



# FORT ORD REUSE AUTHORITY

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

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

## ADMINISTRATIVE COMMITTEE MEETING

8:15 a.m. Tuesday, December 30, 2014

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

### AGENDA

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

**4. 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. APPROVAL OF MEETING MINUTES**

**ACTION**

a. October 1, 2014 Administrative Committee Meeting Minutes (*postponed from 12/3/14*)

b. November 5, 2014 Administrative Committee Meeting Minutes (*postponed from 12/3/14*)

c. December 3, 2014 Administrative Committee Meeting Minutes

**6. JANUARY 9, 2014 BOARD MEETING AGENDA REVIEW**

**INFORMATION/ACTION**

**7. BUSINESS ITEMS**

a. 2012-14 Land Use Covenant Reporting Status Update

**INFORMATION**

b. FY 15-16 Capital Improvement Program Forecasts

**INFORMATION**

c. Regional Urban Design Guidelines Update

**INFORMATION**

d. January 22, 2015 Trails Symposium Update

**INFORMATION**

**8. ITEMS FROM MEMBERS**

**9. ADJOURNMENT**

Next Meeting Date: January 21, 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](http://www.fora.org).*



# FORT ORD REUSE AUTHORITY

## ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, October 1, 2014 | FORA Conference Room  
920 2<sup>nd</sup> 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 10<sup>th</sup> 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 12-19<sup>th</sup> 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.

DRAFT



# FORT ORD REUSE AUTHORITY

## ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, November 5, 2014 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933

### 1. CALL TO ORDER

Co-chair Dawson called the meeting to order at 8:16 a.m. The following were present (\*voting members):

Dan Dawson, City of Del Rey Oaks  
Carlos Urrutia, County of Monterey\*  
Daphne Hodgson, City of Seaside \*  
Layne Long, City of Marina\*  
Vicki Nakamura, MPC  
Anya Spear, CSUMB  
Lisa Rheinheimer, MST

Patrick Breen, MCWD  
Jarron Hollion, MCWD  
Dave Delfino, TAMC  
Doug Yount  
Bob Schaffer  
Don Hofer, Shea Homes  
Chuck Lande, Marina Heights

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

Voting Members Absent: Elizabeth Caraker (City of Monterey)

### 2. PLEDGE OF ALLEGIANCE

Daphne Hodgson led the Pledge of Allegiance.

### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Executive Officer Michael Houlemard thanked the Committee for their support and understanding as FORA experienced understaffing due to illness, injury, and family emergencies.

#### a. Infrastructure Financing Districts Legislation

Mr. Houlemard discussed the status of legislative and community efforts to establish infrastructure financing districts across the state.

### 4. PUBLIC COMMENT PERIOD

None.

### 5. NOVEMBER 14, 2014 BOARD MEETING - AGENDA REVIEW

Mr. Houlemard provided an overview of items on the November 14<sup>th</sup> Board meeting agenda and responded to questions from the Committee and public.

### 6. BUSINESS ITEMS

*The following items were taken out of agenda order.*

#### b. Pollution Legal Liability Insurance Policy

##### i. First Named Insured Designee After 2020

##### ii. Individual Insurance Coverage Amounts

##### iii. Insurance Cost Reimbursement Agreements

FORA Special Counsel Barry Steinberg joined the meeting via telephone. Senior Planner Jonathan Garcia presented the item and Mr. Steinberg responded to questions from the Committee and public.

**a. Review 2015 Fort Ord Reuse Authority Legislative Agenda**

Mr. Houlemard reviewed the proposed 2015 Legislative Agenda and requested that Committee members advise their elected representatives of any desired amendments or additions to the document. Lisa Rheinheimer stated that MST would provide several proposed amendments related to transit for Legislative Committee consideration.

**7. ITEMS FROM MEMBERS**

Mr. Houlemard discussed the Committee and Board meeting schedules for December and January, noting that the regular Administrative Committee meeting would fall on New Year's Eve. The Committee suggested the meeting be rescheduled for the following week to allow for greater participation.

**8. ADJOURNMENT**

Co-Chair Dawson adjourned the meeting at 9:12 a.m.

DRAFT



# FORT ORD REUSE AUTHORITY

## ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, December 3, 2014 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933

### 1. CALL TO ORDER

Chair Houlemard called the meeting to order at 8:24 a.m. The following were present (\*voting members):

Carlos Uruttia, County of Monterey\*  
Tim O'Halloran, City of Seaside \*  
Wendy Strimling, County of Monterey  
Vicki Nakamura, MPC  
Anya Spear, CSUMB  
Lisa Rheinheimer, MST

Steve Matarazzo, UCSC  
Lyle Shurtleff, BRAC  
Patrick Breen, MCWD  
Doug Yount, ADE  
Bob Schaffer  
Kathleen Lee, Sup. Potter's Office

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

Voting Members Absent: Elizabeth Caraker (City of Monterey), Layne Long (City of Marina), Dan Dawson (City of Del Rey Oaks).

### 2. PLEDGE OF ALLEGIANCE

Tim O'Halloran led the Pledge of Allegiance.

### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Chair Houlemard noted that the United Veterans Council would be hosting their Annual Recognition Dinner that night. He also announced both sides were close to finalizing a settlement agreement in the Marina v. FORA lawsuit regarding Preston Park.

### 4. PUBLIC COMMENT PERIOD

None.

### 5. APPROVAL OF MEETING MINUTES

- a. October 1, 2014 Administrative Committee Meeting Minutes
- b. November 5, 2014 Administrative Committee Meeting Minutes

*Executive Officer Houlemard stated that the item would be postponed for lack of a quorum and the meeting would proceed as a meeting of the whole.*

### 6. DECEMBER 12, 2014 BOARD MEETING - AGENDA REVIEW

Chair Houlemard postponed discussion of the Board packet and moved to item 7b to accommodate members needing to leave early (*item continued below*).

### 7. BUSINESS ITEMS

- b. Pollution Legal Liability (PLL) Insurance Policy
  - i. First Named Insured Designee After 2020
  - ii. Individual Insurance Coverage Amounts
  - iii. Insurance Cost Reimbursement Agreements

Chair Houlemard announced it was time to finalize jurisdiction participation in the PLL Insurance Policy, as executed agreements needed to be submitted to FORA by the end of December. Senior Planner Jonathan Garcia discussed recent discussions with the County of Monterey regarding their potential assumption of first named insured responsibility, and Chair Houlemard discussed alternatives for addressing outstanding items.

**6. DECEMBER 12, 2014 BOARD MEETING - AGENDA REVIEW (CONTINUED)**

Chair Houlemard reviewed the draft December 12<sup>th</sup> Board meeting agenda packet, and Associate Planner Josh Metz provided an overview of the January 22, 2015 Fort Ord Trails Symposium.

**7. BUSINESS ITEMS (CONTINUED)**

**a. Approve 2015 Meeting Dates**

Chair Houlemard reviewed the 2015 meeting schedule. No action was taken for lack of quorum.

**c. 2012-14 Land Use Covenant Reporting Status Update**

Mr. Garcia announced that Land Use Covenant Reports were due by December 31, 2014.

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

Mr. Metz briefly discussed the outcome of the RUDG site visit and preparation for the February Charrette. Chair Houlemard informed the Committee that the charrette marketing plan and schedule had been amended to reflect requests for greater input from the Latino and African American communities.

**e. January 22, 2015 Trails Symposium Update**

Mr. Metz stated the item did not require further discussion.

**8. ITEMS FROM MEMBERS**

None

**9. ADJOURNMENT**

Chair Houlemard adjourned the meeting at 9:06 a.m.

**-START-**

**DRAFT  
BOARD PACKET**





# FORT ORD REUSE AUTHORITY

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

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

## REGULAR MEETING FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Friday, January 9, 2015 at 2:00 p.m.

910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

### AGENDA

#### 1. CALL TO ORDER

#### 2. PLEDGE OF ALLEGIANCE

#### 3. CLOSED SESSION

- a. 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 December 12, 2014 Board Meeting Minutes ACTION

#### 8. BUSINESS ITEMS

- a. 2<sup>nd</sup> Vote: Approve FY 2014/15 Preston Park Operating and Capital Improvement Budgets ACTION
- b. Approve Memorandum of Agreement among County of Monterey, UCP East Garrison, LLC, and FORA Regarding Habitat Management on Parker Flats Reserve ACTION
- c. Monterey Bay Economic Partnership Implementation Plan Report INFORMATION/ACTION
- d. Consider Executive Officer Compensation Adjustment ACTION
- e. Post Reassessment Items
  - i. January 22, 2014 Trails Symposium Status Report INFORMATION
  - ii. February 2-11, 2014 Regional Urban Design Guidelines Charrette INFORMATION
  - iii. Category 3 Work Plan Update INFORMATION
- f. Environmental Services Cooperative Agreement Quarterly Update INFORMATION

- g. Elect 2015 Board Officers ACTION
- h. Confirm Chair Appointment to Fill Finance Committee Vacancy 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. Post Reassessment Advisory Committee INFORMATION
- e. Regional Urban Design Guidelines Task Force INFORMATION
- f. Travel Report INFORMATION
- g. Public Correspondence to the Board INFORMATION

**11. ITEMS FROM MEMBERS**

**12. ADJOURNMENT**

**NEXT BOARD MEETING: FEBRUARY 13, 2015**

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](http://www.fora.org).

## FORT ORD REUSE AUTHORITY BOARD REPORT

### BUSINESS ITEMS

<b>Subject:</b>	2nd Vote: Approve FY 2014/15 Preston Park Operating and Capital Improvement Budgets	
<b>Meeting Date:</b>	January 9, 2015	<b>ACTION</b>
<b>Agenda Number:</b>	8a	

#### **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 Make Best Efforts to Hold Meetings Between Alliance Management Company and the Preston Park Tenants Association.

#### **BACKGROUND/DISCUSSION:**

The first vote on this item was taken at the October 10, 2014 Board meeting. The Board report from this meeting is included as **Attachment A**.

