



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, September 2, 2015

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

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. August 5, 2015 Minutes

6. SEPTEMBER 11, 2015 BOARD MEETING- AGENDA REVIEW

INFORMATION/ACTION

7. BUSINESS ITEMS

- a. Base Reuse Plan (BRP) Post-Reassessment Progress Update INFORMATION
 - i. DRAFT Regional Urban Design Guidelines (RUDG) Update
 - ii. BRP Reassessment Report: Categories 1 & 2 Progress Update
 - iii. BRP Reassessment Report: Category 3 Status Update
- b. Water Augmentation Project Planning Process – Status Report INFORMATION
on Meetings between Monterey Regional Water Pollution Control Agency, Marina Coast Water District (MCWD) and FORA
- c. Marina Coast Water District- Water and Wastewater INFORMATION
Facilities Agreement Dispute Resolution – Update
- d. Fort Ord Reuse Authority Prevailing Wage Program INFORMATION/ACTION
- e. Fort Ord Reuse Authority Building Removal Update INFORMATION

8. ITEMS FROM MEMBERS

9. ADJOURNMENT

Next Meeting Date: September 16, 2015

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.



FORT ORD REUSE AUTHORITY

ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, August 5, 2015 | FORA Conference Room
920 2nd Avenue, Suite A, Marina CA 93933

1. CALL TO ORDER

Co-chair Michael Houlemard called the meeting to order at 8:05a.m. The following were present:

**voting members, AR = arrived after call to order*

Layne Long, City of Marina*
Melanie Beretti, Monterey County
John Dunn, City of Seaside*
Tim O'Halbran, City of Seaside
Diana Ingersoll, City of Seaside
Elizabeth Caraker, City of Monterey*
Vicki Nakamura, MPC
Anya Spear, CSUMB
Chris Placco, CSUMB
Steve Matarazzo, UCSC

Mike Zeller, TAMC
Peter Le, MCWD
Wendy Elliott, MC
Lyle Shurtleff, BRAC
Mike Gallant, MST
Lisa Rheinheimer, MST
Andy Sterbenz, Schaaf & Wheeler
Bob Schaffer

FORA Staff:
Michael Houlemard
Steve Endsley
Jonathan Garcia
Ted Lopez
Peter Said
Crissy Maras
Maria Buell

2. PLEDGE OF ALLEGIANCE

Pledge of allegiance led by Peter Le.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Michael Houlemard stated that construction by Bureau of Land Management will resume soon.

Layne Long arrived after roll call.

Chris Placco announced that CSUMB's Master Plan Charrette scheduled for October 8th from 4:30 -7 p.m. at the Student Center. He invited the Public to attend. Lyle Shurtleff, BRAC said that prescribed burns have been delayed due to fire activity in California.

4. PUBLIC COMMENT PERIOD

None.

5. APPROVAL OF MEETING MINUTES

- a. July 5, 2015 Administrative Committee Minutes
- b. July 15, 2015 Administrative Committee Minutes

MOTION: Chris Placco moved, seconded by Melanie Beretti to approve the July 5, 2015 and July 15, 2015 Administrative Committee minutes.

MOTION PASSED UNANIMOUSLY

6. AUGUST 14, 2015 BOARD MEETING- AGENDA REVIEW

Michael Houlemard reviewed the draft Board agenda packet and said that there was a small chance that the upcoming August board meeting might be cancelled. However, those items identified as "information" would be sent electronically to the Board.

Mr. Houlemard reviewed the consent Board agenda. Under Item 6a, he referenced FORA's correspondence dated July 30 to Marina Coast Water District (MCWD) and their acceptance of FORA's terms. Mr. Houlemard said letter is available and will be discussed on a separate item. Under Item 6b, CIP Distribution was done electronically and Crissy Maras can send hard copies to those requesting them. Mr. Houlemard stated all items under Executive Officer are for "information" only. U.S. Fish & Wildlife indicated no issues with the retirement of Ms. Hylliard and they committed to finalizing this review. Mr. Houlemard referenced their meeting with John Laird at the time of this visit.

Steve Matarazzo said Debbie Hylliard postponed her retirement until end of August.

7. BUSINESS ITEMS

a. FORA/Marina Coast Water District Water & Wastewater Facilities Agreement

- i. Article 10.1 Dispute Resolution Procedure – Status Report
- ii. Article 3.2 Additional Facilities – Update MCWD/Monterey Regional Water Pollution Control Agency negotiations

Assistant Executive Officer, Steve Endsley, reviewed the deadlines pursuant to the Facilities Agreement and discussed ongoing water related issues related to the Marina Coast Water District Water & Wastewater. Staff responded to questions from the Committee and the public.

b. RUDG Schedule of Events

Principal Planner, Jonathan Garcia, indicated that the report references dates for future design guidelines meetings. The first scheduled meeting is coming up and there are three more to follow. He said feedback is encouraged and needed in order to finalize. Mr. Houlemard said the draft guidelines will be brought back for more internal input from the Administrative Committee.

c. FY 2015/16 FORA Capital Improvement Program – Distribution

Crissy Maras said a Link to the report was provided in the Agenda packet and that she would provide hard copies to those that requesting them.
No other questions.

d. Post Reassessment Work Program Categories 1 and 2 & Request for Proposals Report

Assistant Planner, Ted Lopez, said Staff is preparing a RFP to conduct an environment review of Category 1 and 2. The Scope of Work is seeking an analysis and preparation of a checklist and then begin CEQA review. Mr. Houlemard said Staff is making sure all steps are done correctly. The RFP release would be sometime in September and closing response date due in October.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT

Meeting was adjourned at 9:17 a.m.

- START -

**DRAFT
BOARD PACKET**



FORT ORD REUSE AUTHORITY

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REGULAR MEETING FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Friday, September 11, 2015 at 2:00 p.m.

910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

INFORMATION

- a. New Staff Introduction
- b. Staff Recruitment Update

5. CONSENT AGENDA

- a. Approve July 10, 2015 Minutes
- b. Approve Salary Schedule for Project Coordinator/Specialist

ACTION
ACTION

6. BUSINESS ITEMS

- a. Base Reuse Plan (BRP) Post-Reassessment Progress Update
 - i. DRAFT Regional Urban Design Guidelines (RUDG) Update
 - ii. BRP Reassessment Report: Categories 1 & 2 Progress Update
 - iii. BRP Reassessment Report: Category 3 Status Update
- b. Water Augmentation Project Planning Process – Status Report on Meetings between Monterey Regional Water Pollution Control Agency, Marina Coast Water District (MCWD) and FORA
- c. Marina Coast Water District- Water and Wastewater Facilities Agreement Dispute Resolution – Update
- d. Fort Ord Reuse Authority Prevailing Wage Program
- e. Fort Ord Reuse Authority Building Removal Update

INFORMATION

INFORMATION

INFORMATION

INFORMATION/ACTION

INFORMATION

7. 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.

8. EXECUTIVE OFFICER'S REPORT

- a. Outstanding Receivables
- b. Habitat Conservation Plan Update

INFORMATION
INFORMATION

- c. Administrative Committee
- d. Post Reassessment Advisory Committee
- e. Regional Urban Design Guidelines Task Force
- f. Veterans Issues Advisory Committee
- g. Travel Report
- h. Public Correspondence to the Board

INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION

9. ITEMS FROM MEMBERS

10. ADJOURNMENT

DRAFT

NEXT BOARD MEETING: OCTOBER 9, 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.

Placeholder for Item 5a

Minutes July 10, 2015 Board Meeting

This item will be included in the final Board packet.

Placeholder for Item 5b

**Adopt Salary Schedule for Project Coordinator /
Specialist**

**This item will be included in the final Board packet,
pending the Executive Committee review.**

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: Base Reuse Plan (BRP) Post-Reassessment Progress Update

Meeting Date: September 11, 2015

Agenda Number: 6a

INFORMATION

RECOMMENDATION(S):

- i. Receive an update regarding progress on Draft Regional Urban Design Guidelines (RUDG).
- ii. Receive an update regarding progress on Categories 1 and 2 identified in the Base Reuse Plan (BRP) Reassessment Report (December 2012).
- iii. Receive an update on status of BRP Reassessment Report Category 3 items.

BACKGROUND/DISCUSSION:

i. Draft RUDG:

The RUDG Task Force met at 9:00am on Thursday, June 25, 2015 to review a RUDG Administrative Draft. Staff and consultants have made significant progress towards the RUDG completion incorporating existing plans and community input, and contributing to Base Reuse Plan (BRP) completion and regional economic development. Members reviewed draft materials in detail and provided feedback. Along with member input, representatives from the CSUMB Campus Master Planning process and consultant team contributed feedback and suggestions. Community representation from Fort Ord developers, construction trades, and a broad set of community interests also yielded constructive feedback.

The Task Force met again on August 18 and 27 to review updates to the RUDG document. . Members provided additional input on refinements and adjustments, and recommended delaying the planned September Board presentation to allow additional review, consultant refinement of deliverables, and incorporation of Task Force (see Executive Officer's Report for approved June 25 and August 18 Task Force minutes).

The next RUDG Task Force meeting was set for 11:00 am, Thursday September 10, 2015.

As next steps, Staff anticipates providing a thorough informational report at the October Board meeting and action report at the November Board meeting.

ii. Categories 1 and 2 Progress:

The FORA Board of Directors approved the 2014 Work Plan at its February 13, 2014 meeting, which included completion of the BRP Reassessment Report for Categories 1, 2, and 3 items. At the November 14, 2014 Board of Directors meeting, staff presented the Board with an information update on Categories 1 and 2. Staff noted that Categories 1 and 2 would likely require environmental clearance under the California Environmental Quality Act (CEQA). Category 1 focuses on text and figure changes and Category 2 focuses on prior Board action and regional plan consistency.

The Categories 1 and 2 environmental clearance was based on special land use attorney Alan Waltner's review of "CEQA and Land Use Implications of Potential Revisions to the FORA BRP" (**Attachment A**). In Mr. Waltner's memorandum, it was recommended that FORA contract an environmental consultant to prepare an Initial Study (I/S) Checklist to determine the type of environmental clearance for Categories 1 and 2.

On August 13, 2015, staff released a Request for Proposal (RFP) to select an environmental consultant to review and prepare environmental clearance for Categories 1 and 2 (**Attachment B**). A total of 25 environmental consultant firms were contacted and invited to submit a proposal by the September 2, 2015 deadline (**Attachment C**).

Staff will review all submitted proposals to identify 3-4 environmental consultants to interview. An outside interview panel will conduct consultant interviews and make a recommendation to staff. Consultant interviews are scheduled to take place the week of September 14-18.

Staff anticipates returning to the October or November Board meeting with the selected environmental consultant and signed contract agreement, contingent on Board approval (**Attachment D**).

iii. Category 3 Status:

The BRP Reassessment report identified Category 3 as Implementation of BRP Policies and Programs. Under this Category, BRP Policies and Programs were identified as incomplete. For example, the BRP identifies FORA as the responsible party to develop the RUDG (see section i. above for additional details). FORA staff met with individual jurisdiction representatives on Category 3 items and received status updates. Several cross-jurisdictional policies and programs were identified. FORA staff will provide a more detailed report at the next Board meeting.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Staff time for this item is included in the approved FORA budget. Funding to finish Categories 1 and 2 Post-Reassessment items is included in the FY 15-16 approved budget (carried over from the previous FY).

COORDINATION:

Administrative Committee, Executive Committee.

Prepared by _____
Ted Lopez

Approved by _____
Michael A. Houlemard, Jr.

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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 action¹, 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

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 additional 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-level² 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.

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.

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

² This memorandum is provided for the benefit of FORA. Third parties, such as local agencies, land owners, developers, and financiers, 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;

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 actions⁷ within the area affected have become effective⁸, 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

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

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

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.



Fort Ord Reuse Authority (FORA) Request for Proposals (RFP)

Consultant Services - CEQA Review of Categories 1 and 2 of the Fort Ord Base Reuse Plan (BRP) Final Reassessment Report (December 14, 2012)

Critical Dates:

Proposals distributed: Thursday, August 13, 2015
Pre-submittal meeting: FORA may elect to hold a pre-submittal meeting
Proposal submittals due: **Wednesday, September 2, 2015 by 4:00 p.m., PST**
Consultant Interviews: September 8-11, 2015

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Purpose

This Request for Proposal (RFP) invites consultant firms to submit a proposal to review and analyze Categories 1 and 2 of the Fort Ord Base Reuse Plan (BRP) Final Reassessment Report (BRP Reassessment). The consultant firm shall review all material and documents discussed in this RFP and determine the best approach to comply with the California Environmental Quality Act (CEQA). If the consultant firm's analysis determine that the activities described in Categories 1 and 2 qualify as a "project" (defined under CEQA), either an exemption, Initial Study, Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report (EIR) will be completed. It is noted that the Fort Ord Reuse Authority (FORA) Board of Directors is the Lead Agency under CEQA and will use the consultant firm's determination as a tool when Categories 1 and 2 modifications to the BRP are considered.

Background

The former Fort Ord is located in northern Monterey County, approximately 120 miles south of San Francisco, between the cities of Monterey to the southwest and Salinas to the northeast. It borders Monterey Bay National Marine Sanctuary to the west and extends from the cities of Seaside, Sand City, Del Rey Oaks and Monterey in the south to Marina in the north and to the Salinas River to the east encompassing 45 square miles / approximately 28,000 acres.

The Fort Ord U.S. Army Military Reservation closure was announced by Congress in 1991 as part of the Base Realignment & Closure (BRAC) nationwide process. Subsequently, State of California legislation created FORA in 1994 to oversee the civilian reuse and redevelopment of the former Fort Ord. In addition, State legislation established the FORA Board of Directors (FORA Board) consisting of 13 voting and 12 ex officio non-voting members.

The FORA Board is required to manage the conversion of the Fort Ord from military service to civilian reuse and redevelopment. This conversion involves enhanced economic recovery, promotion of education and protection of natural resources referred to as the three "E's" – Economy, Education and Environment.

Context

FORA's mission is to prepare, adopt, finance, and implement a plan for the former Fort Ord, including land use, transportation systems, land/water conservation, recreation and business operations.

In order to meet these objectives, the FORA Board initiated the BRP in 1996. The BRP was supported by a programmatic Environmental Impact Report (1997 EIR) in compliance with CEQA. Subsequently, the BRP became the official local regional plan to enhance, promote and deliver economic recovery, while protecting designated natural resources.

The adopted BRP and 1997 EIR generated significant community interest both in support and in opposition. Subsequent to the 1997 BRP adoption, Ventana Chapter of the Sierra Club challenged the adequacy of the 1997 EIR document.

As a component of the Ventana Chapter’s legal challenge, a settlement was reached that involved FORA’s adoption of Chapter 8 to its Master Resolution. In accordance with Chapter 8 of the FORA Master Resolution, the Reuse Plan underwent a comprehensive reassessment that was completed and finalized into a BRP Reassessment (December 14, 2012). The BRP Reassessment was a community-wide regional effort that identified a range of principle items for FORA Board’s consideration (**Attachment A**).

In response to community interest, FORA Board created the Post Reassessment Advisory Committee (PRAC). The PRAC conducted an examination of Categories 1 (BRP Corrections and Updates) and 4 (Policy and Program Modifications) in the BRP Reassessment recommending text and figure corrections (**Attachments B and C**).

