOULEMARD Six Hundred Fifty Dollars ($650.00) per month for retirement program, deferred compensation, supplemental life insurance, wellness programs, or other benefits at the election of HOULEMARD.

h) Insurance. HOULEMARD shall receive the same or substantially similar life and health insurance benefits as are provided to department heads in the County of Monterey.

i) Professional Dues/Conferences. HOULEMARD shall be entitled to attend the conferences for which FORA budgets. If such conferences are budgeted, FORA shall also pay for HOULEMARD's reasonable expenses incurred in attending such conferences.

j) Holidays. HOULEMARD shall be entitled to the same paid holidays as provided to FORA employees.

k) Reimbursable Expenses. HOULEMARD shall be reimbursed for out-of-pocket expenses according to the adopted policies of FORA. In acknowledgment of the monthly car allowance described in Section 3-f, HOULEMARD shall not be reimbursed for mileage associated with the performance of his duties as Executive Officer.

4. EVALUATION.

a) It is the intention of the FORA Board of Directors to provide an annual performance evaluation. The evaluation shall take place on or before June 1st of each year. In recognition of accomplishment of objectives and performance, a merit increase may be granted to HOULEMARD after the evaluation, along with any cost-of-living increase as may be included at the discretion of the FORA Board of Directors.

b) HOULEMARD shall provide a timely reminder to the Executive Committee of its obligation under this section.

c) The parties agree that failure of FORA to carry out its intention pursuant to this Section 4 shall not be deemed a breach of this Agreement.

5. EXCLUSIVE EMPLOYMENT AND OUTSIDE WORK. HOULEMARD agrees to work exclusively for FORA. HOULEMARD may, without violating the exclusive services term in this Agreement, teach or write for publication without FORA's prior approval. With the prior written approval of the FORA Board of Directors, HOULEMARD may also enter into consulting arrangements with public or private entities if such activities do not interfere with his duties as the Executive Officer.

6. TERMINATION. This Agreement may be terminated prior to the expiration of its three year term as follows:

a) By mutual agreement; or

b) By HOULEMARD providing FORA ninety (90) day's advance written notice; or

c) By FORA through written notice of termination to HOULEMARD. In that event, the termination shall be effective upon delivery of the notice unless the notice provides otherwise. If terminated in this manner, HOULEMARD shall be paid severance pay equal to six (6) month's salary, exclusive of benefits except as provided herein.

At-Will Status. HOULEMARD is an at-will employee and serves at the pleasure of the FORA Board of Directors. HOULEMARD may be dismissed, and this Agreement terminated, at the discretion of the FORA Board of Directors for any reason or for no reason at all, except that FORA shall provide the notice and compensation as noted in Section 6-c above.

7. NOTICES. Notices under this Agreement shall be by United States mail, postage prepaid, addressed as follows, or such other address as the parties may establish and provide written notice thereof:

Chair of the Board of Directors
Fort Ord Reuse Authority
100 12th Street
Marina, CA 93933

Michael A. Houlemard, Jr.
2223 Albert Lane
Capitola, CA 95010

8. PARTIAL INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties agree that the remaining provisions shall nonetheless continue in full force and effect.

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

Edith Johnsen, Chair
Fort Ord Reuse Authority

Michael A. Houlemard, Jr.

APPROVED AS TO FORM:

Gerald Bowden, Authority Counsel

EXECUTIVE OFFICER
EMPLOYMENT AGREEMENT New Contract 7/14 - 7/20

This Executive Officer Employment Agreement (this "Agreement") is made and entered into effective July 1, 2014 (the "Commencement Date") by and between the Fort Ord Reuse Authority, a public corporation formed under the Fort Ord Reuse Authority Act, California Government Code sections 67650 *et seq.* (hereinafter "FORA") and Michael A. Houlemard, Jr., an individual (hereinafter "Houlemard").

1. RECITALS. This Agreement is made and entered into with respect to the following circumstances:

(a) Houlemard has served as the Executive Officer of FORA since March 1997. On or about September 21, 2000 FORA and Houlemard (each a "Party" and collectively, the "Parties") entered into an Executive Officer Employment Agreement for a term ending June 30, 2003 (the "Employment Agreement"). On or about July 11, 2003 the Parties entered into Extension #1 to the Employment Agreement by which the term of Houlemard's employment was extended through June 30, 2008. On or about June 13, 2008 the Parties entered into Extension #2 to the Employment Agreement by which the term of Houlemard's employment was extended through the then anticipated end of FORA's statutory authority (June 30, 2014). Subsequent amendment to the Fort Ord Reuse Authority Act has extended the term of FORA's statutory authority through June 30, 2020, but the term of the Employment Agreement as extended will expire on June 30, 2014.