Staff recommends approval of the FY 2014/15 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, including original attachments to the October 10<sup>th</sup> staff report (**Attachment A**), are archived on the FORA website at

<http://fora.org/brd111414.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**

<b>Subject:</b>	Preston Park – Rent Rate Policy Questions	
<b>Meeting Date:</b>	October 10, 2014	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8b	

**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 

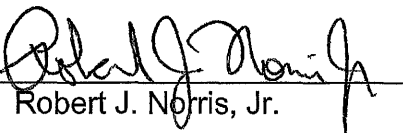
During the past several years, we have fallen behind the long standing policy of being comparable to the area rental market to avoid government out-competing private property owners for tenants. FORA and Alliance Management staff analyzed the option of recommending a rental increase closer to the 9.4% 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.

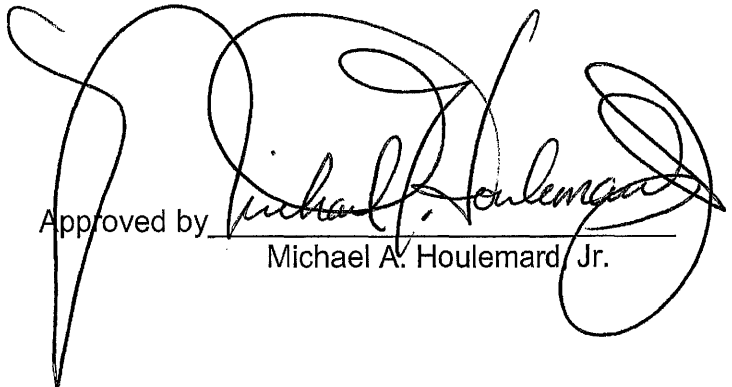
**COORDINATION:**

Executive Committee, Authority Counsel, and Alliance Management

Prepared by

  
Robert J. Norris, Jr.

Approved by

  
Michael A. Houlemard, Jr.



# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

<b>Subject:</b>	Approve Memorandum of Agreement among County of Monterey, UCP East Garrison, LLC, and FORA Regarding Habitat Management on Parker Flats Reserve	
<b>Meeting Date:</b>	January 9, 2015	<b>ACTION</b>
<b>Agenda Number:</b>	8b	

### **RECOMMENDATION(S):**

Approve Memorandum of Agreement among County of Monterey, Union Community Partners (UCP) East Garrison, LLC, and Fort Ord Reuse Authority (FORA) regarding habitat management on Parker Flats Reserve (MOA) (**Attachment A**). Due to color maps and length of documents, staff has made Exhibits A, B, and C to the MOA available at the following FORA website links:

[http://fora.org/Board/2015/Packet/Additional/Exh-A\\_Map\\_EastGarrisonInterimCTS\\_MitigationArea2014-09-02v2.pdf](http://fora.org/Board/2015/Packet/Additional/Exh-A_Map_EastGarrisonInterimCTS_MitigationArea2014-09-02v2.pdf)

[http://fora.org/Board/2015/Packet/Additional/Exh B InterimCTS\\_MitigationMonitoringPlan2014-09-02%20v2.pdf](http://fora.org/Board/2015/Packet/Additional/Exh_B_InterimCTS_MitigationMonitoringPlan2014-09-02%20v2.pdf)

[http://fora.org/Board/2015/Packet/Additional/Exh C ConservationEasement%202014-12-02\\_CDFWcomments.pdf](http://fora.org/Board/2015/Packet/Additional/Exh_C_ConservationEasement%202014-12-02_CDFWcomments.pdf)

### **BACKGROUND/DISCUSSION:**

At its January 12, 2006 meeting, the FORA Board certified the County of Monterey's East Garrison Specific Plan, zoning, and project development entitlements as consistent with the 1997 Fort Ord Reuse Plan. On August 4, 2004, the United States Fish and Wildlife Service (USFWS) listed the California Tiger Salamander (CTS) as a threatened species under the federal Endangered Species Act (ESA). The USFWS issued a 2004 CTS Biological Opinion, allowing development at the East Garrison to occur provided certain restrictions were enforced. The developer, at that time, East Garrison Partners I, LLC, FORA, County of Monterey, and County of Monterey Redevelopment Agency entered into a Memorandum of Agreement regarding ESA enforcement of development restrictions at East Garrison, dated October 6, 2005. That agreement assures the USFWS that restrictions are fully implemented as part of East Garrison development.

On March 3, 2010, the California Fish and Game Commission designated CTS as threatened under the California Endangered Species Act (CESA). Several years ago, the current developer UCP East Garrison, LLC, sighted what appeared to be a CTS (unconfirmed) within the East Garrison development project site and has pursued a State of California 2081 Incidental Take Permit (ITP) since that time. To obtain an ITP, California Department of Fish and Wildlife (CDFW) requires the County of Monterey, UCP East Garrison, LLC, and FORA to execute an agreement whereby the parties agree to ensure CTS habitat preservation at a 134-acre habitat preservation and restoration area within the Parker Flats Habitat Reserve on former Fort Ord. According to this draft agreement, the County currently owns these 134-acres and would agree to allow preservation and restoration on these habitat deed-restricted lands. UCP East Garrison would agree to fund five years of habitat management and restoration on

these lands. FORA would agree to fund and implement long-term habitat management and restoration on these lands through Fort Ord Habitat Conservation Plan (HCP) implementation.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Staff time for this item is included in the approved FORA budget. Collection of the FORA Community Facilities District (CFD) Special Tax/Development Fee is the primary funding source for the future Fort Ord HCP. FORA has collected more than \$2,000,000 in CFD Special Taxes from the East Garrison development project in the past two years. If UCP East Garrison, LLC, obtains a CDFW-issued ITP, it will allow the developer to proceed with future project phases in a timely manner.