With respect to Category 2, the FORA Board directed staff to hire an attorney specializing in land-use law. Special land-use attorney Mr. Alan Waltner was contracted by FORA to conduct an assessment of Categories 1 through 5. In a memoranda to FORA, Mr. Alan Waltner recommended FORA hire an environmental consultant to prepare an Initial Study on Categories 1 and 2. The hiring of an environmental consultant would assist in the appropriate CEQA process to complete and begin to address discovered findings. Mr. Waltner opined that FORA’s Consistency Determinations were conducted correctly and that the resulting corrections recommended in Category 1 could be included in an Initial Study analysis (**Attachment D**).

Subsequently, the FORA Board directed staff to contract an environmental consultant to complete an Initial Study of Categories 1 and 2 (a, b, c, and d) (**Table 1. Categories 1 & 2 Reuse Plan Reassessment recommended corrections**). The Initial Study would serve as the basis to consider the best approach to perform the appropriate CEQA review. In addition, completion of CEQA review Initial Study - Initial Study will enable FORA Board to incorporate any prior FORA Board actions into BRP land use concept map modifications.

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

<i>Category</i>	<i>Topics</i>
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	

Scope of Work

The FORA Board has identified prior actions taken in Categories 1 and 2 as requiring completion of a CEQA review and process. Subsequently, the Scope of Work is divided into five tasks each pertaining to Categories 1 and 2: **Task 1: Analysis and Determination of Categories 1 and 2 – Project or No Project; Task 2: Initial Study, Determination and Deliverables for Categories 1 and 2; Task 3: Initial Study, CEQA Process and Deliverables for Categories 1 and 2; Task 4: Meetings and Presentations, and; Task 5: Mutual Responsibilities Related to Scope of Work.** The environmental consultant shall perform and complete all work, as appropriate, identified in Tasks 1, 2, 3, 4 and 5.

Task 1: Analysis and Determination of Categories 1 and 2 – Project or No-Project:

- A. A review and analysis of Categories 1 and 2 to determine whether this activity is defined under CEQA as a “project” and subject to CEQA compliance.
- B. Prepare an administrative draft “determination opinion” detailing its findings and the determination to include the appropriate CEQA process to complete.
- C. Prepare and finalize a written “determination opinion” and deliver a presentation to FORA Board.
- D. If in the “determination opinion” the consultant firm finds the activity is not a “project” or a “project” that qualifies for an exemption, the appropriate CEQA exemption will be prepared and filed with the County of Monterey, Clerk of the Board.

Task 2: Initial Study, Determination and Deliverables for Categories 1 and 2:

- A. Pending the outcome of Task 1, the consultant firm shall review Category 1 text and figure corrections in the BRP Reassessment and specific recommendations offered by the PRAC, and compile text and figure corrections into final form for use in the Initial Study. This deliverable will require retention of original BRP figures for historical purposes and creation of 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 in the BRP Reassessment considerations, and special counsel Alan Waltner’s memoranda, the consultant shall 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 shall contact and communicate with Mr. Waltner to receive advice to support completion of this deliverable.
- C. Complete modified circulation related maps and text in the BRP for use in the Initial Study. The consultant will use **Attachment A.** and shall contact and communicate with special counsel Alan Waltner to receive advice 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. Present deliverables and findings described under **Scope of Work Task 1: Initial Study, Determination and Deliverables for Categories 1 and 2, A, B, C. and D.** to the FORA Board.
- F. Complete an Administrative Draft Initial Study under CEQA of deliverables and findings described in **Scope of Work Task 1: Initial Study, Determination and Deliverables for Categories 1 and 2, A, B, C. and D.**
- G. Provide FORA staff with an Administrative Draft Initial Study.
- H. Finalize Initial Study with a detailed written analysis of determination for CEQA process.
- I. Prepare and present Initial Study findings and determination to FORA Board.
- J. 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.

Task 3: Initial Study, CEQA Process and Deliverables for Categories 1 and 2:

- E. Pending outcome of the Initial Study, complete appropriate CEQA on Categories 1 and 2 principle items prior to FORA Board consideration of codification of prior Reuse Plan changes.
- F. Prepare all administrative draft CEQA documents as determined by the Initial Study. Administrative draft CEQA documents shall include, but not be limited to, Negative Declaration, Mitigated Negative Declaration or EIR.
- G. Prepare and finalize all draft CEQA documents as determined by the Initial Study. Draft CEQA documents shall include, but not be limited to, Negative Declaration, Mitigated Negative Declaration or EIR. Draft CEQA documents shall be used for public review and comment.
- H. Review, analyze and prepare all written comments that are submitted in response to the circulation of the Initial Study and CEQA documents.
- I. Prepare and finalize all CEQA documents as determined by Initial Study.
- J. Prepare and present all CEQA documents to FORA Board.

Task 4: Meetings and Presentations for Categories 1 and 2:

Attend up to seven (7) meetings as determined necessary by FORA staff. Tentatively, two (2) meetings shall be conducted with the FORA Administrative Committee and two (2) meetings shall be conducted with the FORA Board for presenting findings and deliverables.

Task 5: Mutual Responsibilities Related to Scope of Work

Close cooperation will be required between FORA staff and consultant. FORA's specific responsibilities are listed below:

- A. FORA staff will provide a project manager or coordinator as a single point of contact.
- B. FORA staff, from a range of divisions, will attend and participate in project meetings as appropriate.
- C. FORA staff will support the consultant's public engagement throughout the project and solicit the attendance of third parties whose participation FORA deems important.
- D. FORA will make every effort to ensure the attendance of elected officials, committee members, and stakeholders as appropriate at key meetings and presentations.
- E. FORA will provide appropriate meeting room(s) for any public engagement meetings, workshops, presentations, and studio workspace, including securing the space.

End of Scope of Work

Contents of Proposal

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

- A. A proposal describing how your firm will complete this work (20 pages or less). Work completion timelines. Note: four (4) **timelines** are required for:
 - 1. Review Categories 1 and 2 to determine the appropriate CEQA process.
 - 2. An Initial Study and proposal to prepare a Negative Declaration.
 - 3. An Initial Study and proposal to prepare a Mitigated Negative Declaration.
 - 4. An Initial Study and proposal to prepare an Environmental Impact Report.

- B. Work completion costs. Note: four (4) **cost estimates** are required for:
 - 1. Review Categories 1 and 2 to determine the appropriate CEQA process.
 - 2. An Initial Study and proposal to prepare a Negative Declaration.
 - 3. An Initial Study and proposal to prepare a Mitigated Negative Declaration.
 - 4. An Initial Study and proposal to prepare an Environmental Impact Report.

- C. Statement of Qualifications.
- D. Examples of relevant experience providing similar CEQA environmental services.
- E. Three recent client references.

Proposal Submission Instructions

Four (4) bound copies and an electronic copy of the proposal must be submitted, with all copies having been signed by the individual or, if a company, the company official with the power to bind the company in its proposal.

Questions regarding this RFP and FORA's specific submission requirements may be directed to Ted Lopez, Associate Planner. Mr. Lopez can be reached by telephone at (831) 883-3672, or by e-mail at ted@fora.org.

The Proposal is due no later than Wednesday, September 2, 2015 by 4:00 p.m., PST to:

Ted Lopez
Associate Planner
Fort Ord Reuse Authority
920 2nd Ave., Suite A
Marina, CA 93933

An incomplete proposal or proposal received after the due deadline will not be considered.

Criteria for Selection

The RFP submittal will be evaluated on the following factors:

- A. Demonstrated ability to competently and efficiently complete CEQA process for complex land use issues.
- B. 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).
- C. Merits of materials included in your proposal.
- D. Timelines and Cost Estimates as described in **Contents of Proposal**.

Tentative Schedule

RFP distributed:	Thursday, August 13, 2015
Pre-submittal meeting:	FORA reserves right to hold pre-submittal meeting
Proposal submittal due:	Wednesday, September 2, 2015 by 4:00 p.m., PST
Consultant Interviews:	September 8-11, 2015
Consultant Selection:	September 14-18, 2015
Finalize Contract/Contract Award:	September / October 2015
Contract Work Begins:	October 2015
Estimated Completion:	April 2016

Addenda

Any subsequent changes in the RFP from the date of issuance to the date of submittal, such as that which might result from input at the pre-proposal conference, will go into an addendum by FORA staff to those parties who have provided the proper notice of interest in responding to the RFP. We encourage all potential proposers to register their intent to submit by phone, mail or e-mail to make sure that they receive notice of addenda on a timely basis.

Equal Opportunity Program Requirements

FORA is committed to equal opportunity in solicitation of professional service consultants doing business with, or receiving funds from FORA. FORA encourages prime consultants to share this commitment.

Acceptance of Contract

Subsequent to the selection of the awarded consulting firm, the contents of the proposal shall become a contractual obligation if a contract ensues. Failure of a consultant to accept this obligation will result in the cancellation of the contract award.

Prime Consultant Responsibilities

The selected consultant will be required to assume responsibility for all services offered in their proposal. The selected consultant will be the sole point of contact with regards to contractual matters, including payment of any and all charges resulting from the contract.

Disclosure

As a general rule, all documents received by FORA are considered public records and will be made available for public inspection and copying upon request. If you consider any documents submitted with your response to be proprietary or otherwise confidential, please submit a written request for a determination of whether the documents can be withheld from public disclosure no later than ten days prior to the due date of your response. If you do not obtain a determination of confidentiality prior to the submittal deadline, any document(s) submitted will be subject to public disclosure.

Terms and Conditions

Issuance of the RFP does not commit FORA to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure a contract for services. All respondents should note that the execution of any contract pursuant to this RFP is dependent upon the approval of the FORA Board.

FORA reserves the right to retain all proposals for a period of sixty (60) days for examination and comparison. FORA also reserves the right to waive non-material irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that the proposals are qualified by specific limitations.

Once the consultant is selected and all scoping and financial negotiations are completed, the consultant will be asked to execute FORA's Standard Professional Services Agreement (**Attachment F**) and return it to FORA with all necessary documentation including Certificates of Insurance. Once the Authority Counsel has reviewed and approved the signed agreement, a presentation will be scheduled for approval of the contract by the FORA Board, if appropriate.

All studies, reports, documents, and other materials prepared by or in possession of the consultant as part of work or services under the contract shall include electronic copies where possible and shall become the permanent property of FORA and shall be delivered to FORA upon demand.

Online Resources

In carrying out this work a number of documents from various sources may be reviewed:

- [FORA Website](#)
- [Base Reuse Plan](#)
- [Reassessment Report](#)
- [Transportation Agency for Monterey County \(TAMC\)](#)
- [Monterey Bay Unified Air Pollution Control District](#)
- [Marina Coast Water District](#)
- [City of Marina](#)
 - [General Plan & Related Documents](#)
 - [Municipal Code](#)
 - [Dunes at Monterey Bay Specific Plan](#)
- [City of Seaside](#)
 - [General Plan & Related Documents](#)
 - [Zoning Code](#)
 - [Main Gate Specific Plan](#)
- [County of Monterey](#)
 - [Fort Ord Master Plan \(2001\)](#)

Development Project Links:

- [Marina Heights](#)
- [The Dunes at Monterey Bay](#)
- [Seaside Resort](#)
- [East Garrison Specific Plan](#)
- [East Garrison Pattern Book](#)
- [Veterans Cemetery](#)
- [Monterey Downs](#)
- [UC Monterey Bay Education, Science and Technology \(UC MBEST\) Master Plan](#)
- [Cypress Knolls](#)

Attachments

The RFP attachments referenced consist of the following:

- A. Final Reassessment Report, Fort Ord Reuse Plan Reassessment, cover page (December 14, 2012). <http://www.fora.org/BRPReassessment.html>.
- B. 3.2 Category 1 – BRP Corrections and Updates. <http://www.fora.org/RFP/Attachment-B 3-2Category1-BRP Corrections-Updates.pdf>.
- C. Post-Reassessment Advisory Committee (PRAC) – BRP Figure “Category 1” Recommendations. <http://www.fora.org/RFP/Attachment-C PRAC-BRP Figure Category 1 Recommendations.pdf>.
- D. Special counsel, Mr. Alan Waltner, Esq., Memoranda (September 3, 2013 and July 3, 2013). <http://www.fora.org/RFP/Attachment-D Special Counsel AlanWaltner091313-070313-Memoranda.pdf>.
- E. Chapter 3: Topics and Options, Table 10 Regional and Local Plan Consistency Needs. <http://www.fora.org/RFP/Attachment-E Chapter3 Topics-Options Table 10 Regiona-Local Plan Consistency Needs.pdf>.
- F. FORA Standard Professional Services Agreement. <http://www.fora.org/RFP/Attachment-F Professional Services Agreement.pdf>.

RFP Environmental Consultant Invite List

Consultant Firms	City	State
AECOM	San Jose	CA
Reimer Associates Consultants	Monterey	CA
Cypress Environmental / Land Use Planning	Aptos	CA
Environmental Policy Solutions, LLC	San Jose	CA
Hamilton Swift & Associates	Santa Cruz	CA
Dudek	San Francisco	CA
Golden State Planning & Environmental Consulting	Monterey	CA
EMC Planning Group	Monterey	CA
Kimley-Horn (Salinas office)	Salinas	CA
LSA Associates, Inc.	Berkeley	CA
Moule & Polyzoides, Architects and Urbanists	Pasadena	CA
Michael Baker Intl. (Formerly PMC - Monterey)	Oakland	CA
RBF Consulting	Marina	CA
David J. Powers & Associates	San Jose	CA
ICF International (formerly Jones & StokesAssoc)	San Jose	CA
Robert Bein, William Frost & Associates	San Jose	CA
Stephanie Strelow - Environmental Planning	Santa Cruz	CA
Rincon Consultants	Monterey	CA
MIG / TRA Consultants	Menlo Park	CA
Arcadis (satellite office)	Marina	CA
Willdan	Oakland	CA
Economic & Planning Systems	Oakland	CA
Keyser Marston	San Francisco	CA

Base Reuse Plan (BRP) – Reassessment Report: Categories 1 and 2

1	█											
2		█										
3			█									
4				█								
5					█							
6						█						
7							█					
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12												█
	06/1997	06/1997	07/1997	11/1998	12/2012	09/2014	02/2014	08/2015	09/2015	10-11 2015	10-11 2015	4/2016

Sept. 11, 2015
FORA Board
Meeting

1. Base Reuse Plan (BRP) adopted by FORA Board, June 13, 1997.
2. BRP Environmental Impact Report (EIR) certified by FORA Board, June 13, 1997.
3. Sierra Club – Ventana Chapter challenge EIR adequacy, July 1997.
4. Sierra Club – FORA reach settlement agreement; Master Resolution amended: Article 8.10.010 (h), November 30, 1998.
5. BRP Reassessment Report adopted by FORA Board, December 14, 2012
6. Alan Waltner recommendation: Categories 1 and 2, California Environmental Quality Act (CEQA) environmental clearance.
7. Board approves 2014 work plan to complete BRP Reassessment Categories 1 and 2 environmental clearance.
8. Request for Proposal (RFP) to complete Categories 1 and 2 environmental clearance released August 13, 2015.
9. **FORA Board: BRP Reassessment Report: Categories 1 and 2 Progress Update, September 11, 2015.**
10. FORA Board reviews / approve consultant contract October 9 or November 13, 2015 meeting.
11. Consultant contract work begins October / November 2015.
12. Estimated environmental clearance completion: April 2016.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Water Augmentation Project Planning Process – Status Report on Meetings between Monterey Regional Water Pollution Control Agency (MRWPCA), Marina Coast Water District (MCWD), and FORA	
Meeting Date:	September 11, 2015	INFORMATION
Agenda Number:	6b	

RECOMMENDATION(S):

Receive a recycled/reclaimed water planning update.