(b) Houlemard has performed his duties as the Executive Officer of FORA to the satisfaction of FORA's governing Board of Directors (the "Board").

(c) The Parties desire that the term of Houlemard's employment as Executive Officer of FORA should be further extended on the terms and conditions set forth in this Agreement.

2. TERM. The term of this Agreement shall commence on the Commencement Date and shall end, unless sooner terminated or otherwise extended, no later June 30, 2020.

3. COMPENSATION.

(a) Salary, COLAs and Longevity Pay. During the term of this Agreement, as compensation for his services as FORA's Executive Officer, Houlemard shall be paid an annual salary of Two Hundred Seven Thousand Three Hundred Seventy-Four Dollars ($207,374.00) in installments in accordance with the FORA's general compensation program, prorated for any partial payroll period. If and when a Cost of Living Adjustment ("COLA") is awarded to FORA's other employees, Houlemard's salary shall be adjusted in like proportion. Houlemard has been receiving and during the term of this Agreement Houlemard shall continue to receive

longevity pay on the same basis and subject to the same terms and conditions as apply to FORA's other employees. Except as a consequence of a COLA or longevity pay, Houlemard's salary shall not be adjusted during the term of this Agreement, but an incentive bonus may be awarded to Houlemard from time to time as provided in Section 3(b) below.

(b) Incentive Bonus. The Board may award a bonus to Houlemard in recognition of exemplary performance beyond that required under this Agreement as an incentive to continue such performance. The bonus shall not be considered to be salary to which Houlemard is entitled or as any form of compensation for past performance. Rather, any bonus shall be an inducement for future performance. As such, in order to be eligible to receive any bonus Houlemard must be employed by FORA at the time any bonus is awarded. The Board has the sole and unbounded discretion to award or withhold a bonus, and to establish the amount of any such bonus. The Board may award any bonus in a lump sum or in installments. The award of a bonus should not be expected.

(c) Employee Taxes. Houlemard is subject to all applicable Federal and State income tax withholdings from his income.

(d) Retirement Contribution. Houlemard shall be entitled to participate in the retirement program made available by FORA through the Public Employees' Retirement System to FORA's other employees (currently 2% at 55), as the retirement program may from time to time be amended, and in the same manner, to the same extent, and subject to the same terms and conditions, including but not limited to contribution rates, as apply to FORA's other employees.

(e) Paid Leave. During the term of this Agreement, Houlemard shall be entitled to forty-nine (49) days per year as paid leave, which shall be allocated as follows:

Vacation	26 days
Sick Leave	18 days
Management Leave	5 days

Vacation, Sick Leave, and Management Leave may be collectively referred to as "Annual Leave." Annual Leave shall accrue, be subject to accrual limits, be converted to service credit on retirement, be cashed out, or may be used, each only in conformity with those policies regarding Annual Leave established by FORA as they may be amended from time to time. Houlemard shall not be required to keep time sheets, but shall inform FORA's Executive Committee in advance of his vacation plans and shall report to the Executive Committee his use of all categories of Annual Leave contemporaneously with taking leave.

(f) Car Allowance. During the term of this Agreement, FORA shall pay Houlemard Two Hundred Fifty Dollars ($250.00) per month as an allowance for use of his personal vehicle. Houlemard shall at all times during the term of this Agreement maintain liability insurance covering the business use of his personal vehicle meeting the reasonable satisfaction of FORA.

(g) Deferred Compensation. During the term of this Agreement, FORA shall contribute Eight Hundred Thirty-Three Dollars ($833.00) per month into a deferred compensation plan mutually selected by the Parties.

(h) Insurance. Houlemard and his dependents shall be entitled to participate in any life or health insurance programs made available by FORA to FORA's other employees and their dependents, as such program(s) may from time to time be amended, and in the same manner, to the same extent, and subject to the same terms and conditions, including but not limited to contribution rates, as apply to FORA's other employees and their dependents.