**COORDINATION:**

Authority Counsel, County of Monterey, UCP East Garrison, LLC, CDFW, Administrative and Executive Committees.

DRAFT

Prepared by \_\_\_\_\_ Reviewed by \_\_\_\_\_  
Jonathan Garcia Steve Endsley

Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.

12/3/14 DRAFT v11 Rev

**MEMORANDUM OF AGREEMENT  
REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE  
PARKER FLATS RESERVE AT THE FORMER FORT ORD,  
CALIFORNIA**

This Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the former Fort Ord, California (this "Agreement") is made and entered into by and among the **FORT ORD REUSE AUTHORITY** ("FORA"), the **COUNTY OF MONTEREY** ("County"), and **UCP EAST GARRISON, LLC** ("UCP") (each a "Party" and collectively, as the "Parties").

**WITNESSETH THAT:**

**WHEREAS**, FORA is a public corporation of the State of California created for the purpose of planning for, financing, and managing the transition of the property comprising the former Fort Ord military installation (the "Former Fort Ord") from military to civilian use by, among other things, facilitating the transfer of Former Fort Ord property from the United States Army (the "Army") to local governmental entities or their designees;

**WHEREAS**, County is a political subdivision of the State of California, which agency has been designated by the *Fort Ord Reuse Plan* (June 13, 1997) (the "Reuse Plan"), the Economic Development Conveyance Agreement between FORA and the Army dated June 20, 2000, and the Implementation Agreement between FORA and County dated May 8, 2001, as currently amended, to receive certain property from FORA that has been or will be transferred to FORA from the Army;

**WHEREAS**, UCP is a Delaware limited liability company and the private developer of the East Garrison Project located on the Former Fort Ord and within the unincorporated portion of the County of Monterey;

**WHEREAS**, FORA has already received or will soon receive fee title to certain land parcels of the Former Fort Ord from the Army pursuant to the Reuse Plan (the "FORA Property");

**WHEREAS**, pursuant to the Reuse Plan, FORA already has conveyed to County the following parcels of FORA Property on the Former Fort Ord: Parcels L5.7, L20.2.1 and portions of E19a.3 and E19a.4 (hereinafter referred to collectively as the "County North Property");

**WHEREAS**, Parcel E19a.4, a portion of which has been transferred to the County as part of the County North Property, is an approximately 379-acre parcel which is subject to development restrictions as "Habitat Reserve" under the *Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord, California* (dated 1997) ("HMP"), as that HMP has

been amended by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification (Agreement #A-09555, known as the "Land Swap Agreement," approved by the County Board of Supervisors on September 23, 2003);

**WHEREAS**, the County North Property includes the northerly approximately 134 acres of Parcel E19a.4 as depicted in **Exhibit "A"** attached hereto, which the Parties desire to preserve as habitat for the California tiger salamander (*Ambystoma californiense*) ("CTS") subject to the terms of this Agreement (the "CTS Preservation and Habitat Restoration Area");

**WHEREAS**, FORA has undertaken the preparation of the *Fort Ord Multispecies Habitat Conservation Plan* ("Fort Ord HCP"), and Parcel E19.a.4 has been designated as the "Parker Flats Reserve" habitat management area in the draft Fort Ord HCP. The CTS Preservation and Habitat Restoration Area comprises a portion of the Parker Flats Reserve habitat management area included in the draft Fort Ord HCP; however, the Parties recognize that the draft Fort Ord HCP has not yet been adopted and could change in the course of the environmental review and adoption proceedings;

**WHEREAS**, all necessary environmental assessments for the East Garrison Project were conducted and all then required permits for the East Garrison Project were issued and obtained, prior to the initiation of physical construction. Although CTS was not listed under California law as endangered or threatened at the time of environmental review and approval of the East Garrison Project and no Section 2081 incidental take permit for CTS was then required, FORA has since that time been preparing the Fort Ord HCP in coordination with United States Fish and Wildlife Service ("USFWS") and the California Department of Fish and Wildlife ("CDFW"). This Fort Ord HCP will include mitigation measures relating to CTS. The draft Fort Ord HCP is anticipated to be released for public review in January 2015;

**WHEREAS**, because UCP intends to construct the East Garrison Project in reliance on the project approvals obtained prior to agency approval of the Fort Ord HCP and USFWS issuance of the associated Section 10(a)(1)(B) incidental take permit and CDFW issuance of the associated Section 2081 incidental take permit (collectively, the "Fort Ord HCP ITPs"), CDFW recommended that UCP obtain a separate Section 2081 incidental take permit to cover the possibility of take of CTS in the interim, with the understanding that such Section 2081 incidental take permit also would require a conservation easement and, until the Fort Ord HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs, a fund for the interim habitat management of the CTS Preservation and Habitat Restoration Area (the "Interim Habitat Management Fund");

**WHEREAS**, subject to the terms and conditions set forth below, FORA and County intend to allow the CTS Preservation and Habitat Restoration Area to be preserved and managed for its value as habitat for the CTS in accordance with this MOA and the policies set forth in the *Reuse Plan*, and the HMP, until the Fort Ord HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs.