BACKGROUND/DISCUSSION:

As one of three potential ways (recycled/reclaimed, desalination, and conservation) to address future Fort Ord water demand, FORA, MRWPCA, and MCWD staff met a number of times over June, July, and August to support negotiations that would result in a coordinated recycled/reclaimed water project. FORA's participation ensures that FORA's interests are protected. In general terms, each party has certain interests, assets, and infrastructure that make negotiating a written agreement a desirable outcome. MCWD has built a significant portion of its RUWAP recycled trunk line and has certain recycled water rights negotiated previously with MRWPCA. MCWD also has an interest in delivering recycled/reclaimed water to Ord Community customers to meet contract objectives for FORA. MRWPCA is interested in moving its proposed Pure Water Monterey project advance treated water from its regional treatment plant north of Marina to the Seaside Groundwater Basin aquifer to achieve ground water replenishment.

MCWD and MRWPCA can both achieve cost savings by sharing in the cost of building/utilizing the recycled water trunk line infrastructure to serve both of their projects. FORA is interested in securing augmented water to mitigate its 1997 Base Reuse Plan impacts and serve Ord Community customers. FORA has the possibility to use a portion of a \$24 million line item in its Capital Improvement Program toward Fort Ord Water Augmentation, once agreement is in place that secures FORA's right to augmented water. The overall approach is that MCWD and MRWPCA would agree to jointly achieve their individual projects by applying collective resources. Staff will continue to offer regular updates to the policy-making boards, leading to consideration by the respective Boards of collectively beneficial "water resource cooperative agreements."

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

MCWD, MRWPCA, Administrative and Executive Committees.

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Marina Coast Water District – Water and Waste Water Facilities Agreement Dispute Resolution – Update	
Meeting Date:	September 11, 2015	INFORMATION
Agenda Number:	6c	

RECOMMENDATION:

Receive an update on the Fort Ord Reuse Authority (FORA)/Marina Coast Water District (MCWD) Dispute Resolution Procedure, outlined in the FORA/MCWD 1998 Water and Wastewater Facilities Agreement (**Attachment A**), and initiated on July 20th, 2015.

BACKGROUND:

The FORA Board received the Budget, MCWD and FORA staff presentations, and a MCWD recycled water planning update during their May, June and July 2015 meetings. At the June FORA Board meeting, FORA Board members identified disputed Budget elements as: \$470,000 Capital Reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project desalination project and the FY 2015/16 proposed 9% rate increase.

DISCUSSION:

On July 13, 2015, FORA received a Notice of Dispute from MCWD Interim General Manager Bill Kocher (**Attachment B**), outlining the MCWD Board's reasons for not adopting the FORA Board's proposed resolutions of the Budget's disputed elements. The Dispute Resolution Procedure was initiated at a meeting of Mr. Kocher and FORA Executive Officer Michael Houlemard held on July 20, 2015. The Procedure is outlined in Article 10.1 of the 1998 Agreement. Subsequent to that meeting, Executive Officer Houlemard responded to the July 13th Notice of Dispute (July 30, 2015 letter, **Attachment C**) outlining FORA's proposed resolution of the disputed elements. MCWD issued an August 4, 2015 letter (**Attachment D**), confirming their acceptance of FORA's proposed resolution of the dispute. At the direction of the Executive Committee, FORA responded with an August 10, 2015 letter (**Attachment E**), confirming resolution of the dispute and outlining a joint water augmentation planning process. Board agenda item 6b provides details on FORA, MRWPCA, and MCWD negotiations.

FORA staff recently received a number of questions and concerns about the process, which are described and responded to in **Attachment F**.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

MCWD staff

Prepared by _____ Reviewed by _____
Jonathan Garcia D. Steven Endsley

Approved by _____
Michael A. Houlemard, Jr.

AMENDMENT TO WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Amendment to Water/Wastewater Facilities Agreement ("Amendment") are the FORT ORD REUSE AUTHORITY ("FORA") and the MARINA COAST WATER DISTRICT ("MCWD"), which agree as follows:

1. Agreed Facts. The parties entered into an agreement dated March 13, 1998 and entitled "Water/Wastewater Facilities Agreement" ("Agreement"). Subsequent changes in applicable law and circumstances make it mutually beneficial for the parties to amend the Agreement to add the option of effecting the conveyance of the subject water and wastewater facilities to MCWD either through a no-cost economic development conveyance through FORA or through a public benefit conveyance through the US Department of Health and Human Services. Such an amendment will benefit both parties by potentially expediting the conveyance and providing greater flexibility in operating the facilities with greater public and economic benefit to the communities served by the parties.

2. Amendment Procedure. Paragraph 10.7 of the Agreement requires consent of the governing Boards of both parties to amend the Agreement. As with the Agreement, FORA will adopt this Amendment by ordinance and MCWD will adopt this Agreement by resolution. FORA is the lead agency for adoption of this Amendment.

3. Definitions. The definitions of words and terms in the Agreement shall control the meaning of the same words and terms used in this Amendment.

4. Amendments. The Agreement is amended as follows:

4.1 Paragraph 1.4 is amended as follows:

"EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by either a "public benefit conveyance" or a "no-cost economic development conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by either a public benefit conveyance or a no-cost economic development conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries."

4.2 Paragraph 1.5 is amended as follows:

"CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA

Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by either a public benefit conveyance or a no-cost economic development conveyance pursuant to this Agreement."

4.3 The heading of Paragraph 3.1 is amended as follows:

"APPLICATION FOR PUBLIC BENEFIT CONVEYANCE OR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE; PERMITS TO OPERATE."

4.4 Paragraph 3.1.1 is amended as follows:

"MCWD Responsibilities. MCWD, as lead agency, will diligently either prosecute an application to the USA for a public benefit conveyance to MCWD, or through FORA prosecute a no-cost economic development conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities."

4.5 Paragraph 3.1.2 is amended as follows:

“FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for conveyance of the facilities and incidental rights to MCWD through either a public benefit conveyance or a no-cost economic development conveyance.

4.6 Paragraph 7.1.4 is amended as follows:

“Payments to FORA. Upon the effective date of either a public benefit conveyance or a no-cost economic development conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3.”

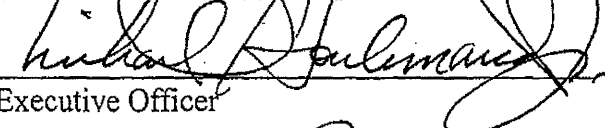
4.7 Paragraph 9.3 is amended as follows:

“TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance or MCWD's application through FORA for a no-cost economic development conveyance. If the USA denies MCWD's application for a public benefit conveyance or for a no-cost economic development conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement.”


5. Incorporation of Terms. This Amendment is incorporated into the Agreement by this reference, and all the provisions of the Agreement as specifically amended by this Amendment, including but not limited to execution in counterparts are incorporated in and apply to this Amendment.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By 
Executive Officer

MARINA COAST WATER DISTRICT

By 
President, Board of Directors

Dated: 3-2-01

ATTEST

By 
Secretary

WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Water/Wastewater Facilities Agreement ("Agreement") are the FORT ORD REUSE AUTHORITY and the MARINA COAST WATER DISTRICT, which agree as follows:

ARTICLE 1. AGREED FACTS

1.1. CAPACITY OF THE PARTIES. FORA is a local governmental entity and is defined as a public corporation of the State of California established by the FORA Act. MCWD is a County Water District and political subdivision of the State of California, organized under Division 12, sections 30000 and following, of the California Water Code.

1.2. AUTHORITY. FORA has authority under the FORA Act, and particularly under Government Code section 67679(a)(1), to plan for and arrange the provision of those base wide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, sewage and water conveyance and treatment facilities to assure a reasonable transition from military ownership and operation to civilian ownership and operation, and to further the integrated future use of Fort Ord. MCWD has authority, under Water Code sections 30000 and following, and under Article 11, Section 9 of the California Constitution, to acquire, construct, operate, and furnish water and sewer facilities outside its boundaries and within the jurisdictional boundaries of a local governmental entity by agreement with the local governmental entity.

1.3. PURPOSE. The parties intend by this Agreement to establish the terms and conditions for FORA to plan and arrange for the provision of the facilities, and for MCWD to acquire, construct, operate, and furnish the facilities, to benefit mutually the service area and the area within MCWD's jurisdictional boundaries. This Agreement will govern MCWD's ownership and operation of the facilities.

1.4. EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by a "public benefit conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by a public benefit conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries.

1.5. CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The

U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by public benefit conveyance pursuant to this Agreement.

1.6. WATER SUPPLY CAPACITY RIGHTS. The FORA Board has previously adopted a comprehensive plan for the administration of groundwater extraction rights consistent with the Agreement between the USA and the Monterey County Water Resources Agency dated September 1993. It is anticipated this plan may be amended from time to time at the sole discretion of the FORA Board. The total volume of groundwater available for this plan is 6,600 acre feet per year.

1.7. LEAD AGENCY. FORA is the lead agency for the adoption of this Agreement.

ARTICLE 2. DEFINITIONS AND ATTACHMENTS

2.1. "Committee" means the Water/Wastewater Oversight Committee appointed by the FORA Board to oversee the provision of water and wastewater collection services by MCWD under this Agreement.

- 2.2. "Facilities" means the public capital facilities used to provide water and wastewater collection services on the service area, including appurtenances and incidental rights of access, extraction, discharge, and use. Sewage (herein also called "sewer" and "wastewater") and water public capital facilities existing as of the date of this Agreement are generally shown on Exhibits A and B to this Agreement. Public capital facilities are those on MCWD's side of the service connection, including the meter for water service. For sewer facilities, the service connection is at the tap into the main collection system, wherever located, as determined by MCWD.
- 2.3. "FORA" means Fort Ord Reuse Authority.
- 2.4. "FORA Act" means the Fort Ord Reuse Authority Act codified in Title 7.85, sections 67650 and following, of the California Government Code, as may be amended from time to time.
- 2.5. "MCWD" means Marina Coast Water District.
- 2.6. "Service Area" means the former Fort Ord Army base in northwestern Monterey County, California. The service area is shown generally on the diagram attached to this Agreement as Exhibit A.
- 2.7. "USA" means the United States of America represented by the Department of the Army.
- 2.8. Attachments to this Agreement:
- EXHIBIT "A": Diagram of Fort Ord Water System/Service Area, Schaaf & Wheeler, April 1994
- EXHIBIT "B": Diagram of Fort Ord Wastewater System/Service Area, FORIS, undated
- EXHIBIT "C": Mediators
- EXHIBIT "D": Gov. Code §§ 54980-54983, 67679(a)(1)
- EXHIBIT "E": Pub. Util. Code §§ 10101, 10102, 10103, 10104 and 10105

ARTICLE 3. FACILITIES ACQUISITION AND OWNERSHIP

3.1. APPLICATION FOR PUBLIC BENEFIT CONVEYANCE; PERMITS TO OPERATE.

3.1.1. MCWD Responsibilities. MCWD, as lead agency, will diligently prosecute an application to the USA for a public benefit conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities.

3.1.2. FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for a public benefit conveyance.

3.1.3. Joint Responsibilities. MCWD and FORA will diligently take such actions and execute such documents as either considers necessary for MCWD to obtain and confirm all rights in and to the existing wastewater and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use.

3.2. ADDITIONAL FACILITIES.

3.2.1. MCWD Responsibilities. MCWD will cause to be planned, designed and constructed such additional water and sewer facilities as FORA, in consultation with MCWD, reasonably determines are necessary for the service area. MCWD may cause to be planned, designed and constructed any other facilities as MCWD reasonably determines will carry out the purpose of this agreement as expressed in section 1.3 of this Agreement.

3.2.2. FORA Responsibilities. FORA will determine in consultation with MCWD, based on recommendations from the Committee, what additional facilities are necessary for the service area.

3.3. TRANSFER, OBLIGATION, AND ENCUMBRANCE OF FACILITIES. Any transfer, obligation, or encumbrance of any interest in the facilities shall require the prior written approval of both parties.

3.4. ESTABLISHMENT OF WATER AND SEWER CAPACITY RIGHTS.

3.4.1. MCWD Responsibilities. MCWD shall have no responsibility for establishment and administration of water extraction capacity rights and

wastewater discharge and treatment capacity rights, except to compensate FORA for such administration.

3.4.2. FORA Responsibilities. The FORA Board will administer all extraction and discharge rights which may be obtained from the USA, pursuant to the comprehensive plan previously adopted by FORA and such changes as may be made to the plan from time to time by the FORA Board.

3.5. GRANT LOCAL SHARE. MCWD shall assume and pay the local share of any federal or state grant made to improve, maintain or add to the facilities. Any such obligation shall be a reimbursable cost under section 7.1.2 of this Agreement.

ARTICLE 4. OVERSIGHT

4.1. MCWD RESPONSIBILITIES. MCWD shall own and operate the facilities under the oversight and with the approvals and authorizations of FORA and the Committee as provided in this Agreement. MCWD shall cooperate with FORA and the Committee, and shall provide such information to the Committee as reasonably requested by the Committee, including but not limited to the reports enumerated in section 4.2.3 of this Agreement.

4.2. FORA RESPONSIBILITIES.

4.2.1. Committee Appointment. A Water/Wastewater Oversight Committee will be appointed by the FORA Board from appropriate agency staff members who will serve at the pleasure of the Board. The Committee will include representatives from the future land use jurisdictions and the two Universities (Cities of Marina, Seaside, Monterey, Del Rey Oaks, the County of Monterey, CSUMB and UCMBEST), for a total of seven members (see attachment).

4.2.2. Committee Role. The Committee shall be advisory to the FORA Board and shall have the following functions:

- 4.2.2.1. Receive recommendations regarding operation of the facilities.
- 4.2.2.2. Advise the FORA Board and staff on appropriate action regarding such recommendations.
- 4.2.2.3. Review and recommend on operating and capital improvement budgets.
- 4.2.2.4. Periodically review and recommend a master plan of public sewer and water facilities.

- 4.2.2.5. Make recommendations pursuant to Article 7 of this Agreement, including recommendations regarding allocation of costs over benefitted properties.
- 4.2.2.6. Confirm adequacy of services provided.
- 4.2.2.7. Review the annual financial statement and MCWD audit to affirm that results achieved comport with expectations of FORA.
- 4.2.2.8. Evaluate annually the performance of MCWD in accordance with this Agreement.
- 4.2.2.9. Advise on short and long term financial planning and fiscal management.
- 4.2.2.10. Assure that the facilities are complimenting implementation of the reuse plan.