(i) Professional Dues/Conferences. Houlemard shall be entitled to attend the conferences for which FORA budgets. If such conferences are budgeted, FORA shall also pay for Houlemard's reasonable expenses incurred in attending such conferences in conformity with those policies regarding reimbursements established by FORA as they may be amended from time to time.

(j) Holidays. Houlemard shall be entitled to the same paid holidays as are provided to FORA's other employees.

(k) Reimbursable Expenses. Houlemard shall be reimbursed for out-of-pocket expenses according to those policies regarding reimbursements established by FORA as they may be amended from time to time. In acknowledgment of the monthly car allowance described in Section 3(f), Houlemard shall not be reimbursed for mileage associated with the performance of his duties as Executive Officer.

4. EVALUATION. The Board intends to conduct a performance evaluation on or before June 1 of each year, at which time the Board may, but shall not be obligated to, consider awarding an incentive bonus as set forth in Section 3(b) above. Houlemard shall provide a timely reminder to FORA's Executive Committee to schedule the annual performance review. The Parties agree that any failure to conduct any performance review shall not be deemed a breach of this Agreement.

5. EXCLUSIVE EMPLOYMENT AND OUTSIDE WORK. Houlemard agrees to work exclusively for FORA as Executive Officer, with such duties and responsibilities as shall be set forth by the Board, and shall so serve faithfully and to the best of his ability under the direction and supervision of the Board. Houlemard may, without violating the exclusive services term in this Agreement, teach or write for publication without FORA's prior approval. With the prior written approval of the Board, Houlemard may also enter into consulting arrangements with public or private entities if such activities do not interfere with his duties as Executive Officer.

6. **TERMINATION.** Houlemard is an at-will employee and serves at the pleasure of the Board. Houlemard may be dismissed, and this Agreement terminated, at the discretion of the Board for any reason or for no reason at all, except that in the event of termination pursuant to Sections 6(c) or (d) below, FORA shall provide the notice and/or compensation as provided therein. This Agreement may be terminated prior to its scheduled expiration date as follows:

(a) By mutual agreement;

(b) By Houlemard providing FORA ninety (90) days advance written notice;

(c) By FORA through written notice to Houlemard of intent to terminate his employment for "Cause." For purposes of this Agreement, with respect to Houlemard the term "Cause" shall mean (i) breach of this Agreement; (ii) commission of an act of dishonesty, fraud, embezzlement or theft in connection with his duties or in the course of his employment; (iii) commission of damage to property or reputation of FORA; (iv) failure to perform satisfactorily the material duties of his position after receipt of a written or verbal warning from the Board; (v) conviction of a felony or a crime of moral turpitude; (vi) failure to adhere to or execute FORA's policies; or (vii) such other behavior detrimental to the interests of FORA as the Board determines. Cause shall be determined in the sole discretion of the Board. If the Board believes that FORA has Cause to terminate Houlemard's employment, FORA shall give appropriate written notice to Houlemard as provided in Government Code section 54957 of his right to have the complaints or charges heard in an open session rather than a closed session of a meeting of the Board. After written notice to Houlemard, if he does not request to have the complaints or charges heard in open session, he shall be provided the opportunity to meet with the Board in closed session regarding the specific complaints or charges stated in writing. Should the Board decide after meeting to terminate Houlemard, his employment shall be terminated immediately without rights to any appeal, severance pay or benefits other than compensation earned (including all benefits and reimbursements accrued and then due) up to the effective date of termination.

(d) By FORA through written notice to Houlemard of termination without Cause. In that event, the termination shall be effective upon delivery of the notice unless the notice provides otherwise. If terminated without Cause, Houlemard shall be entitled to severance pay equal to six (6) months salary, exclusive of benefits. At the election of the Board, severance pay may be paid in substantially equal installments over any period up to six (6) months.

7. **NOTICES.** Notices under this Agreement shall be by United States mail, postage prepaid, addressed as follows, or such other address as the Parties may establish and provide written notice thereof:

Chair of the Board of Directors
Fort Ord Reuse Authority
100 12th Street
Marina, CA 93933

Michael A. Houlemard, Jr.
2223 Albert Lane
Capitola, CA 95010

8. TERMINATION OF FORMER EMPLOYMENT AGREEMENT. Effective upon the Commencement Date, the Employment Agreement shall automatically, and without any need for further action by the Parties, be terminated and of no further force and effect. During the term of this Agreement, the employment relationship between the Parties shall be controlled by the terms and conditions of this Agreement and not by any terms or conditions of the former Employment Agreement. The foregoing provisions notwithstanding, any Annual Leave which Houlemard has accrued but which remains unused and has not been cashed out as of the day before the Commencement Date shall be carried over and added to the Annual Leave which accrues pursuant to this Agreement, subject to any applicable accrual limits as may be specified in those policies regarding Annual Leave established by FORA as they may be amended from time to time.