**WHEREAS**, FORA and County intend to record a conservation easement over the CTS Preservation and Habitat Restoration Area to ensure the preservation and management of the property for the purposes set forth in the *Reuse Plan* and the HMP (the “Conservation Easement”) until such time as the HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs;

**WHEREAS**, the Reuse Plan (Program C-1.2) requires local jurisdictions to preserve sufficient right-of-way for anticipated future travel demands which includes a conceptual roadway improvement, known as the “Eastside Road,” to accommodate vehicular traffic resulting from base-wide implementation of land development under the policies of the Reuse Plan. (Reuse Plan, Section 4.2.2.3; Program B-1.1.) The project is identified as a “Basewide Mitigation” in the Circulation Element of the Reuse Plan, its associated Final EIR/S, and the *FORA Capital Improvement Program (CIP)*;

**WHEREAS**, the currently-proposed alignment of the proposed Eastside Road is adjacent to the southern portion of the approximately 333-acre Parcel S.1.3.2 (APN 031-101-023), which is presently owned by FORA, and which is designated for future conveyance to California State University, Monterey Bay (“CSUMB”) for use under its 2007 *Master Plan* as “Open Space,” and which is proximate and adjacent to the CTS Preservation and Habitat Restoration Area;

**WHEREAS**, the alignment and location of the proposed Eastside Road has not been finalized and may change;

**WHEREAS**, subject to the terms and conditions set forth below and until USFWS and CDFW issue the Fort Ord HCP ITPs, County does not object to the CTS Preservation and Habitat Restoration Area being restored and managed for its CTS habitat value in accordance with the terms set forth in this Agreement and consistent with the Reuse Plan and the HMP in conjunction with the restoration and management of other preservation and habitat restoration areas in the East Garrison portion of the Former Fort Ord;

**WHEREAS**, habitat management requirements and funding for the CTS Preservation and Habitat Restoration Area are set forth in the Incidental Take Permit No. 2081-\_\_\_\_\_ (dated, \_\_\_\_\_, 2014, as it may be amended pursuant to the terms of this Agreement) issued by the CDFW to UCP for the incidental take of the CTS at the East Garrison Project site (the “UCP Incidental Take Permit”) and the *East Garrison CTS Interim Mitigation Monitoring Plan, Monterey County*, Live Oak Associates, Inc., December 19, 2013, created thereunder and attached hereto as **Exhibit "B"** (the “Interim Mitigation Plan”) as it may be amended pursuant to the terms of this Agreement;

**WHEREAS**, UCP has paid development impact fees in the amount of more than Two Million and Five Hundred Thousand Dollars (\$2,500,000) of which a substantial portion are fees for the funding and long-term management of the habitat management areas identified in the Fort Ord HCP when it is approved and USFWS and CDFW issue the Fort Ord HCP ITPs, which is anticipated to include the Parker Flats Reserve habitat management area, identified in the draft Fort Ord HCP; and

**WHEREAS**, nothing in the UCP Incidental Take Permit or the Interim Mitigation Plan makes the County legally or financially responsible for implementation of the Interim Mitigation Plan or adherence to the UCP Incidental Take Permit requirements, which responsibility remains with UCP; provided, however, that upon UCP's deposit of the Interim Habitat Management Fund into escrow as provided in this Agreement, County shall allow the implementation of the Interim Mitigation Plan for the CTS Preservation and Habitat Restoration Area.

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

**I. AGREEMENT**

**A. LONG-TERM HABITAT MANAGEMENT**

1. FORA and County agree that the CTS Preservation and Habitat Restoration Area described and depicted in Exhibit A shall be protected and managed for its CTS habitat value in accordance with the terms of this Agreement and the policies set forth in the Reuse Plan, and the HMP until the Fort Ord HCP is adopted and CDFW and USFWS issue the Fort Ord HCP ITPs.

2. Notwithstanding the foregoing, this Agreement does not preclude any alignment of the proposed Eastside Road provided such proposed Eastside Road alignment does not extend into the CTS Preservation and Habitat Area.

3. Subject to the provisions of Section 1.A.4 of this Agreement, FOR A shall assume the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area when USFWS and CDFW issue the Fort Ord HCP ITPs, subject to the terms of the adopted Fort Ord HCP. County's obligations to perform interim habitat management and UCP's obligation to fund the interim habitat management shall cease when FORA assumes the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area. FORA's obligation may be transferred by FORA to a suitable land manager, such as a future HCP Joint Powers Authority that will ensure implementation of the Fort Ord HCP. This obligation shall not commence until such time as FOR A receives a factually correct written notice that USFWS and CDFW have issued the Fort Ord HCP ITPs.

4. FORA's duty (or that of the approved land manager designee) to implement the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area as outlined in Section I.B.3 of this Agreement is limited by the amount of the Ford Ord HCP fees collected.