4.2.3. Evaluation Criteria. The Committee will use the following criteria in evaluating MCWD's performance under this Agreement:

- 4.2.3.1. Timely development annually of operation and capital budgets.
- 4.2.3.2. Timely and accurate quarterly and annual financial reports.
- 4.2.3.3. Timely and accurate quarterly and annual operational reports.
- 4.2.3.4. Customer service orientation and MCWD's responsiveness to customer concerns, as shown in quarterly and annual reports of customer communications and responses.

ARTICLE 5. FACILITIES OPERATION

5.1. MCWD RESPONSIBILITIES.

5.1.1. Operation. MCWD will operate the facilities in accordance with applicable laws, rules and regulations, and policies established by the MCWD Board and the FORA Board, and procedures adopted by MCWD staff after

consultation with the Committee. Unless this Agreement or any policy or procedure established pursuant to this Agreement provides otherwise, MCWD will operate the facilities in the same manner as MCWD operates similar facilities for other areas served by MCWD.

5.1.2. Communication and Reports. MCWD will communicate regularly with the Committee about the operation of the facilities, and will respond promptly to communications from FORA and the Committee. MCWD will deliver quarterly and annual operational reports to the Committee.

5.1.3. Complaints. Complaints about MCWD's operation of the facilities will be dealt with in the first instance by MCWD's General Manager or designee. Decisions of the General Manager or designee may be appealed to the FORA Board in the same manner that decisions within the boundaries of MCWD are appealed to MCWD's Board. The decision of the FORA Board on complaints will be final and will exhaust all administrative remedies.

5.1.4. Interconnection With MCWD Facilities. Interconnections currently exist between the facilities and MCWD's facilities. MCWD may improve interconnections between MCWD's facilities and the facilities, to provide for enhanced, conjunctive and concurrent use of all system facilities to serve the service area and other areas served by MCWD.

5.2. FORA RESPONSIBILITIES. FORA will cooperate with MCWD to establish policies for the operation and administration of the facilities and to facilitate operation and administration of the facilities to achieve the purpose of this Agreement as stated in section 2.3 of this Agreement. FORA will respond promptly to communications from MCWD about operation of the facilities. The FORA Board will deal promptly with appeals of complaints about MCWD's operation of the facilities.

5.3. JOINT RESPONSIBILITIES.

5.3.1. Groundwater Use. The parties will cooperate on MCWD's increased withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy), in compliance with law, to enable the increased withdrawals from 5,200 afy to 6,600 afy for use in the service area, as stipulated in paragraph 4.c. of the September 1993 Agreement between The United States of America and the Monterey County Water Resources Agency, and in paragraph 5.1.1.1 of the "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands," recorded August 7, 1996, in Reel 3404 Page 749, in the Office of the Monterey County Recorder.

5.3.2. Groundwater Management. The parties will cooperate to further the conservation, management and protection of groundwater underlying the service area and groundwater used on the service area.

5.3.3. Recycled Water. The parties will cooperate to further the use of recycled, reused and reclaimed water and stormwater.

5.4. AGREEMENT ADMINISTRATION. The following persons or their designated representatives shall be the contact persons for the parties and shall administer this Agreement:

Executive Officer of FORA
FORA
100 12th Street, Bldg 2880
Marina, CA 93933

General Manager of MCWD
MCWD
200 12th Street, Bldg. 2788
Marina, CA 93933

ARTICLE 6. EX OFFICIO MEMBERSHIP

6.1. MCWD Responsibilities. Close cooperation and communication between FORA and MCWD being vital to the successful implementation of this Agreement, upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, MCWD will become an ex officio member of FORA under applicable provisions of the FORA Act, with all of the rights and obligations of an ex officio member.

6.2. FORA Responsibilities. Upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, FORA will enroll MCWD as an ex officio member of FORA pursuant to the FORA Act, with all of the rights and obligations of an ex officio member.

ARTICLE 7. FINANCIAL PROVISIONS

7.1. MCWD RESPONSIBILITIES

7.1.1. Separate Fund Accounting. MCWD will account for its operations for the service area as a separate fund within the general MCWD operation. The service area fund will have its own line items and account numbers, and will give MCWD the ability to report on revenues and expenses for the service area. Rules for allocating overhead between the service area fund and other MCWD operations will be determined based on the principles set forth in Circular A-87, Cost Principles for State and Local Governments, of the federal Office of Management and Budget.

7.1.2. MCWD Will Recover Costs. MCWD will recover all of its direct and indirect, short term and long term costs of furnishing the facilities to the service area. MCWD shall not be required to take any action in connection with furnishing the facilities to the service area unless and until a source of funds is secured from the service area to pay in full in a reasonable manner consistent with normal accounting practices all of MCWD's direct and indirect, short term and long term costs of the action to be taken by MCWD, including costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

7.1.3. Budgets and Compensation Plans.

7.1.3.1. Proposed Budgets. MCWD's General Manager shall submit a proposed budget to the Committee within four months after conveyance of the existing facilities from the USA to MCWD, and shall submit subsequent proposed budgets by March 30 of each year. Each budget shall contain an action budget for one year, from July 1 through June 30, and an operational planning budget for an additional year, and a five-year capital improvement planning budget, updated annually. Each budget shall provide for sufficient revenues to pay MCWD's direct and indirect, short-term and long-term costs to furnish the facilities to the service area for the two years covered by the action budget and the planning budget.

7.1.3.2. Request for Change. MCWD may at any time submit a written request to FORA for recommended changes in compensation. The request shall state in detail the reasons for the request and the amount of change requested.

7.1.3.3. MCWD Board Action. Not less than two weeks nor more than four weeks after receiving FORA's response pursuant to section 7.2, MCWD's governing Board shall act on the response. MCWD's Board may adopt the proposal with FORA's recommended changes, or may refer the matter to mediation as provided in section 10.1 of this Agreement.

7.1.3.4. Term of Adopted Plan. Each adopted compensation plan shall remain in effect until a new plan is adopted.

7.1.4. Payments to FORA. Upon the effective date of a public benefit conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3.

7.1.4.1. MCWD will pay for FORA's administrative and liaison services incurred by FORA in the management and operation of the facilities and the administration of this Agreement.

7.1.4.2. MCWD will pay to FORA an amount equal to five percent (5%) of all revenues derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water, within the Service Area, to partially compensate FORA for its forbearance pursuant to section 3.1.2 of this Agreement.

7.1.4.3. MCWD will pay any sum due to FORA under any agreement with FORA which may be required under the provisions of sections 10101 and following of the California Public Utilities Code, and sections 54980 and following of the California Government Code.

7.1.4.4. MCWD will pay the fair market value of any interest in property purchased from FORA.

7.1.4.5. MCWD will pay an annual fee for membership on the FORA Board of Directors as an ex-officio member in an amount as the FORA Board may establish by resolution. MCWD acknowledges that MCWD's annual fee for such ex-officio membership may exceed the amount paid by other ex-officio members. The annual fee to be paid by MCWD will not exceed one percent (1%) of all revenues, derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water within the service area.

7.1.4.6. In the event FORA enters into an agreement with Monterey County or any city which has jurisdiction over a portion of the service area, for the division of revenues derived from the sales of water by MCWD within the jurisdiction of the County or city, the amounts specified in Section 7.1.4.2 of this Agreement shall be reduced by the amount FORA receives pursuant to such agreements for the division of revenues.

7.1.5. MCWD's Financial Authority. MCWD may exercise any authority available to MCWD under law and this Agreement to finance MCWD's operations for the service area.

7.1.6. Defense of Financial Plans. MCWD, at MCWD's cost, shall defend all financial plans adopted and financial actions taken by MCWD and FORA by or pursuant to this Agreement. MCWD may file and prosecute a validating action if authorized by law for any such plan.

7.2. FORA RESPONSIBILITIES.

7.2.1. FORA shall respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA's response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA's response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three

months, the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.

7.2.2. Nothing in this Agreement shall limit or impair FORA's ability to contract or arrange financing for construction of capital facilities.

7.3. JOINT RESPONSIBILITIES.

7.3.1. MCWD's Board shall adopt by resolution and FORA's Board shall adopt by ordinance, as a supplement to this Agreement, each compensation plan for MCWD determined pursuant to sections 7.1.3 and 7.2.1 of this Agreement.

7.3.2. MCWD and FORA will cooperate in reviewing and working with communications and proposals from other municipal corporations pursuant to sections 10100 and following of the Public Utilities Code and any other provisions of law dealing with water and sewer utility franchises, with the use of the public streets, ways, alleys, and places within the other municipal corporations for the provision of water and sewer services, or with compensation to a municipal corporation for services performed for another municipal or public corporation.

7.3.3. If MCWD makes any payments to another municipal corporation the amount of such payments shall reduce any sums which such municipal corporation would otherwise receive from sales pursuant to Title 7.85 of the Government Code.

ARTICLE 8. RISK MANAGEMENT

8.1. RISK OF LOSS. Except as otherwise provided in this Agreement, MCWD shall bear the risk of loss from its provision of services to the service area, to the same extent and in the same manner and subject to the same limitations as with MCWD's activities within the area from which MCWD's Directors are elected. This Agreement is not intended and shall not be construed to remove any protection from liability or any procedures for claiming liability under state and federal law. Allocation of the risk from defective or inadequate facilities shall be determined in the conveyance of the facilities from the USA. To the fullest extent permitted by law, MCWD's facilities and other assets for providing water and sewer services within its jurisdictional boundaries shall not be at risk from claims based on MCWD's owning, operating, and furnishing the facilities within the service area. MCWD's risk and liability for MCWD's activities for the service area shall be limited to the value of any facilities within or for the service area, the assets in any service area accounts, and the value of insurance carried by MCWD for providing services within the service area. MCWD, with FORA's assistance, shall diligently apply for and attempt to obtain any all state and federal assistance that is available in the event of catastrophic losses to the facilities.

8.2. INSURANCE. Throughout the term of this Agreement MCWD shall maintain insurance with coverage and limits equivalent to that maintained for MCWD's operations within its jurisdictional boundaries. The insurance shall cover the members of the Committee and shall name FORA as an additional insured.

8.3. COST OF RISK. Each compensation plan adopted for MCWD pursuant to Article 7 of this Agreement shall be adequate to pay MCWD's cost of insurance for acquiring, constructing, operating and furnishing the facilities for the service area, and to establish a prudent risk reserve for uninsured risks.

ARTICLE 9. EFFECTIVE DATE AND TERM

9.1. EFFECTIVE DATE. This Agreement shall become effective when FORA and MCWD have each executed this Agreement.

9.2. FORMAL ADOPTION. FORA will adopt this Agreement by ordinance. MCWD will adopt this Agreement by resolution.

9.3. TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance. If the USA denies MCWD's application for a public benefit conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement.

9.4. EFFECT OF TERMINATION. Upon termination of this Agreement, unless otherwise provided by this Agreement or by law or by further agreement of FORA and MCWD or their successors, MCWD shall own the facilities free and clear of the terms and conditions of this Agreement.

ARTICLE 10. GENERAL PROVISIONS

10.1. DISPUTE RESOLUTION PROCEDURE.

10.1.1. Meet and Confer; Mediation. This section shall apply to all disputes arising under this Agreement. The Agreement Administrators designated under section 5.4 of this Agreement shall first meet and confer to resolve any dispute. Each party shall make all reasonable efforts to provide to the other party all information relevant to the dispute. If the Agreement Administrators cannot resolve the dispute within ten working days from the date of the dispute, they shall meet and

confer together with the Committee. If the dispute is not resolved within another ten working days from the date of the dispute, the Agreement Administrators shall meet and confer together with a voting member of the FORA Board and a member of the MCWD Board. If the dispute is not resolved within another ten days from the date of the dispute, the parties shall mediate the dispute at the earliest possible date, with one of the persons named on Exhibit "C" to this Agreement serving as mediator. If the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity, including declaratory relief which shall be binding on the parties.

10.1.2. Provisional Relief Available. The requirement to use the procedure specified in section 10.1.1 of this Agreement shall not prevent a party from seeking provisional relief from a court if necessary to protect the public health or safety.

10.1.3. Mediator List. Exhibit "C" to this Agreement is a list of persons both parties will accept as mediators for any dispute arising under this Agreement. If a dispute requires mediation, the parties will choose a mediator from the list by some random method, and will continue to do so until a mediator is selected who can mediate the particular dispute without delay. As a last resort, if no person named on Exhibit "C" can mediate a particular dispute without delay, the parties will ask the Presiding Judge of the Monterey County Superior Court to appoint a mediator.

10.2. WAIVER OF RIGHTS. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

10.3. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement on the part of the parties, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement.

10.4. EXHIBITS. All exhibits referred to in this Agreement and attached to this agreement are incorporated in this Agreement by reference.

10.5. COUNTERPARTS. This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

10.6. NOTICES. All notices, requests, consents, approvals, authorizations, agreements, or appointments hereunder shall be given in writing and addressed to the principal office of each party.

10.7. AMENDMENTS. This Agreement integrates and supersedes all prior and contemporaneous agreements and understandings about MCWD's provision of the services to the Service Areas. This Agreement may not be amended without consent of the governing Boards of both parties.


10.8. SUCCESSORS. This Agreement shall bind and benefit the successors of the parties hereto.

10.9. ADDITIONAL DOCUMENTS. The parties hereto agree, upon request, to execute, acknowledge, and deliver all additional documents necessary to carry out the intent of this Agreement.

10.10. CAPTIONS. Captions of the Articles, Sections, and Paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By 
Chairperson, Board of Directors

Dated: 3/13/98

ATTEST:.

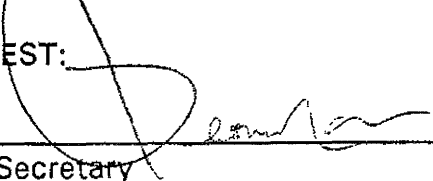
By 
Secretary

MARINA COAST WATER DISTRICT

By 
President, Board of Directors

Dated: 3/13/98

ATTEST:

By 
Secretary

ORDINANCE NO. 98-01

**AN ORDINANCE OF BOARD OF DIRECTORS OF THE FORT ORD REUSE
AUTHORITY APPROVING AN AGREEMENT BETWEEN MARINA COAST
WATER DISTRICT AND THE FORT ORD REUSE AUTHORITY**

The Board of Directors of the Fort Ord Reuse Authority ordains as follows:

SECTION 1. The Board of Directors of the Fort Ord Reuse Authority approves an Agreement between Marina Coast Water District and the Fort Ord Reuse Authority for the operation of water and wastewater collection systems on the former Fort Ord military reservation.

SECTION 2. This ordinance shall become effective on its adoption.