9. COMPLETE AGREEMENT. This Agreement is a full and complete statement of the Parties' understanding with respect to the matters set forth in this Agreement. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations, or understandings between the Parties relating to the subject matter of this Agreement, whether oral or written.

10. INTERPRETATION. This Agreement shall be construed as a whole and in accordance with its fair meaning. It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the Parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, in the event of any dispute regarding its interpretation, this Agreement shall not be construed against any Party as the drafter, and the Parties expressly waive any right to assert such a rule of interpretation.

11. PARTIAL INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties agree that the remaining provisions shall nonetheless continue in full force and effect.

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

Michael A. Houlemard, Jr.

Chair
Fort Ord Reuse Authority

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Authorize Purchase of Pollution and Legal Liability Insurance Coverage	
Meeting Date:	November 14, 2014	**ACTION**
Agenda Number:	8i	

RECOMMENDATION(S):

i. Authorize the Executive Officer to purchase Pollution and Legal Liability (PLL) Insurance Coverage, not to exceed $X.X million.

ii. Authorize the Executive Officer to enter into repayment agreements with Named Insureds that are unable to schedule their prorated insurance premium payment to Fort Ord Reuse Authority (FORA) before December 31, 2014, in the form of **Attachment A**.

BACKGROUND/DISCUSSION:

The October 10, 2014 Board report for item 8a includes additional background discussion for this item.

In January 2014, the Board authorized insurance broker Marsh, Inc. and Special Counsel Barry Steinberg to proceed with an insurance carrier selection and negotiation process for a PLL insurance policy spanning the next ten years. Staff notes that the Army Environmental Services Cooperative Agreement (ESCA) Grant provided FORA with $916,056 toward the purchase of PLL insurance coverage similar to what the FORA Board purchased in 2004. Three insurance carriers (Chubb, XL, and Zurich) submitted revised policy quotes at the end of September 2014, these quotes along with additional PLL background documents are located on the FORA website at http://fora.org/PLL.html, under Support Documents 3.3, 3.4, and 3.5. Marsh, Inc. prepared a "Fort Ord PLL Comparison," which is also found at the website link provided above, under Support Documents 3.2 and included as **Attachment B**. Chubb's quote of $1,442,639 in insurance premium for $50 million in coverage was approximately $3.5 million less than XL, the second most competitive quote (note: insurance quotes do not include the costs of broker fee and surplus lines tax).

After receiving an update from Special Counsel Barry Steinberg on October 10, 2014, the Board authorized the Executive Officer, upon advice and counsel of Marsh and Special Counsel Barry Steinberg, to negotiate policy terms and conditions, bind coverage effective December 31, 2014 if premium is less than $2 million, and identify first-named insured to replace FORA after its June 30, 2020 sunset.

Since this time, the Executive Officer negotiated terms and conditions of the policy. Chubb provided an updated insurance policy quote on October XX, 2014 (**Attachment C**). The Executive Officer bound coverage on November X, 2014. To complete the process, staff recommends Board approval of recommendations i and ii to purchase the insurance policy and obtain premium payment assurances from the Named Insured.

Named Insureds' requested coverage amounts are described in the following table.

Named Insured	Requested Coverage Amount
FORA (First-Named Insured)	$10,000,000
County of Monterey (considering role of First-Named Insured after 06/30/2020	$20,000,000
City of Seaside	$1,000,000
City of Marina	$5,000,000
City of Monterey	$5,000,000
Monterey Peninsula College	$5,000,000
Transportation Agency for Monterey County	$2,000,000
Monterey-Salinas Transit	$1,000,000
Marina Coast Water District	$1,000,000

FISCAL IMPACT:

Reviewed by FORA Controller _____

The new insurance policy premium will cost $X.X million. FORA will use $716,056 in ESCA PLL funds and $X.X million from the General Fund to purchase the policy. FORA will receive repayment for its General Fund expenditures from the Named Insureds.