## B. INTERIM HABITAT MANAGEMENT

1. Commencing as soon as practicable, but in all events, within six (6) months after the later of (i) County's acceptance and recordation of the grant deed conveying the property containing the CTS Preservation and Habitat Restoration Area to County and (ii) CDFW's issuance of the UCP Incidental Take Permit, and subject at all times to UCP's compliance with the funding requirements described in Sections I.B.4 and I.B.5 of this Agreement, County (or its designee) shall manage the CTS Preservation and Habitat Restoration Area in accordance with the Interim Mitigation Plan and this Agreement, on an interim basis until the Fort Ord HCP is adopted and the USFWS and CDFW issue the Fort Ord HCP ITPs, but in no event exceeding five (5) years from the date of recordation of the Conservation Easement.

2. Attainment of the Interim Mitigation Plan success criteria is solely the responsibility of UCP in accordance with this Section I.B of this Agreement.

3. Intentionally omitted.

4. Pursuant to its obligations as the permittee under the UCP Incidental Take Permit, UCP shall deposit funds into the Interim Habitat Management Fund, in accordance with Section I.B.5 of this Agreement for the implementation of the Interim Mitigation Plan. As provided for under the UCP Incidental Take Permit, County shall hold and manage this Interim Habitat Management Fund in a separate account unless another entity is designated by CDFW for this purpose.

5. Within five (5) business days of the execution of this Agreement, UCP shall deposit into First American Title Company Escrow No. \_\_\_\_\_ (the "Escrow") the total Interim Habitat Management Fund amount of One Hundred and Four Thousand, One Hundred Fifty Five Dollars (\$104,155) to be paid to County as a fund sufficient to implement the Interim Mitigation Plan for the CTS Preservation and Habitat Restoration Area for a period not to exceed five (5) years subject to the terms and conditions set forth in this Agreement and subject to augmentation of funds and/or extension of the five year period under the terms set forth below, and all Parties shall deliver signed escrow instructions consistent with the terms of this Agreement. The amount of the Interim Habitat Management Fund is based upon the cost estimates contained in the Interim Mitigation Plan.

- a. Escrow shall transfer the Interim Habitat Management Fund to County for deposit into a separate interest-bearing account solely for purposes of the interim habitat management for the CTS Preservation and Habitat Restoration Area.
- b. In the event that County notifies UCP that the cost to implement the Interim Mitigation Plan exceeds the Interim Habitat Management Fund, UCP shall deposit into Escrow additional funds to pay for such additional costs within ten (10) days receipt of such notice. If there are any inconsistencies between the escrow instructions and this Agreement, this Agreement shall control.

- c. In the event that USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the effective date of this Agreement (as defined in the final paragraph of this Agreement), UCP shall deposit into Escrow such additional amount necessary to cover the costs of implementation of the Mitigation Plan until the USFWS and CDFW issue the Fort Ord HCP ITPs.

6. Upon UCP's deposit of the Interim Habitat Management Fund into Escrow, as the then current owner of the CTS Preservation and Habitat Restoration Area, County shall convey and record a Conservation Easement over the CTS Preservation and Habitat Restoration Area for the sole purpose of allowing UCP to fulfill the UCP Incidental Take Permit and Interim Mitigation Plan obligations. Recording fees, if any, shall be paid out of the Interim Habitat Management Fund. The Conservation Easement shall substantially be in the form attached hereto as **Exhibit "C."** Payment of the Interim Habitat Management Fund and conveyance of the Conservation Easement is contingent upon issuance by CDFW of the UCP Incidental Take Permit and CDFW written approval of the Interim Mitigation Plan reflecting the size and location of the Conservation Easement as described in the Recitals and **Exhibit A** and otherwise consistent with this Agreement. UCP shall deposit the Interim Habitat Management Fund, and County shall submit for recordation the Conservation Easement, within five (5) business days of CDFW's issuance of the UCP Incidental Take Permit and approval of the Interim Mitigation Plan. UCP shall use its best efforts to obtain such approval as quickly as feasible.

7. County shall periodically withdraw sufficient funds from the Interim Habitat Management Fund prior to the commencement of interim habitat management activities as expenses are incurred for that fiscal year in accordance with the Interim Mitigation Plan.

8. County shall return and release to UCP any unused funds in the Interim Habitat Management Fund remaining for the Interim Mitigation Plan within thirty (30) days of the later of the following events: USFWS and CDFW issuance of the Fort Ord HCP ITPs or the final disposition of any litigation challenging the Fort Ord HCP and/or Fort Ord HCP ITPs.

## **C. MISCELLANEOUS TERMS**

1. This Agreement may be modified or terminated only as mutually agreed in writing by the Parties. In no event shall UCP agree to any modification or termination without first securing the approval of, or a statement in writing of "no objection" from, CDFW.

2. Any or all obligations created by this Agreement for any individual Party may, as the law permits, be transferred or assigned by that Party to a third party; provided, however, any such transfer or assignment must be approved in writing by the other Parties, which approval shall not be unreasonably withheld, conditioned or delayed.

3. This Agreement shall not be effective until it has been signed on behalf of each of the Parties by their respective authorized representatives.



4. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original; and counterpart signature pages may be detached and assembled to form a single original agreement. This Agreement may be executed and delivered by the exchange of electronic facsimile or portable document format (.pdf) copies or counterparts of the signature page which shall be considered the equivalent of ink signature pages for all purposes.

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

6. 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.

7. This Agreement shall be construed as a whole and in accordance with its fair meaning. The organization and format of this Agreement (including the numbering of, or the captions, headings, or titles to, any sections or paragraphs of this Agreement) are intended solely for convenience of reference and shall not be used to construe the scope, meaning, intent, or interpretation of any part of this Agreement. Whenever used in this Agreement, the word "including" shall be deemed to be followed by the words "but not limited to." Each number, tense, and gender used in this Agreement shall include any other tense, number, or gender where the context and references so require. Any pronoun used in this Agreement shall be read in the singular or plural number and in such gender as the context may require. 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, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Agreement held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Agreement shall continue to be valid and binding upon the Parties.

8. In the event of any action or proceeding in law or in equity arising out of or in connection with this Agreement or to enforce or interpret any of the terms of this Agreement, the prevailing Party or Parties in such action shall be entitled to have and recover from the non-

prevailing Party or Parties reasonable attorneys' fees, including fees on appeal, in addition to such other relief as may be granted. Each Party shall bear its own attorneys' fees and costs incurred in the negotiation and implementation of this Agreement.

9. Each person signing this Agreement on behalf of a Party expressly represents and warrants that he or she has received full and complete authority to sign this Agreement on behalf of that Party, whether the Party is an individual or an entity, by the exercise of any necessary powers governing the execution of contracts by that Party and that no further approval of any kind is necessary to bind that Party to this Agreement.

## **II. INDEMNITY**

UCP shall indemnify and hold County and FORA, and their officers, directors, partners, affiliates, principals, employees, agents, successors and permitted assigns (each an "Indemnified Party"), harmless from and against all claims, demands, losses, damages, liabilities, penalties, fines, assessments and actions and all related attorneys' fees and expenses and costs of litigation (collectively "Claims") for injury or death of any person or loss of or damage to tangible real or tangible personal property or the environment and from and against any Claims arising from or related to the approval of this Agreement. UCP shall also defend, indemnify and hold the County and its officers, directors, partners, affiliates, principals, employees, agents, successors and permitted assigns (each an "Indemnified Party") from and against any Claims brought under the Conservation Easement. The County or FORA shall notify UCP in writing promptly upon learning of any Claim for which indemnification may be sought, provided that the failure to do so shall not affect the indemnity except to the extent UCP is prejudiced thereby. UCP shall have control of the defense or settlement provided that no settlement that materially affects the obligations under this Agreement of the County or FORA shall be entered into without the affected Party's prior written approval, which shall not be unreasonably withheld or delayed, and provided further that the Indemnified Party shall have the right to participate in the defense or settlement with counsel of its own selection and at its sole expense. The Indemnified Party shall reasonably cooperate with the defense and at UCP's expense. Nothing in this Section II shall be understood or construed to mean that UCP shall indemnify the County or FORA or any of their respective officers, directors, employees or agents for any wrongful acts, willful misconduct, active negligence or omission of the County, FORA or their officers, employees, agents, or their consultants or contractors or solely as a result of County's or FORA's ownership of the County North Property.

## **III. NOTICES**

Formal notices, demands, and communications among the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt or facsimile, to the principal office of the Parties as follows:

**Fort Ord Reuse Authority:**

ATTN: Michael A. Houlemard, Jr.,  
Executive Officer  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, California 93933

**County:**

ATTN: Carl Holm, Acting Director  
Monterey County Resource Management Agency  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901

**UCP East Garrison, LLC**

James W. Fletcher  
Chief Operating Officer  
UCP East Garrison, LLC  
Benchmark Communities  
99 Almaden Blvd, Suite 400, San Jose, CA 95113

With a copy to:

**UCP East Garrison, LLC**

Allen Bennett, Esq.  
Vice President and General Counsel  
548 W. Cromwell, Suite 104  
Fresno, CA 93711

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

In addition, a copy of all notices under this Agreement shall be contemporaneously provided to CDFW at the following address:

California Department of Fish and Wildlife  
ATTN: Habitat Conservation Manager  
Central Region  
1234 E. Shaw Avenue  
Fresno, California 93710

**IV. LIST OF EXHIBITS**

The following listed Exhibits are made a part of this Agreement:

- Exhibit A: Map entitled "*East Garrison CTS Preservation and Habitat Restoration Area*," Live Oak Associates, Inc. November 22, 2013 updated September 2, 2014
- Exhibit B: East Garrison CTS Interim Mitigation Monitoring Plan, Live Oak Associates, Inc., December 19, 2013 updated September 2, 2014
- Exhibit C: Form of Conservation Easement Deed (CTS Preservation and Habitat Restoration Area) [Working Draft under review by CDFW]