PASSED AND ADOPTED this 13th day of February, 1998 by the following vote:

AYES: Barlich, Albert, Vocelka, Potter, Perkins, Johnsen
Jordan, Mancini, Pendergrass, Styles, Koffman, White

NOES: Perrine

ABSENT: None

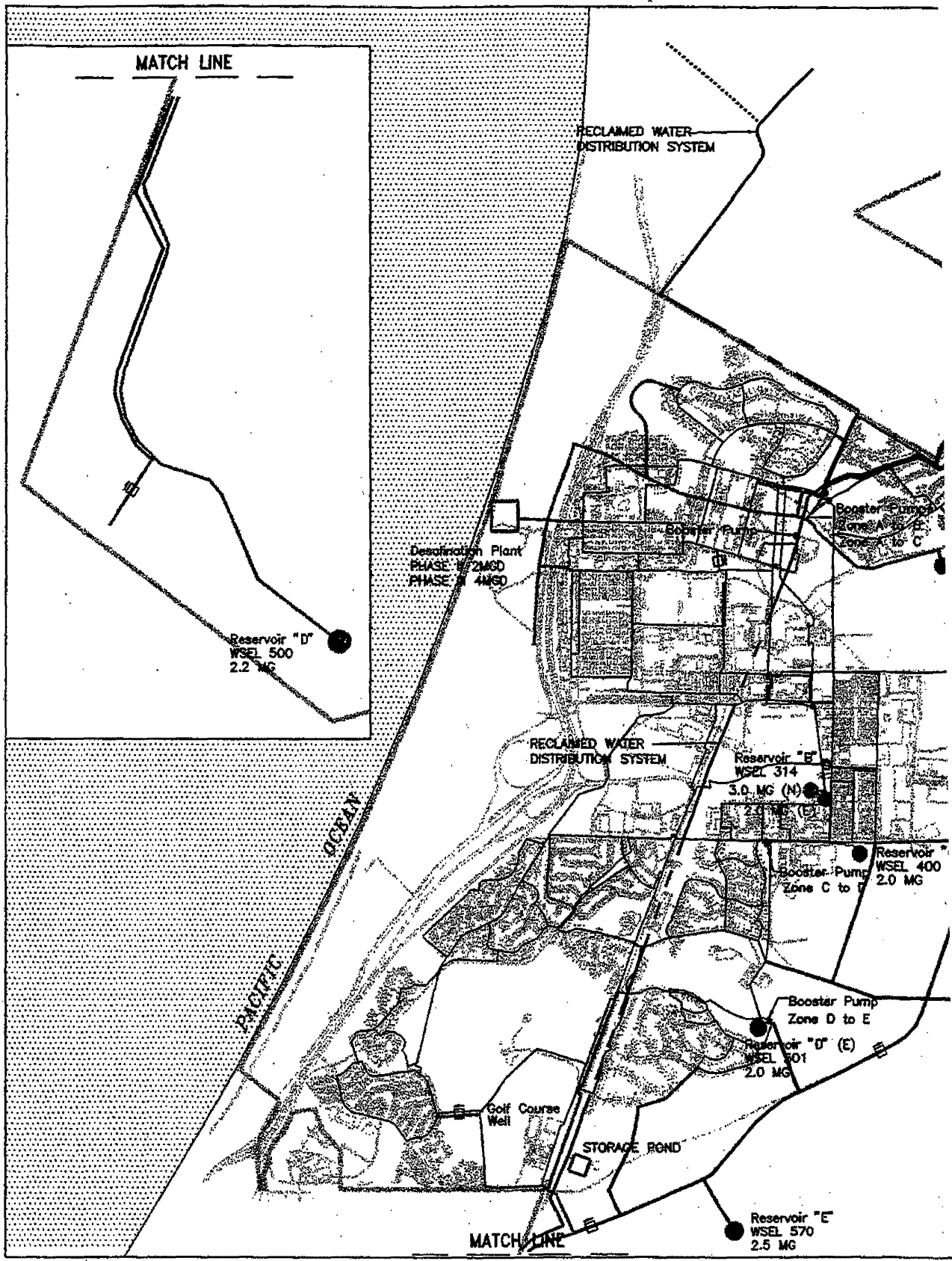


Chair of the Board of Directors

ATTEST:

Michael Houlemard
Clerk of the Board

By 
Deputy



MATCH LINE

RECLAIMED WATER DISTRIBUTION SYSTEM

Desalination Plant
PHASE I 2MGD
PHASE II 4MGD

Reservoir "D"
WSEL 500
2.2 MG

RECLAIMED WATER DISTRIBUTION SYSTEM

Reservoir "E"
WSEL 314
3.0 MG (N)
2.0 MG (E)

Reservoir "E"
WSEL 400
2.0 MG

Booster Pump
Zone D to E

Reservoir "D" (E)
WSEL 501
2.0 MG

STORAGE POND

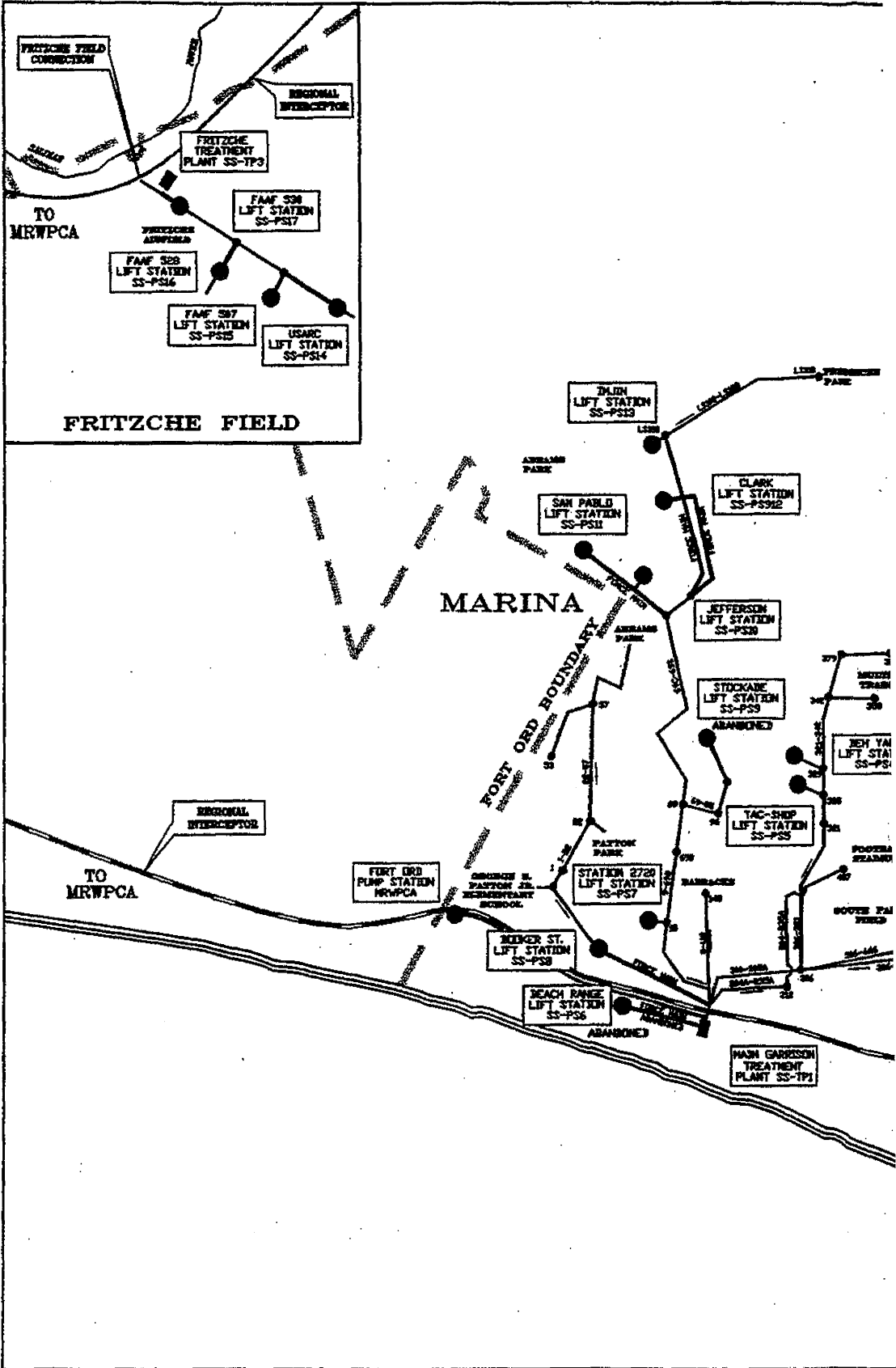
MATCH LINE

Reservoir "E"
WSEL 570
2.5 MG

PACIFIC OCEAN

Golf Course Well

Booster Pump
Zone A to C



**EXHIBIT C
MEDIATORS**

Dick Milbrodt
Leon Panetta
Lt. Gen. Ret. James Moore
Don Owen
Frank Dimick
John Gregg
Anne Schneider

CITIES, COUNTIES, & OTHER AGENCIES

Title 5

Chapter 12, added as Chapter 11, Municipal Services and Functions, by Stats.1978, c. 960, p. 2961, § 1, was renumbered Chapter 12 and amended by Stats.1980, c. 676, § 131.

§ 54980. Definitions

As used in this chapter:

(a) "Legislative body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a district.

(b) "Local agency" means any county, city, city and county, or public district which provides or has authority to provide or perform municipal services or functions.

(c) "Municipal services or functions" includes, but is not limited to, firefighting, police, ambulance, utility services, and the improvement, maintenance, repair, and operation of streets and highways.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54980, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Decline of emergency medical services coordination in California: Why cities are at war with counties over illusory ambulance monopolies. Byron K. Toma, 23 Sw.U.L.Rev. 285 (1994).

Library References

Municipal Corporations ¶226. WESTLAW Topic No. 268. C.J.S. Municipal Corporations § 976 et seq.

Notes of Decisions

Paramedics 1

1. Paramedics

For purposes of determining whether county's program of certifying paramedics for ambu-

lance services was immune from antitrust liability under the state action doctrine, provision of emergency service is a traditional municipal function. Mercy-Peninsula Ambulance, Inc. v. San Mateo County, N.D.Cal.1984, 592 F.Supp. 956, affirmed 791 F.2d 755.

§ 54981. Contracts for municipal services

The legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

MUNICIPAL SERVICES / Div. 2

Former § 54981, added by Stats.1965, c. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

§ 54981.7. Indian tribe
tion service

A city or county may enter into an agreement with a county to provide fire protection services for the Indian lands and territory adjacent to the city or county. The agreement shall not be construed to alter or diminish the jurisdiction in Indian lands. (Added by Stats.1996, c. 1085)

§ 54982. Consideration

Any agreement entered into for consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Former § 54982, added by Stats.1965, c. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

§ 54983. Construction

Authority for entering into an agreement shall be construed as supplemental to the authority of local agencies to enter into agreements for services or functions which it is permitted to perform. The account limit applicable to the agreement shall not apply to any agreement entered into prior to the effective date of this act. (Added by Stats.1978, c. 960, p. 2121, § 1.)

The amendments to this section shall not apply to any agreement entered into prior to the effective date of this act. (Added by Stats.1978, c. 960, p. 2121, § 1.)

Former § 54983, added by Stats.1965, c. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

ES, & OTHER AGENCIES
Title 5

*Services and Functions,
numbered Chapter 12 and*

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MUNICIPAL SERVICES AND FUNCTIONS
Div. 2

§ 54983

Historical and Statutory Notes

Former § 54981, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

§ 54981.7. Indian tribes; fire protection services; police or sheriff protection services

A city or county may enter into a contract with an Indian tribe for the city or county to provide fire protection services and police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. Nothing in this section shall be construed to alter or affect federal Public Law 280, relating to state jurisdiction in Indian lands.

(Added by Stats.1996, c. 1085 (A.B.1762), § 1.)

§ 54982. Consideration

Any agreement entered into pursuant to this chapter shall be for valuable consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54982, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

§ 54983. Construction of authority granted

Authority for entering into agreements pursuant to this chapter shall be construed as supplementing existing authority for legislative bodies of local agencies to enter into agreements for the providing of municipal services and functions and shall not be construed as authorizing the legislative body of any local agency to enter into an agreement for the providing of municipal services or functions which it is prohibited to provide by law or which exceeds the force account limit applicable to the local agency contracting to receive services.

The amendments to this section which become effective January 1, 1981, shall not apply to any agreement which was made prior to that date nor to the current term of any self-renewing or renewable agreement which had been entered into prior to that date.

(Added by Stats.1978, c. 960, p. 2121, § 1. Amended by Stats.1980, c. 398, p. 781, § 1.)

Historical and Statutory Notes

Former § 54983, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any * * * utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

* * *(e) This title shall not be construed to limit the rights of the California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 2.)

Historical and Statutory Notes

1994 Legislation

The 1994 amendment of this section by c. 1169 (S.B. 1600) explicitly amended the 1994 addition of this section by c. 64 (S.B.899).

§ 67679. Basewide public capital facilities; identification; financing and construction; identification of significant local public capital facilities; construction or improvement; exceptions; assessments; financing districts; development fees

(a)(1) The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, * * * constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

(3) The board may construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located.

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A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).

(5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).

(7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).

(9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).

(10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).

(11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.

(12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy authorized assessments or special taxes in order to pass through funding for these services to the local agencies. Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 3.)

EXHIBIT "E"

CALIFORNIA PUBLIC UTILITIES CODE
SELECTED SECTIONS

§ 10101. Powers of municipality

There is granted to every municipal corporation of the State the right to construct, operate, and maintain water and gas pipes, mains and conduits, electric light and power lines, telephone and telegraph lines, sewers and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along, in such manner as to afford security for life and property.

§ 10102. Restoration

A municipal corporation exercising its rights under this article shall restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and shall locate its use so as to interfere as little as possible, with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume.

§ 10103. Agreement of other municipality

Before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation, it shall request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject.

§ 10104. Action to establish terms and conditions of use

If the two municipal corporations are unable to agree on the terms and conditions and location of a use within three months after a proposal to do so, the municipal corporation proposing to use a street, alley, avenue, or highway may bring an action in the superior court of the county in which the street, alley, avenue, or highway is situated against the other municipal corporation to have the terms and conditions and location determined. The superior court may determine and adjudicate the terms and conditions to which the use of the street, avenue, alley, or highway shall be subject, and the location thereof, and upon the making of the final judgment the municipal corporation desiring to do so may enter and use

the street, alley, avenue, or highway upon the terms and conditions and at the location specified in the judgment.

§ 10105. Unincorporated territory

A grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory. This section is not applicable if the street, alley, avenue, or highway, or portion thereof, was located in incorporated territory prior to May 5, 1933.

000071



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099
Home Page: www.mcwd.org
TEL: (831) 384-6131 FAX: (831) 883-5995

Attachment B to Item 6c
FORA Board Meeting, 9/11/15

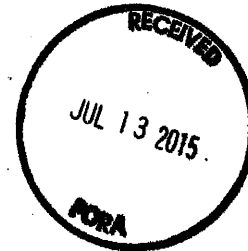
HOWARD GUSTAFSON
President

PETER LE
Vice President

THOMAS P. MOORE
WILLIAM Y. LEE
JAN SHRINER

July 13, 2015

Mr. Michael A. Houlemard, Jr., Executive Officer
Fort Ord Reuse Authority
920 – 2nd Avenue, Suite A
Marina, CA 93933



Re: Notice of Dispute under 1998 Water/Wastewater Facilities Agreement

Dear Mr. ~~Houlemard~~ *Michael*:

Notice is hereby given that the Marina Coast Water District refers the limited issues set forth in your letter dated June 17, 2015 re: Response to Marina Coast Water District FY 2015-16 Proposed Ord Community Budget to dispute resolution. This is pursuant to Sections 7.1.3.3 and 10.1 of that certain 1998 Water/Wastewater Facilities Agreement (1998 Agreement).