COORDINATION:

FORA land use jurisdictions and other agencies receiving property and/or accessing insurance coverage include: City of Marina, City of Seaside, City of Monterey, City of Del Rey Oaks, County of Monterey, Monterey Peninsula College, Marina Coast Water District, Transportation Agency for Monterey County, California State University Monterey Bay, University of California Santa Cruz, and Monterey-Salinas Transit.

Prepared by_____ Approved by_____

Jonathan Garcia Michael A. Houlemard, Jr.

Placeholder for Item 8i – Attachments A through C

Authorize Purchase of Pollution and Legal Liability Insurance Coverage – ATTACHMENTS A THROUGH C

These items will be included in the final Board packet.

Placeholder for Item 8j

City of Del Rey Oaks Land Sales Transaction

This item will be included in the final Board packet.

Placeholder for Item 8k

Appeal of Marina Coast Water District Determination - Bay View Community Annexation

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This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Outstanding Receivables	
Meeting Date: **Agenda Number:**	November 14, 2014 10a	**INFORMATION**

RECOMMENDATIONS:

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update for October 2014.

BACKGROUND/DISCUSSION:

Development Fee/Preston Park: In 1997, the U.S. Army and FORA entered into an interim lease for Preston Park. Preston Park consisted of 354 units of former Army housing within the jurisdiction of the City of Marina (Marina). Marina became FORA's Agent in managing the property. Marina and FORA selected Mid-Peninsula Housing Coalition to manage the property and lease it to tenants. In 1998, Mid-Peninsula completed rehabilitating Preston Park units and began leasing the property to the public. After repayment of the rehab loan, Marina and FORA have by state law each shared 50% of the net operating income from Preston Park.

The FORA Board enacted a base-wide Development Fee Schedule in 1999. Preston Park is subject to FORA's Development Fee Schedule overlay. In March 2009, the FORA Board approved the MOU between FORA and Marina whereby a portion of the Preston Park Development Fee was paid by the project. In 2009, Marina transferred $321,285 from Preston Park, making an initial Development Fee payment for the project. The remaining balance is outstanding and is the subject of current litigation.

FISCAL IMPACT:

All former Fort Ord projects are subject to either the developer fee overlay or the Community Facilities District fees to pay fair share of the California Environmental Quality Act required mitigation measures. In addition, the outstanding balance is a component of the Basewide Mitigation Measures and Basewide Costs described in Section 6 of the FORA Implementation Agreements. If any projects fail to pay their fair share it adds a financial burden to other reoccupied or development projects to compensate.

COORDINATION:

Executive Committee

Prepared by_____ **Approved by**_____

Ivana Bednarik Michael A. Houlemard, Jr.

Placeholder for Item 10b

Habitat Conservation Plan Update

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Administrative Committee	
Meeting Date: **Agenda Number:**	November 14, 2014 10c	**INFORMATION**

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The approved October 1, 2014 Administrative Committee minutes will be included in the final Board packet.

FISCAL IMPACT:

Reviewed by the FORA Controller_____

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

COORDINATION:

Administrative Committee

Prepared by_____ **Approved by**_____

Lena Spilman Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Finance Committee	
Meeting Date: **Agenda Number:**	November 14, 2014 10d	**INFORMATION**

RECOMMENDATION:

Receive a report from the Finance Committee.

BACKGROUND/DISCUSSION:

The Finance Committee is scheduled to meet on November 10th to discuss the FY 13-14 Financial Audit Report. Minutes from this meeting will be included in the December Board packet.

FISCAL IMPACT:

Reviewed by the FORA Controller_____

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

COORDINATION:

Finance Committee

Prepared by_____ **Approved by**_____

Marcela Fridrich Michael A. Houlemard, Jr.

Placeholder for Item 10e

Post Reassessment Advisory Committee

This item will be included in the final Board packet.

Placeholder for Item 10f

Regional Urban Design Guidelines Task Force

This item will be included in the final Board packet.

Placeholder for Item 10g

Travel Report

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Public Correspondence to the Board	
Meeting Date: **Agenda Number:**	November 14, 2014 10h	**INFORMATION**

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

Correspondence may be submitted to the Board via email to board@fora.org or mailed to the address below:

FORA Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Placeholder for Item 10i

Administrative Consistency Determination for Entitlement: City of Marina's Marriott Hotel Project

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This item will be included in the final Board packet.