###

DRAFT

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

**FORT ORD REUSE AUTHORITY**

BY: \_\_\_\_\_  
Michael A. Houlemard, Jr.  
Executive Officer

**COUNTY OF MONTEREY**

BY: \_\_\_\_\_  
Chair, Board of Supervisors of the  
County of Monterey

**UCP EAST GARRISON, LLC**  
a Delaware limited liability company,

BY: \_\_\_\_\_  
its Chief Operating Officer

###

**Exhibit A**

***“CTS Preservation and Habitat  
Restoration Area”***

*Live Oak Associates, Inc.*

*November 22, 2013 Updated September 2, 2014*

DRAFT

**Exhibit B**

**East Garrison CTS Interim Mitigation Monitoring Plan**

*Live Oak Associates, Inc.*

*December 19, 2013 Updated September 2, 2014*

DRAFT

**Exhibit C**

**Form of Conservation Easement Deed  
(CTS Preservation and Habitat Restoration Area)  
[Working Draft under Review by CDFW]**

DRAFT



# **Placeholder for Item 8c**

**Monterey Bay Economic Partnership  
Implementation Plan Report**

---

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

# **Placeholder for Item 8d**

**Consider Executive Officer Compensation  
Adjustment**

---

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

# **Placeholder for Item 8e**

**Post Reassessment Items**

---

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

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b>	Environmental Services Cooperative Agreement Quarterly Update	
<b>Meeting Date:</b>	January 9, 2015	<b>INFORMATION</b>
<b>Agenda Number:</b>	8f	

### 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 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, 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 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/ESCA 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 the work to comply with grant/AOC requirements. Current status follows:

Item	Originally Allocated	Accrued through June 2014
FORA PLL Self-Insurance/Policy Purchase	\$ 916,056	\$916,056
Reimburse Regulators & Quality Assurance	4,725,000	xxx
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	xxx
FORA Administrative Fees	3,392,656	
<b>Total</b>	<b>\$97,728,609</b>	<b>\$81,513,982</b>
	<b>ESCA Remainder</b>	<b>\$xxx</b>

xxx: amounts will be provided in final packet

It is important to highlight that data collected during the ESCA investigation stage remains under review by the regulators who determine when remediation 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 working with the Army and Regulators to mitigate the effects these may have on 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.

On November 25, 2014 the U.S. EPA signed the Record of Decision for the ESCA Group 3 properties located in: the County of Monterey (at Laguna Seca), the City of Monterey (south of South Boundary Road) and Del Rey Oaks (south of South Boundary Road). The ESCA Group 3 properties also include the Monterey Peninsula College (MPC) property known as the Military Operations in Urban Terrain (MOUT) facility. The Record of Decision (ROD) records the Regulator's and Army's decision on the cleanup of these properties and what controls are required to continue to protect the public health and safety.

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 8g**

**Elect 2015 Board Officers**

---

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

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** Confirm Chair Appointment to Fill Finance Committee Vacancy

**Meeting Date:** January 9, 2015

**Agenda Number:** 8h

**ACTION**

### RECOMMENDATIONS:

Confirm the Chair's appointment to fill a vacancy on the Finance Committee.

### BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA") Finance Committee ("FC") is currently functioning with five members, comprised of four voting and one ex-officio members from the FORA Board. Their appointments are recommended by the FORA Chair and confirmed by the Board each year in February. When a committee member can no longer serve out their term, the same procedure for new appointments is followed.

FC member Graham Bice, UC Santa Cruz, has announced that he is unable to continue serving on the Committee due to the time constraints of his new responsibilities. FORA Chair is proposing FORA ex-officio alternate Andre Lewis, CSUMB, to replace Graham Bice; Board concurrence is required.

### FISCAL IMPACT:

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

### COORDINATION:

Executive Committee, FC Chair Oglesby

Prepared by \_\_\_\_\_  
Ivana Bednarik

Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.



# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Outstanding Receivables	
<b>Meeting Date:</b> January 9, 2015 <b>Agenda Number:</b> 10a	<b>INFORMATION</b>

### RECOMMENDATIONS:

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

### BACKGROUND/DISCUSSION:

Development Fee/Preston Park: In 1997, the U.S. Army and FORA executed 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/was the subject of litigation.

On November 10, 2014, Marina and FORA agreed to settle pending litigation primarily by Marina acquiring FORA's interest in Preston Park. Currently, FORA and Marina are finalizing terms of a settlement agreement; it is expected that it will be concluded and executed by 12/31/2014. The \$35 million settlement amount includes \$2,078,835 payment of the outstanding fees.

### 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

<b>Subject:</b> Administrative Committee	
<b>Meeting Date:</b> January 9, 2015 <b>Agenda Number:</b> 10c	<b>INFORMATION</b>

### **RECOMMENDATION:**

Receive a report from the Administrative Committee.

### **BACKGROUND/DISCUSSION:**

The Administrative Committee met on October 1, 2014, November 5, 2014, and December 3, 2014, the approved 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.

# **Placeholder for Item 10d**

**Post Reassessment Advisory Committee**

---

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

# **Placeholder for Item 10e**

**Regional Urban Design Guidelines Task Force**

---

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

# **Placeholder for Item 10f**

**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:** January 9, 2015

**Agenda Number:** 10g

**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](mailto:board@fora.org) or mailed to the address below:

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

DRAFT

**-END-**

**DRAFT  
BOARD PACKET**