Section 7.2.1 of the 1998 Agreement states as follows:

7.2.1. FORA shall respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA's response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA's response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three months, the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.

In your June 17, 2015 letter, the "disputed elements" and the "detailed reasons for the dispute" appear to be as follows:

Disputed Element #1 - \$470,000 Capital Reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project (RUWAP) desalination project. "RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other)."

Disputed Element #2 – 9% [water] rate increase for FY 2015/16. "[A] portion of the 9% rate increase **appears** to provide Ord Community funding for litigation related to the failed regional desalination project and/or further desalination planning outside of **current** FORA Board direction." [Emphasis added.]

In your letter, you specify the following as being acceptable to FORA to resolve FORA's dispute:

- #1 – Exclude desalination specific project line item 25b-2 and re-program RUWAP implementation to include conservation, recycled and other augmented options.
- #2 – Lower the “9% rate increase commensurate to MCWD regional desalination project/litigation expenses, which also are directed to be removed from the revised budget.”

Please be advised that MCWD Board has reviewed the above and has determined not to adopt FORA's proposed resolutions and hereby submits all of the above matters to dispute resolution in accordance with Section 10.1 of the 1998 Agreement.

Reserving the right to provide additional information relevant to this dispute, MCWD provides the following for FORA's information:

1. Disputed Element #1 - \$470,000 Capital Reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project (RUWAP) desalination project. The FOR A Board's statement was that the “RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other).”

1.1. The June 17, 2015 letter fails to provide sufficient “detailed reasons for the dispute” of this element and, therefore, fails to comply with Section 7.2.1 of the 1998 Agreement.

1.2. In the FORA CIP for FY 2012/2013, FORA's position as stated in the last sentence in Section II.b on page 6 is that “MCWD is still contractually obligated to provide an augmented source for the former Fort Ord as distinct from the Regional [Desalination] Project.” MCWD recognizes that contractual obligation to FORA so MCWD has been pursuing recycled water, water conservation, and desalinated water augmentation options. FORA and MCWD have long recognized that recycled water, desalinated water, and water conservation are the legs of the three-legged stool needed to meet FORA's 2030 2,400 AFY augmentation water requirement.

1.3. As demonstration of the MCWD commitment to the integrated approach to water augmentation that FORA apparently failed to recognize is that the very budget in question already includes recycled water and water conservation projects and activities. Please note that this MCWD Ord Community FY 2015/16 budget submitted to FORA includes \$750,000 for CIP RW-0156, Recycled Water Trunk Main, and funding for an additional water conservation specialist position. It also includes funding for the 2015 Urban Water Management Plan update, which will reassess the long-term water demand projections for the Ord Community.

1.4. Two FORA member agencies, the City of Seaside and Monterey County, have published a draft Specific Plan for the Monterey Downs Project, which requires non-potable recycled water for all six phases and desalinated water for Phases IV to VI. The draft environment impact report for the project identified the RUWAP recycled water component and the RUWAP desalinated water component as the water sources providing that needed water. There are questions as to whether the Monterey Downs Project or any other new development dependent upon the additional 2,400 AFY in FORA Augmentation Water can be entitled without both RUWAP water projects being built.

1.5. The statement in FORA's June 17, 2015 letter that "RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other)" is not a sufficient "detailed reason" to stop all RUWAP desalination project planning given FORA's statement as to MCWD's contractual obligation, MCWD's ongoing recycled water and water conservation activities (as included in this very budget), and the need to plan, finance, and construct RUWAP recycled and desalinated water sources for new developments within the Ord Community.

1.6. As part of or separate from the dispute resolution process, MCWD wishes to work with FORA to consider desalination, recycled water, conservation, and other water augmentation options so long as a determination can be made in a timely manner. If the FORA Board wishes to engage in a discussion of water augmentation issues separate and apart from this dispute resolution process, we are anxious to do so and ask that you please contact me. Toward that effort, I have already reached out to engage you in the discussions regarding reclaim negotiations with MCWPCA.

2. Disputed Element #2 – 9% [water] rate increase for FY 2015/16. "[A] portion of the 9% rate increase **appears** to provide Ord Community funding for litigation related to the failed regional desalination project and/or further desalination planning outside of **current** FORA Board direction." [Emphasis added.]

2.1. The June 17, 2015 letter fails to provide sufficient "detailed reasons for the dispute" of this element and, therefore, fails to comply with Section 7.2.1 of the 1998 Agreement.

2.2. New Water Rates Effective January 1, 2016: The 2015 calendar year water rates went into effect on January 1, 2015, and the proposed new water rates will not go into effect until January 1, 2016. MCWD's Proposed Compensation Plan for FY 2015-2016 for the Ord Community Water/Wastewater Systems contains the following statement on page 2, "In order to meet operating and capital needs of the Ord Community systems, this compensation plan includes residential rate increase of 9% for water and 4% for wastewater effective January 1, 2016." Therefore, any dispute regarding residential water rates in the Proposed Compensation Plan only applies to new residential rates effective January 1, 2016, and only to the extent of FORA providing "detailed reasons for the dispute," which it did not do.

2.3. Failed Regional Desalination Project Litigation Costs:

2.3.1. In 2002, MCWD with FORA's endorsement initiated the Regional Urban Water Augmentation Project (RUWAP) to explore water supply alternatives to provide the additional 2,400 AFY of water augmentation supply needed by FORA under the adopted Fort Ord Reuse Plan. Subsequently, FORA and MCWD agreed upon the development of the "Hybrid Alternative" consisting of a 1,500 AFY of recycled water (allocating 1,200 AFY to the Ord Community and 300 AFY to the Monterey Peninsula) and 1,500 AFY of desalination water (allocating 1,200 AFY to the Ord Community and 300 AFY to Central Marina).

2.3.2. The FORA Board had endorsed the Regional Desalination Project when the project agreements were entered into; therefore, pursuant to Section 7.1.2 of the 1998 Agreement, the current FORA Board cannot disallow litigation costs incurred to protect MCWD's rights under the RDP agreements. For example, the FORA Capital Improvement Program for FY 2012/13 through 2021/22, Section II.b, Water Augmentation (p. 6), states, "At the April 2008 FORA Board meeting, the Board endorsed the Regional Plan as the preferred plan to deliver the requisite 2,400 AFY of augmenting water to the 6,600 AFY groundwater entitlements." In April 2008, the Regional Plan included a 12,500 AFY desalination facility at North Marina being considered by the California Public Utilities Commission and Cal Am. That proposed project became the RDP. Nearly 90% of the Water to which MCWD was to be entitled by that project was dedicated to the Ord Community.

2.3.3. MCWD entered into that certain Water Purchase Agreement dated April 6, 2010 (WPA), and other agreements to develop the Regional Desalination Project. WPA Section 9.4(d) allocated 1,700 AFY of desalinated Product Water to MCWD "to satisfy MCWD customers' demand in MCWD's Service Area that cannot be satisfied by MCWD's Potable Groundwater Limits." "MCWD Service Area" was defined in Recital A as the "lands within the City of Marina and certain other areas within Monterey County, including lands on the former Fort Ord." "MCWD's Potable Groundwater Limits" was defined in Section 1.3 as "the limits for the withdrawal of water from the Salinas Basin imposed by law or agreement upon MCWD for the development of the former Fort Ord." Therefore, the WPA provided that the 1,700 AFY was to meet customers' demand in the Ord Community that could not be satisfied by the 6,600 AFY groundwater allocation under the 1993 Ord Annexation Agreement.

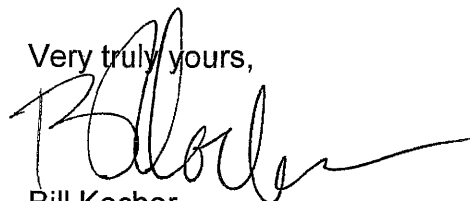
2.4. RUWAP Desalination Project Planning: See discussion under Section 1 above.

3. Pursuant to Section 7.1.2 of the 1998 Agreement, the FORA Board is required to allow MCWD to recover all of MCWD's direct and indirect, short term and long term costs of furnishing the facilities to the Ord Community, including the cost of administration, operation, maintenance, and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

4. The FORA Board failed to comply with all of the requirements of Section 7.2.1 of the 1998 Agreement within three months of the submittal of the proposed Compensation Plan to FORA and, therefore, the proposed Compensation Plan is deemed adopted by FORA.

The "date of the dispute" for purposes of Section 10.1.1 of the 1998 Agreement shall be the date you receive this Notice unless another date is mutually agreed upon.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bill Kocher", with a long horizontal flourish extending to the right.

Bill Kocher
Interim General Manager



FORT ORD REUSE AUTHORITY

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

Attachment C to Item 6c
FORA Board Meeting, 9/11/15

www.ford.org

July 30, 2015

Bill Kocher, Interim General Manager
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

RE: Dispute Resolution Procedure

Dear Mr. Kocher,

The Fort Ord Reuse Authority (FORA) is in receipt of your July 13th Notice of Dispute under the FORA/Marina Coast Water District (MCWD) 1998 Water and Wastewater Facilities Agreement (Agreement). Subsequent to this letter, you and I met on Monday, July 20th, which initiated the Dispute Resolution Procedure outlined in Article 10.1 of the Agreement. The Agreement states that if the Agreement Administrators cannot resolve the dispute within ten working days (by August 3rd), they shall meet and confer together with the FORA Water/Wastewater Oversight Committee (WWOC). If the dispute is not resolved within *another ten working days* (by August 17th), they shall meet and confer with one FORA and one MCWD voting Board member. If the dispute is not resolved within *another ten working days* (by August 31st), the parties shall mediate the dispute at the earliest possible date (the mediator list is Exhibit C to the Agreement). Then, if the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity...

FORA proposes the following resolution to the points made in your July 13, 2015 letter:

Disputed Element 1: FORA accepts MCWD's representation that it is "pursuing recycled water, water conservation, and desalinated water augmentation options." This statement satisfies the FORA-Board's stated desire for "all water augmentation options (recycled, conservation, other)" to be pursued. FORA would like to participate in a three-party planning process with MCWD and Monterey Regional Water Pollution Control Agency to come to agreement on a Memorandum of Understanding regarding the reclaimed component first, followed by establishment of a planning process to study and address all other options. To aid this planning process, FORA would give up its objection to the \$470,000 in question being included in the FY 2015/16 Ord Community budget document.

Disputed Element 2: FORA accepts MCWD's statement that "the proposed new water rates will not go into effect until January 1, 2016". FORA does not accept MCWD's statement that the FORA Board endorsement of the prior Regional Desalination Project constituted an open ended commitment to that now failed project nor does it accept that "the current FORA Board cannot disallow litigation costs incurred to protect MCWD's rights under the RDP agreements." FORA proposes that as the new rates do not come into effect until January 1, 2016, time remains for FORA and MCWD to include this issue as one of the items for discussion in the planning process proposed under resolution for Disputed Element 1 and a cooperative effort be made by our two agencies to explore ways in which MCWD might be made

whole for expenditures made toward pursuit of the Regional Urban Water Augmentation Project and to “recover...costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet...service demands.” FORA continues to object to MCWD funding costs of litigation regarding the prior RDP out of the Ord cost center but accepts MCWD’s assertion that the current year budget in question does not include direct legal expenditures of this nature and can therefore withdraw its objection to the 9% rate increase should the planning process noted above include this issue for further discussion and problem-solving.

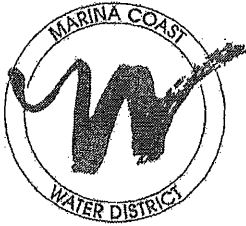
As for point 4 noted in your letter, FORA notes that the dispute resolution process and the right to deem a budget adopted are mutually exclusive and hereby propose that MCWD allow the dispute resolution process to conclude before deeming the disputed elements approved.

Thank you for the opportunity to comment and we look forward to further meetings at your earliest convenience.

Sincerely,



Michael A. Houlemard, Jr.
Executive Officer



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

Home Page: www.mcwd.org

TEL: (831) 384-6131 FAX: (831) 883-5995

DIRECTORS

HOWARD GUSTAFSON
President

PETER LE
Vice President

THOMAS P. MOORE
WILLIAM Y. LEE
JAN SHRINER

August 4, 2015

Michael Houlemard, Executive Officer
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

RE: Dispute Resolution Procedure

Dear Mr. Houlemard, *Michael,*

The MCWD Board of Directors has considered FORA's letter dated July 30, 2015, and accepts FORA's proposed resolution of the dispute. To avoid any misunderstandings, MCWD understands that the terms of the resolution are as follows:

Disputed Element #1 – FORA gives up its objection to the \$470,000 in question being included in the FY 2015/2016 Ord Community Budget. MCWD staff agrees to keep FORA staff apprised of the status of the MCWD/MRWPCA negotiations regarding the provision of reclaimed water to the Ord Community and to make clear to MRWPCA that the terms of any agreement between MCWD and MRWPCA on this issue shall be subject to the approval of the FORA Board. MCWD staff and FORA staff shall establish a “problem-solving” planning process to study and address augmentation water sources.

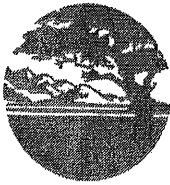
Disputed Element #2 – Included in the above planning process, FORA agrees to explore ways in which MCWD might be made whole for expenditures made by MCWD pursuant to MCWD's RUWAP obligations and to recover MCWD's costs to meet service demands and Regional Desalination Project litigation costs. Because the RDP litigation costs in MCWD's FY 2015/2016 Budget are not being funded from the Ord Community cost center, FORA withdraws its objection to the 9% water rate increase.

FORA questioned MCWD's Section 4 position on the grounds that the dispute resolution process and right to deem a budget adopted are mutually exclusive and that the dispute resolution process must be completed before the disputed elements may be deemed approved. Since the dispute resolution process is now concluded, this issue is rendered moot.

Thank you for your considerations and resolution of this dispute.

Sincerely,

Keith Van Der Maaten
General Manager



FORT ORD REUSE AUTH

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

Phone: (831) 883-3672 | Fax: (831) 883-3675

Attachment E to Item 6c
FORA Board Meeting, 9/11/15

www.fora.org

August 10 , 2015

Keith Van Der Maaten, General Manager
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

RE: Dispute Resolution

Dear Mr. Van Der Maaten,

Thank you for your August 4, 2015 letter accepting the Fort Ord Reuse Authority's (FORA's) proposed dispute resolution dated July 30, 2015. To avoid any misunderstanding, the resolution to the FY 2015/16 Ord Community Budget Disputed Elements 1 & 2 are as defined in the 7/30/2015 letter (*attached*).

FORA looks forward to working with Marina Coast Water District (MCWD) on the Regional Urban Water Augmentation Program (RUWAP) components, including an in-depth study of recycled water, conservation, desalinated water and other water augmentation sources. As stated in the June 17, 2015 FORA response to the MCWD FY 2015/16 Proposed Ord Community Budget, the FORA Board is "concerned that the 9% rate increase and the \$470,000 for 10% design of the RUWAP desalination project may be unduly burdensome for ratepayers." Therefore, as a part of the proposed three-party planning process outlined in our July 30, 2015 letter between FORA, MCWD and Monterey Regional Water Pollution Control Agency, FORA proposes that the three agencies share the planning costs previously earmarked to MCWD's \$470,000 line item, reducing exposure to the ratepayers, and explore other cost-reducing measures with the same end in mind.