-END-

DRAFT
BOARD PACKET

Fort Ord Reuse Authority
DRAFT 2015 LEGISLATIVE AGENDA

The purpose of this report is to outline 2015 Fort Ord Reuse Authority (FORA) legislative tasks. The FORA 2015 Legislative Agenda defines Board policy, sets legislative, regulatory or federal/state resource allocation positions, and supports the 1997 Base Reuse Plan's defined programs for replacing the former Fort Ord military regional economic contributions with comparable level civilian activity/programs. The Legislative Agenda is meant to assist state and federal agencies/legislative offices regarding property transfer, economic development, environmental remediation, habitat management/conservation, and infrastructure and mitigation funding. The order in which the tasks are presented herein does not imply rank or priority. Each item is considered a "priority" in achieving FORA's objectives.

A. <u>VETERANS CEMETERY</u>. Continue support for the California Central Coast Veterans Cemetery (CCCVC) development on the former Fort Ord.

<u>Issue</u>:
Burial space for California Central Coast veterans is inadequate. The former Fort Ord is both ideally suited and centrally located. A site was set aside/designated in the 1990s for a veterans cemetery and the FORA Board of Directors has supported by multiple previous actions establishment of the California Central Coast Veterans Cemetery (CCCVC). In 2011, the Legislature amended Military and Veterans Code section 1450.1 directing California Department of Veteran Affairs (CDVA), in cooperation with the City of Seaside, County of Monterey, FORA, and surrounding local agencies, to design, develop, and construct the Veterans Cemetery on the former Fort Ord.

In January 2013, the FORA Board authorized transfer of the land designated for the CCCVC to CDVA. In August, CDVA submitted an application to the U.S. Department of Veteran Affairs (DVA) for approximately $6.8 million in grant funding to establish the CCCVC. Senator Bill Monning authored legislation that reduced the approximate $2.6 million funding gap between the federal grant and estimated project costs by $1 million dollars. Additional state funding efforts reduced the funding gap by another $1 million. The David and Lucile Packard Foundation provided a $350,000 loan and $150,000 in grant funding. Local fundraising efforts produced the remaining portion, which allowed the state to accept the US Department of Veterans Affairs (USDVA) grant funding by the October 15, 2013 deadline. The federal funds were disbursed to the state in September 2014, and construction is scheduled to begin in early 2015.

Current funding supports CCCVC design, planning, and environmental review and will incorporate above ground columbaria, administration and maintenance buildings, a committal shelter, minimal landscaping, and all necessary infrastructure for initial operation. Anticipated future expansion will require additional design, planning, and review and would include in-ground gravesites and additional columbaria, as well as other potential ancillary uses.

Benefits:
The CCCVC offers final resting places for the region's 50,000 (approx.) veterans.

Challenges:
Completion of the cemetery construction will require significant coordination between FORA, the CCCVC Foundation, the California Department of General Services (DGS), CDVA, USDVA, the City of Seaside, the County of Monterey, and other state/federal agencies.

Proposed Position:
- Support DGS and CDVA construction efforts.
- Support efforts to sustain priority standing for the CCCVC with CDVA and USDVA.
- Promote continued vigilance and cooperation among the regulatory agencies.
- Coordinate with federal agencies, the City of Seaside, the County of Monterey, the 20th Congressional District, the 17th State Senate District, and the 29th State Assembly District to sustain efforts to generate federal funding and/or status for future CCCVC expansion.

B. HABITAT CONSERVATION PLAN (HCP). Continue/enhance ongoing coordination with federal and state legislative representatives to secure approval of the HCP.

Issue:
HCP approval remains critical to former Fort Ord reuse. Alternatives to a basewide HCP are costly and time consuming and do not effectively serve the goal of managing or protecting endangered species.

Benefits:
HCP approval is essential to protecting habitat and effectively developing jobs and housing for the region.

Challenges:
Processing the HCP over the past ten years has been difficult and costly. Insufficient federal and state agency resources and overlapping regulatory barriers have thwarted the HCP process.