Once this study is concluded, it is our intention to bring water augmentation program recommendations to the FORA Board for direction/approval. Please contact FORA Assistant Executive Officer Steve Endsley to schedule a FORA-MCWD staff coordination meeting on this matter. To keep and build trust in our joint efforts to serve the Ord Community and provide an augmented water source to the former Fort Ord, our continued cooperation is essential.

It is gratifying that through our joint efforts, the dispute resolution has been completed in a timely manner. Again, thank you for your letter and we look forward to further productive meetings at your earliest convenience.

Sincerely,

Michael A. Houlemard, Jr.
Executive Officer

C: FORA Board of Directors



FORT ORD REUSE AUTHORITY

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

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

July 30, 2015

Bill Kocher, Interim General Manager
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

RE: Dispute Resolution Procedure

Dear Mr. Kocher,

The Fort Ord Reuse Authority (FORA) is in receipt of your July 13th Notice of Dispute under the FORA/Marina Coast Water District (MCWD) 1998 Water and Wastewater Facilities Agreement (Agreement). Subsequent to this letter, you and I met on Monday, July 20th, which initiated the Dispute Resolution Procedure outlined in Article 10.1 of the Agreement. The Agreement states that if the Agreement Administrators cannot resolve the dispute within ten working days (by August 3rd), they shall meet and confer together with the FORA Water/Wastewater Oversight Committee (WWOC). If the dispute is not resolved within *another ten working days* (by August 17th), they shall meet and confer with one FORA and one MCWD voting Board member. If the dispute is not resolved within *another ten working days* (by August 31st), the parties shall mediate the dispute at the earliest possible date (the mediator list is Exhibit C to the Agreement). Then, if the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity...

FORA proposes the following resolution to the points made in your July 13, 2015 letter:

Disputed Element 1: FORA accepts MCWD's representation that it is "pursuing recycled water, water conservation, and desalinated water augmentation options." This statement satisfies the FORA-Board's stated desire for "all water augmentation options (recycled, conservation, other)" to be pursued. FORA would like to participate in a three-party planning process with MCWD and Monterey Regional Water Pollution Control Agency to come to agreement on a Memorandum of Understanding regarding the reclaimed component first, followed by establishment of a planning process to study and address all other options. To aid this planning process, FORA would give up its objection to the \$470,000 in question being included in the FY 2015/16 Ord Community budget document.

Disputed Element 2: FORA accepts MCWD's statement that "the proposed new water rates will not go into effect until January 1, 2016". FORA does not accept MCWD's statement that the FORA Board endorsement of the prior Regional Desalination Project constituted an open ended commitment to that now failed project nor does it accept that "the current FORA Board cannot disallow litigation costs incurred to protect MCWD's rights under the RDP agreements." FORA proposes that as the new rates do not come into effect until January 1, 2016, time remains for FORA and MCWD to include this issue as one of the Items for discussion in the planning process proposed under resolution for Disputed Element 1 and a cooperative effort be made by our two agencies to explore ways in which MCWD might be made

whole for expenditures made toward pursuit of the Regional Urban Water Augmentation Project and to "recover...costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet...service demands." FORA continues to object to MCWD funding costs of litigation regarding the prior RDP out of the Ord cost center but accepts MCWD's assertion that the current year budget in question does not include direct legal expenditures of this nature and can therefore withdraw its objection to the 9% rate increase should the planning process noted above include this issue for further discussion and problem-solving.

As for point 4 noted in your letter, FORA notes that the dispute resolution process and the right to deem a budget adopted are mutually exclusive and hereby propose that MCWD allow the dispute resolution process to conclude before deeming the disputed elements approved.

Thank you for the opportunity to comment and we look forward to further meetings at your earliest convenience.

Sincerely,

D. Stern Endrey for

Michael A. Houlemard, Jr.
Executive Officer

Some concerns have arisen regarding the MCWD-FORA Dispute Resolution Procedure. Below are a summary of concerns and draft FORA staff responses.

1. FORA's letter of July 30th states "FORA would give up its objection to the \$470,000 in question being included in the... budget." This term was accepted by MCWD in its August 4th letter, and MCWD voted to accept this term. The question of how the water district can spend that money appears unclear to some. The July 30th letter reflects an agreement to initiate a planning process but it is unclear about whether MCWD may or may not spend a portion of the \$470K on desal planning.

Response: In FORA's June 8, 2015 Board motion and June 17, 2015 letter to MCWD, the stated reason for the dispute of the \$470,000 capital reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project (RUWAP) desalination plant project was: "RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other)." The Board motion did not include direction about desalination plant siting. However, MCWD is acutely aware of many FORA Board members' stated opposition to any MCWD desalination plant planning that would affect the viability of CalAm's planned desalination plant. Should MCWD conduct desalination plant planning in a manner that negatively affects CalAm's planned desalination plant, the FORA Board has the ability to respond and restrict future Ord Community budget allocations to such a project.

MCWD has always had the right to build or expand their own desal plant; they are a sovereign agency. It is unlikely that they would proceed given the FORA Board's objection and such action requires FORA funds. These funds have continuously been designated by FORA to the hybrid RUWAP format. FORA had a right to deny the \$470K in planning funds, but only for demonstrated reasons, which FORA delineated but MCWD disputed and invoked the dispute resolution procedure. This process does not provide for FORA Board approval of resolution of the dispute, but rather has a specific iterative formula that must be accomplished in ten-day intervals (Chief Executives meet and confer; WWOC considers; one member from each Board meet and confer; arbitration.) Otherwise, FORA runs afoul of both the overall 90-day and specific 10-day deadlines. In that case, MCWD would likely invoke their right to approve the budget by fiat because FORA Board did not act in a timely manner. Rather than becoming embroiled in extended litigation over planning funds, the Executive Officer ended the dispute under favorable terms to FORA. MCWD has agreed to use the 'all of the above' approach the Board desires. They and MRWPCA have agreed to share planning costs with FORA which will lower overall costs and protect rate payers, another stated issue of concern to Board members.

2. FORA's July 30th letter says "FORA proposes that as the new rates do not come into effect until January 1, 2016, time remains for FORA and MCWD to include this issue as one of the items for discussion in the planning process . . ." The letter goes on to state FORA "can therefore withdraw its objection to the 9% rate increase should the planning process noted above include this issue for further discussion and problem-solving." In the August 4th letter, MCWD affirms its understanding that "FORA withdraws its objection to the 9% water increase." The questions being asked about this are essentially, on what authority did the Executive Officer resolve the dispute over the 9% rate increase, and why?

Response: In general, the same procedure for Dispute Resolution holds, as described in #1 above, designating the Executive Officer with the responsibility to achieve resolution of the dispute in a 10-day period. Specifically, in FORA's June 8, 2015 Board motion and June 17, 2015 letter to MCWD, the stated reason for the dispute was: "a portion of the 9% rate increase appears to provide Ord Community funding for litigation related to the failed regional desalination project and/or further desalination planning outside of current FORA Board direction." There also were comments of concern regarding the effect of such a rate increase on the rate payers.

In short, FORA had a weak case to deny the entire 9% rate increase because few specific line items of concern were identified and the result damages MCWD's ability to operate and perform non-disputed capital improvements. This was noted in the June 12, 2015 staff report. Authority Counsel indicated that a vaguely expressed desire to protect ratepayers, appropriate and well-meaning as it is, or suspicion that MCWD will use the rate increase to fund future litigation, has not been substantiated. When MCWD invoked Dispute Resolution, it flagged these very points. FORA's denying the entire rate increase (which already went through the Proposition 218 process two years ago) was unlikely to prevail with either an arbitrator or judge. However, the Board made a strong statement to MCWD to cooperate regionally and that message has been received. MCWD has recognized the need for a three-party cooperative planning process with MRWPCA and FORA. MCWD re-designed their planning process accordingly to accommodate the hybrid approach and the three agency staffs have been meeting on a regular basis.

3. The August 4th letter says "FORA agrees to explore ways MCWD might be made whole for expenditures by MCWD pursuant to MCWD's RUWAP obligations and recover MCWD's costs to meet service demands and Regional Desalination Project litigation costs." The basic question being posed is if the FORA Board made it clear that MCWD not spend money on litigation costs, why was this provision agreed to?

Response: Staff notes that the 9% rate increase allows MCWD to replenish reserves, fund its capital projects, and balance its operations, but not to fund litigation costs. FORA reiterated throughout and confirmed in its August 10th letter that MCWD is not to make direct expenditures from the current Ord operating budget to further legal actions that the FORA board wants settled. The fact remains, that MCWD has incurred costs processing the RUWAP and so called Regional Desalination Project. MCWD has demonstrated that they are not funding litigation through the current operating budget, but they have also made clear they want an opportunity 'to be made whole.'

It is not unreasonable to engage in a structured discussion with MCWD about which expenditures were related to the general RUWAP, which related to processing of regional desal, and which relate to legal expenditures FORA expressly did not authorize. All this provision does is agree to talk with MCWD over the coming months about this and pose settlement options that might be to the benefit of all, while not posing an impediment to the Cal-Am project, and allows MCWD to continue to recover the regular and customary costs of running a water and sewer district.

If MCWD does not solve this issue, there is fear the cost will be borne by Ord Community rate payers. One reason the Executive Officer agreed to talk to MCWD about cost

recovery is because the direct way to protect rate payers is by programming prior expenditures to RUWAP to achieve the intended result of a cost effective, viable reclaimed project not in conflict with the Peninsula/Cal-Am project. That allows for valid cost recovery options and might even allow MCWD to settle litigation in such a way that all parties are satisfied. FORA is already developing a planning process for such a recycled water project in cooperation with MCWD and MRWPCA and will provide more details to the Board as progress continues to be made. Any other approach may block FORA's access to recycled water or other sources should projects be delayed.

It is staff and Authority Counsel's belief that the admittedly cumbersome process of dispute resolution has been followed to the letter, that an effort has been made to reflect stated Board member opinions, and to brief and update the Administrative and Executive Committees in the midst of specific deadlines mandated by the process.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: Fort Ord Reuse Authority Prevailing Wage Program

Meeting Date: September 11, 2015

Agenda Number: 6d

INFORMATION/ACTION

RECOMMENDATION:

- i. Receive a Fort Ord Reuse Authority ("FORA") prevailing wage policy, compliance and enforcement update/report.
- ii. Provide direction regarding FORA's prevailing wage compliance/enforcement role.
- iii. Staff recommends compliance through: 1) **Option C** - SB 854 Registration if not eligible, then 2) **Option A** - Consultant monitoring.

BACKGROUND:

Adopting a prevailing wage requirement (as a base-wide policy for all new construction) surfaced in the California Legislature debates during the consideration of adopting the enabling laws governing FORA's creation. While the FORA enabling legislation did not include prevailing wage provisions, the initial FORA Board meeting explored the policy question in the exchanges about Board 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, requiring prevailing wages to be paid to all workers employed on former Fort Ord construction contracts. The FORA Master Resolution was adopted on March 14, 1997. Article 3.03.090 of the Master Resolution required/confirmed that prevailing wages be paid for all first generation projects occurring on parcels subject to the Base Reuse Plan (BRP).

Discussion regarding prevailing wage requirements continued and was included in BRP compliance actions through 2006, when the Board engaged in further policy clarification actions. In August 2006, the Board received a status report on jurisdiction 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/enforcement.

In the recent past, with the advent of renewed and considerable construction activity on the former Fort Ord, FORA and the California Department of Industrial Relations (DIR) have received a number of reports/complaints of failure to comply with prevailing wage provisions. During that the past two years, jurisdictions have expressed great concern about the added burden that compliance passes along to the jurisdictions and the related resource impact. FORA staff has reported these circumstances at three Board meetings during this calendar year, including a preliminary summary of the fiscal cost of returning the actual monitoring and compliance role to FORA in contrast to jurisdictional commitment to enforce as noted in the Implementation Agreements.

Prevailing Wage Recent Legislation

In June 2014, the California legislature passed a requirement for contractors and subcontractors involved in public works projects or other projects as may be determined by the Labor

Commissioner to register with the California Department of Industrial Relations (DIR). SB 854 was passed also as a means to fund the DIR to perform monitoring and enforcement of prevailing wage laws. The new law requires online registration, payment of a \$300 fee, that agencies file notices of their public works projects with DIR, and that contractors and subcontractors submit certified payroll records to DIR (unless otherwise excused from this requirement). The requirement also mandates that registering contractors and subcontractors have no record of delinquent unpaid wages or penalty assessments.

DISCUSSION:

At its April 10, 2015 meeting, the FORA Board directed staff to pursue a DIR determination that FORA projects must comply with SB 854 **Attachment A**. While DIR is still reviewing the FORA request, complaints and concerns for enforcement continue to be received both by FORA and DIR regarding the uneven enforcement of Prevailing Wage requirements on FORA construction activity **Attachment B**.

In a June telephone conference call between FORA staff and DIR Deputy Commissioner Eric Rood and DIR Legal Counsel, it was suggested that FORA add language to all of Construction Solicitation documents requiring all respondents to be registered with DIR as required by SB854. This registration requirement will require an Amendment to the FORA Master Resolution.

Additionally, Staff is presenting options for developing a FORA prevailing wage compliance program. Although individual jurisdictions have previously assumed prevailing wage compliance responsibilities but complaints continue to be received that monitoring and enforcement is uneven across the FORA jurisdictions. **Attachment C** to this report compares **four** options for a FORA prevailing wage compliance program.

FORA staff's assumption of two full-time staff positions or equivalent consultant hours to monitor, respond to inquiries, and prepare reports is based on FORA Capital Improvement Program development forecasts. A redacted master services agreement is included under **Attachment D** to provide an example of a consultant contract for prevailing wage services to a public agency. FORA staff recommends pursuing **Option C or A (if FORA is not eligible)**. A history of prevailing wage actions is shown on **Attachment E**.

FISCAL IMPACT:

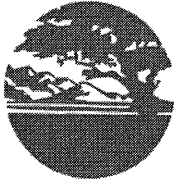
Reviewed by FORA Controller _____

Staff time for this item is included in the approved FORA budget. Should the FORA Board direct staff to proceed with any of the four options for implementing a FORA prevailing wage compliance program, additional FORA budget will be needed to be implemented.

COORDINATION:

FORA Board, City of Marina, Authority Counsel, Department of Industrial Relations.

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



FORT ORD REUSE AU

Attachment A to Item 6d
FORA Board Meeting, 09/11/15

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

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

March 26, 2015

Eric Rood
Assistant State Labor Commissioner
Department of Industrial Relations
160 Promenade, Suite 300
Sacramento, CA 95825

RE: Request to determine SB 854 applicability to Fort Ord.

Dear Mr. Rood,

This letter seeks your clarification regarding provisions of SB 854 that apply to construction projects on the Fort Ord. It is the Fort Ord Reuse Authority's (FORA's) opinion that SB 854, as codified in various sections of California State Code, does apply to Fort Ord. We seek your agreement and determination as the new law provides that the Commissioner may determine the applicability of SB 854 to other projects.