Proposed Position:
- Support legislative and regulatory coordination, state and federal resources, and strong advocacy to enable speedy reviews and processing.
- Coordinate with Department of Interior/ Bureau of Land Management (BLM), California Department of Fish and Wildlife (CDFW), the 20th Congressional District, the 17th State Senate District and the 29th State Assembly District to finalize an MOU between BLM and CDFW regarding habitat management on BLM's Fort Ord National Monument, a required milestone to completing the HCP.

C. **NATIONAL MONUMENT. Assist in implementing the federal National Landscape Conservation System (Fort Ord National Monument) designation for the former Fort Ord Bureau of Land Management (BLM) Natural Resource Management Area through increased trail access, completion of munitions and explosives removal, and continued advancement of the Fort Ord Habitat Conservation Plan (HCP).**

Issue:
HCP approval and implementation are essential to former Fort Ord reuse and will support the National Monument. Advancing access connects the National Monument to other Monterey Bay venues. State and national funding and further recognition are critical.

Benefits:
National attention to the unique flora, fauna, and recreational resources found on the Fort Ord National Monument supports Fort Ord Habitat Management Plan and HCP preservation efforts. The National Monument designation emphasizes the national significance of the BLM's former Fort Ord property to potential donors and other funding sources. As an advocate for the designation, FORA supports BLM's mission and former Fort Ord recreation/tourism, helping improve resource competitiveness.

Challenges:
Each year, the local BLM office competes nationally to receive public and private grants and federal appropriations that support its mission.

Proposed Position:
- Continue to support and work with the 20th Congressional District to introduce/sponsor funding for former Fort Ord conservation, trails, etc.

D. **REUSE FINANCING. Support statewide efforts to create local jurisdictions financing tools to assist reuse and recovery of former military bases.**

Issue:
The loss of "redevelopment financing" to assist in implementing base closure recovery programs was a heavy blow to FORA's member jurisdictions that need financial tools to support economic reuse/recovery initiatives.

Benefits:
Sufficient funding resources for the reuse and recovery from former Fort Ord closure and other military bases. Funding support for habitat management protection, building removal, or other infrastructure demands associated with the reuse programs.

Challenges:
Obtaining agreement to use tax or special district funds to create special financing districts to support targeted economic recovery, affordable housing and/or infrastructure in the climate of limited resources. Currently, there is an unclear transition process regarding the demise of prior redevelopment agencies that may generate litigation.

Proposed Position:
- Support legislation reactivating local agency processes for economic development.
- Support establishment of Military Base Reuse Recovery Zones.
- Support legislation for incentive based mechanisms to strengthen jurisdictions ability to implement base closure recovery programs.

E. AUGMENTED WATER SUPPLY. Work with local and regional agencies to secure State and Federal funding to augment FORA's water supply capital needs.

Issue:
The FORA Capital Improvement Program includes approximately $24M to fund a Regional Water Augmentation necessary to implement the Base Reuse Plan. Securing outside funds to assist this requirement could help the timely implementation of recycled water and/or desalination water facilities and smooth out upfront costs of infrastructure.

Benefits:
Development projected under the Base Reuse Plan depends on an augmented water supply. Additional grant funding could reduce Marina Coast Water District (MCWD) cost to secure water resources and reduce the required hefty capital charges.

Challenges:
Scarce funding and competing water projects throughout the region and state. No current federal/state program exists for this funding.

Proposed Position:
- Continue to work with MCWD to ensure that they fulfill their contractual obligation to FORA for water resource augmentation.
- Support and coordinate efforts with MCWD, Monterey County Water Resources Agency, Monterey Regional Water Pollution Control Agency, other agencies, and FORA jurisdictions to secure funding and/or support other funding mechanisms proposed for this purpose.

F. TRANSPORTATION IMPROVEMENTS. Work with the Transportation Agency for Monterey County (TAMC) and local jurisdictions to secure transportation funds.

Issue:
The FORA Capital Improvement Program requires capital and monetary mitigations of approximately $103,000,000 for transportation infrastructure on and proximate to the former Fort Ord. Some of this funding requires a local, or other, match from the appropriate regional or state transportation body to bring individual projects to completion. Roadway infrastructure proximate to the former Fort Ord impacts traffic mitigation measures on the former Fort Ord.

Benefits:
The timely installation of required on-site, off-site, and regional roadway improvements supports mitigating development impacts and maintaining and improving levels of service vital to the regional economy.

Challenges:
Applying scarce transportation funds to the appropriate projects to optimize transportation system network enhancements. Remaining federal and state programs offering grants or low cost resources are dwindling and increasingly competitive. An adopted HCP is an application requirement for most federal and state transportation grant programs.

Proposed Position:

- Support and coordinate with TAMC, FORA jurisdictions, and others for state infrastructure bonds, federal authorization or other grant/loan/low cost resources.
- Request amendment to Monterey County Local Coastal Plan (LCP) for safety improvements to Moss Landing/Castroville section of Highway 1.
- Advocate for approved regional improvements to maintain traffic flow and funding for transit improvements and active transportation.
- Continue/enhance ongoing coordination with congressional and state legislative representatives to secure HCP approval.

G. BASEWIDE MITIGATION AND BUILDING REMOVAL IMPACTS. Lobby for state funds to mitigate the regional impacts of the development of California State University, Monterey Bay (CSUMB). Support requests for CSUMB campus impact mitigation funds and seek state and other funds for building removal.

Issue:
In July 2006, the California Supreme Court ruled that California State University (CSU) must mitigate off-campus impacts from CSUMB campus development/growth. In order to fund its obligations, CSU requests funds from the State Legislature.

Contaminated building removal is a significant expense to CSUMB ($26 million) and other former Fort Ord land use entities ($43 million). A coordinated effort is more likely to achieve funding success. FORA and CSUMB have partnered on several building removal projects and continue to benefit from shared knowledge and cost savings. In both FY 2010-2011 and 2011-2012, FORA assisted CSUMB in grant funding applications to the Department of Defense Office of Economic Adjustment (OEA) for building removal efforts. In September 2013, FORA and CSUMB jointly prepared a Building Removal Business Plan OEA/US Economic Development Administration (EDA) grant application that would outline cost parameters and set forth terms to guide future removal of large multi-story concrete structures.

In November 2013, it was announced that CSUMB had received full funding from CSU to complete the remaining campus-wide building removal. Remaining basewide building removal costs (both FORA and jurisdictional) continue to impede recovery programs.

Benefits:
Supporting state budget approval of off-campus mitigation impact funding requests helps address CSU's fair share contribution. Similarly, a coordinated effort to secure building removal resources will help all levels of the regional reuse program. Securing financial aid for basewide building removal obligations will improve the overall perception of reuse progress, increase safety by eliminating the attractive nuisance and ongoing vandalism, reduce the "cover" for illegal dumping, and remove potential exposure to certain contaminants within the structures. Although CSUMB's building removal efforts have been fully funded, ongoing coordination with OEA/EDA is crucial to both entities efforts.

Challenges:
The primary responsibility for reviewing this project has transferred from OEA to EDA Region 9. EDA is now restarting that review, which may be awarded next quarter.

Proposed Position:

- Support state budget off-campus impact and building removal earmarks requested by CSU for the CSUMB campus and continue coordination with CSUMB for federal support.
- Support funding for research on the scope and scale of building removal as compared to others in the nation.
- Support funding to clear buildings in areas designated for development.

H. PUBLIC SAFETY OFFICER TRAINING. Work with the County of Monterey to assist Monterey Peninsula College (MPC) to obtain capital and program funding for its former Fort Ord Public Safety Officer Training Programs.

Issue:
FORA/County agreed to assist MPC in securing program funds in 2003.

Benefits:
The Public Safety Officer Training Program is an important component of MPC's Fort Ord reuse efforts and will enhance public safety training at the regional and state levels. Adequate funding is critical.

Challenges:
Funds available through the Office of Homeland Security, the Office of Emergency Services, or other sources may be restricted.

Proposed Position:

- Pursue legislative or other actions to support MPC efforts to secure funding sources.

I. LEGISLATIVE COOPERATION. Coordinate efforts with other Monterey Bay agency legislative issues.

Issue:
Monterey-Salinas Transit, Transportation Agency for Monterey County, and the County of Monterey have adopted legislative programs, some of which will have Fort Ord reuse impacts.

Benefits:
Collaborative funding efforts by agencies involved in the same or interdependent projects will increase the chances to obtain critical funding and also be enhanced by partnering matching funds.

Challenges:
State and federal funding is limited and competition for available funds will be keen.

Proposed Position:

- Coordinate and support other legislative programs in the Monterey Bay area when they interface with former Fort Ord reuse programs.