I thank you for taking time this week to speak to John Arriaga, FORA's legislative consultant. I attach the same questions sent to you by Jonathan Garcia and Robert Norris on March 25, 2015. On this note, I have been directed by the FORA Board to make a formal request for a determination from the Department of Industrial Relations (DIR) regarding applicability of SB 854 to Fort Ord. This issue is of great importance to our local community, County and City elected officials, Assembly Member Mark Stone, and State Senator Bill Monning, all of whom sit on the FORA Board.

Historically, the issue of adopting a prevailing wage requirement as a base-wide policy surfaced in the California legislature during debates around the creation of FORA. While the FORA enabling legislation did not include provisions for prevailing wages, 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 required prevailing wages to be paid to all workers employed on FORA's construction contracts.

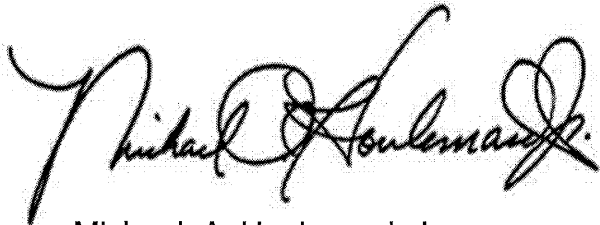
The FORA Board adopted its Master Resolution on March 14, 1997. Article 3.03.090 of the Master Resolution requires that prevailing wage be paid for all first generation projects occurring on parcels subject to the Base Reuse Plan. This originally public land (US Army) is conveyed to FORA, from FORA to the jurisdictions, and from the jurisdictions to a third-party developer. Through the Master Resolution, the FORA Board's policy has been that

prevailing wages are paid as this land is developed. The FORA policy seeks to generate fair wages similar to the legislative intent of SB 854.

The FORA Master Resolution is available through the FORA website at the following address: <http://www.fora.org/Reports/MasterResolution.pdf>

FORA appreciates your urgent attention to this matter, as several public works projects are underway at the former Fort Ord and several more will commence construction in the coming fiscal year. We will contact you early next week to discuss any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Houlemard, Jr.", written in a cursive style.

Michael. A. Houlemard, Jr.
Executive Officer

Enclosures: SB 854 Questions

Cc: FORA Board of Directors



FORT ORD REUSE AUTHORITY

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

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

SB 854 Questions – Public Works

1. In review of the recently enacted SB 854, Fort Ord Reuse Authority (FORA) staff noted that SB 854 encompasses public works projects, as specified, to be paid the general prevailing wage rate, as determined by the Director of Department of Industrial Relations (DIR). In reviewing the FORA Master Resolution prevailing wage provisions (Section 3.03.090), First Generation Construction on the former Fort Ord is required to pay not less than the general prevailing rate of wages as determined by the Director of DIR. In the opinion of FORA staff and Authority Counsel, FORA's prevailing wage provisions constitute a public works project now subject to SB 854. Does DIR agree with this determination?
2. Does FORA need to follow a formal process for DIR to consider whether or not FORA is subject to SB 854?
3. If yes, to whom should FORA address its request for a determination?
4. If subject to SB 854, FORA staff would continue to monitor prevailing wage compliance on former Fort Ord. How would FORA staff access online prevailing wage compliance information in the future?
5. Is there a certification requirement for 3rd party compliance monitors?
6. Does DIR charge public agencies to perform monitoring? If so, what are the rates?
7. What is the timeline for responding to complaints?

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

Attachment B to Item 6d
FORA Board Meeting, 9/11/15

San Francisco

July 8, 2015

595 Market Street, Suite 1400
San Francisco, California 94105
415.597.7200
Fax 415.597.7201

Via Electronic Mail (board@fora.org; michael@fora.org) and U.S. Mail

Board of Directors
Michael Houlemard, Executive Director
Fort Ord Reuse Authority
920 2nd Ave.
Marina, California 93933

Dear Members of the FORA Board of Directors and Executive Director
Houlemard,

We represent the Monterey/Santa Cruz Counties Building & Construction Trades Council. This letter responds to FORA's request that the California Department of Industrial Relations ("DIR") determine whether or not FORA is subject to SB 854 requirements. The Building Trades Council commends FORA for exploring more effective means of ensuring compliance with the Master Resolution's prevailing wage requirement. The Building Trades Council and its affiliated unions have documented instances in which contractors have avoided their prevailing wage obligations. Attempts to secure certified payroll records ("CPRs") on Fort Ord projects have been met by delay and blurred lines of responsibility. Moreover, jurisdictions like the City of Marina have publicly stated that they lack the capacity to monitor projects in their jurisdictions for prevailing wage compliance. Clearly, there is a need for a new approach to monitoring and compliance. Only FORA can effectively monitor and police the Master Resolution's prevailing wage requirement, as Master Resolution Section 1.02 already requires it to do.

As you are aware, SB 854 made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects, including registration requirements for contractors and a requirement that contractors provide electronic certified payroll records to DIR for monitoring. DIR's monitoring and compliance efforts, however, attach only to "public works" projects, as defined in California Labor Code § 1720. Many development projects on Fort Ord will meet the definition of a public work under state law because they "paid for in whole or in part out of public funds." However, the prevailing wage requirements under the Master Resolution have a broader scope than "public works" under the Labor Code.

Barry S. Jellison (CA)

Steven L. Stemerman (CA, NV)

Richard G. McCracken (CA, NV)

W. David Holsberry (CA, NV)

Elizabeth Ann Lawrence (CA, NV, AZ)

Andrew J. Kahn (CA, NV, AZ)

John J. Davis, Jr. (CA)

Florence B. Cup (CA, NV)

Kristin L. Martin (CA, NV, HI)

Eric B. Myers (CA, NV)

Paul L. More (CA, NV, MA)

Sarah Varela (CA, AZ, NV)

Sarah Grossman-Svenson (CA, NV)

Yuval Miller (CA, NV)

Kyrsten Skogstad (CA, AZ)

David L. Barber (CA)

Robert P. Cowell (1931-1980)

of counsel:

Philip Paul Bowe (CA)

**McCracken, Stemerman
& Holsberry**

1630 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.5548

DAVIS, COWELL & BOWE, LLP

Fort Ord Reuse Authority Board of Directors and Executive Director Michael Houlemard

July 8, 2015

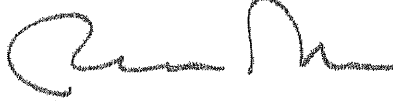
Page 2

Master Resolution Section 3.03.090 applies to all "First Generation Construction performed on parcels subject to the Fort Ord Base Reuse Plan," regardless of whether the ultimate construction is paid for in whole or in part out of public funds. The Master Resolution's prevailing wage requirement devolves on member jurisdictions and developers through FORA's Implementation Agreements with member jurisdictions and the deeds transferring Fort Ord land. *Monterey/Santa Cruz Counties Building & Construction Trades Council v. Cypress Marina Heights L.P.*, 191 Cal.App.4th 1500 (2011). FORA polices compliance with the prevailing wage requirement both through its consistency determinations and through its authority under Section 1.02.

The Master Resolution's prevailing wage requirement was thus intended to be broader than that under state law and to have a different enforcement mechanism. From the policy's adoption in 1995, FORA's Board recognized the particular importance of a prevailing wage mandate to Fort Ord's economic revitalization.

DIR will only have jurisdiction over those Fort Ord development projects (or portions of development projects) that are also "public works" under the Labor Code. Rather than relying on patchwork monitoring from DIR, FORA should establish its own compliance and monitoring program to ensure compliance with its own Master Resolution.

Very truly yours,



Paul L. More

PLM/dl

cc: Ron Chesshire

Robert Norris

From: Ron Chesshire <ron@mscbctc.com>
Sent: Tuesday, July 14, 2015 11:53 PM
To: FORA Board; micheal@fora.org; Robert Norris; jgiffen@kahlaw.net; Steve Endsley
Subject: Master Resolution 1.02

Members of the Board, after many meetings looking into your blank stares when we bring up 1.02 of the Master Resolution we believe it is time for Counsel (Mr. Giffen) to inform the Board and the public of his professional opinion of the meaning and intent of Article 1.02 (1.02.010

- 1.02.110). If he has already done so we request a copy of his opinion.

There seems to be no concern that violations of the MR are taking place and the active jurisdictions and FORA are not responding as per 1.02 even though a jurisdiction claims ignorance, lack of resources and not being responsible. We do applaud your current efforts to bring real compliance to future projects but note this does not alleviate the current problems. Since we are not attorneys we may be wrong in our opinion of 1.02 but it seems we are the only ones whoever mention it and when we do we get the feeling we just drove into the herd around the corner at nighttime. It is called "Enforcement of Master Resolution" and its content seems very simple to understand but again we are not attorneys. The MR is almost 20 years old. Elected officials, City Managers, County Administrators, and City and County staffs, have changed over time. Original intent is being lost in many areas of the MR and as per 1.02 it seems those responsible are in doubt as to their responsibility. In one conversation with the past Sheriff and Head Deputy when told of our opinion of their FORA role the Deputy said, "They can't tell us what to do. We didn't agree to that" and in another incident with a Police Chief it was reported he said, "I don't work for FORA". We have reported in past FORA meetings that the responsible officials in each jurisdiction need to be educated as to their responsibilities. We are beginning to believe now more than ever that the education effort may need to be extended to Admin and staff in the jurisdictions of FORA. Lastly, we are deeply concerned that the possible lack of attention by all responsible parties to what may be their responsibility may lead to legal action. It is very disappointing when the only way to receive justice is through unnecessary litigation caused by the actions or in this case the lack of action on the part of those who should have acted. Therefore I hereby request that FORA assign Mr.

Giffen the duty to write a brief of his professional opinion as to the meaning and intent of Article 1.02 in its entirety. We are in hope that this effort will eliminate the perceived void which exists in the understanding of 1.02 even if that void is solely our own. If so assigned we would like a copy when complete. Thank you, Ron Chesshire CEO - Monterey/Santa Cruz Counties Building and Construction Trades Council

Fort Ord Prevailing Wage Policy Options

Description	Option A	Option B	Option C	Option D
Summary	FORA compliance with consultant monitors	FORA compliance through staff monitors	FORA require SB 854 registration	Status Quo compliance provided by individual jurisdictions
FORA Master Resolution Amendment	Yes	Yes	Yes	Yes
Estimated Cost	80 hours week compliance software \$320,000 per FY.	Assuming 2 FTE compliance software: \$250,000 per year.	Unknown-possibly .3 FTE	Varies by jurisdiction \$50,000 contract to internal staffing = 2 FTE
Estimated Schedule	Selection period could be completed in 2 months.	Selection period could be completed in 3 months.	Unknown	Unknown
Estimated Duration	5 years or if jurisdictions assume after 06/30/20	5 years if jurisdictions assume after 06/30/20	5 years if jurisdictions assume after 06/30/20	5 years or more; May change after 06/30/2020
Flexibility with changing development cycles	Flexibility could be addressed in contract	Hiring additional personnel when needed may be challenging	Unknown	
Long-term obligations	FORA responsibility ends on 06/30/2020	Any retiree benefits will be addressed in FORA dissolution plan	Unknown	

AGREEMENT BETWEEN COUNTY OF MONTEREY AND THE LABOR COMPLIANCE MANAGERS

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and The Labor Compliance Managers, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, COUNTY has invited proposals through the Request for Qualifications (RFQ # 10422) for On-call wage rate and labor compliance monitoring, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible statement of qualifications to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, COUNTY and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

1.1 After consideration and evaluation of the CONTRACTOR'S statement of qualifications, COUNTY hereby engages CONTRACTOR to provide the services set forth in RFQ #10422 and in this AGREEMENT on the terms and conditions contained herein and in RFQ # 10422. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

- RFQ # 10422 dated May 9, 2013, including all attachments and exhibits
- Addendum #1
- Exhibit A: Payment Provisions
- CONTRACTOR'S Proposal dated June 14, 2013
- AGREEMENT
- Certificate of Insurance
- Additional Insured Endorsements

1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order:

AGREEMENT, CONTRACTOR'S Qualifications, RFQ #10422 including all attachments and exhibits, Addendum #1, Exhibit A Payment Provisions, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the COUNTY, or immediate family of an employee of the COUNTY.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use COUNTY premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 The Scope of Work includes but is not limited to the following:
 - 2.2.1 For projects where the COUNTY is the contracting agency, under the review of and in collaboration with the COUNTY's on-site construction manager:
 - 2.2.1.1 Participate in pre-construction conferences with contractors and subcontractors to discuss prevailing wage documentation and procedures required for the project.
 - 2.2.1.2 Collect and review certified payrolls from prime contractors and all subcontractors for compliance with the state and federal prevailing wages contained in the bid documents related to each specified project.
 - 2.2.1.3 Prepare correspondence with the contractor and/or subs who fail to pay the required wage.
 - 2.2.1.4 Conduct periodic on-site interviews with selected workers to spot-check validity of the certified payrolls.
 - 2.2.1.5 Submit to the COUNTY a final report summarizing the projects compliance with the wage requirements at project close-out.

- 2.2.1.6 Maintain complete, accurate, and up-to-date files related to these activities, and make available for inspection by the COUNTY, State Division of Industrial Relations, and/or any grant agencies for a minimum of three years after recording of the Notice of Completion for that project.
- 2.2.2 For certain projects performed by third-party entities as determined by the COUNTY (particularly within the unincorporated area of the former Fort Ord):
 - 2.2.2.1 Review certified payrolls provided by the COUNTY collected from developers, prime contractors, and subcontractors for compliance with the states prevailing wages.
 - 2.2.2.2 Prepare correspondence with the contractor and/or any subs who fail to pay the required wage.
 - 2.2.2.3 Submit to the COUNTY a final report summarizing each project's compliance with the wage requirements project close-out.
 - 2.2.2.4 Maintain complete, accurate, and up-to-date files related to those activities and make available a minimum of three years after completion or closure of the particular construction contract being monitored.

3.0 TERM OF AGREEMENT

- 3.1 The initial term shall commence on **December 1, 2013** through and including **December 31, 2015**, with the option to extend the AGREEMENT(s) for three (3) additional 1 year increments at the COUNTY's discretion. COUNTY is not required to state a reason if it elects not to renew this AGREEMENT. This agreement is of no force or effect until signed by both CONTRACTOR and COUNTY and with COUNTY signing last, and **CONTRACTOR may not commence work before COUNTY signs this Agreement.**
- 3.2 If COUNTY exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions in writing.
- 3.3 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.
 - 3.3.1 Both parties shall agree upon rate extension(s) or changes in writing.
- 3.4 COUNTY reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the payment provisions attached hereto.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. COUNTY does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.4 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from COUNTY in writing.
- 4.5 Tax:
- 4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.5.2 COUNTY is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The COUNTY is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Resource Management Agency department at the following address:
- County of Monterey
Resource Management Agency
168 W. Alisal St. 2nd Floor
Salinas, CA 93901
Attn: G.H. Nichols, PE
- 5.2 CONTRACTOR shall reference the RFQ number on all invoices submitted to COUNTY. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. COUNTY shall certify the invoice, either in the requested amount or in such other amount as COUNTY approves in conformity with this AGREEMENT, and shall promptly submit such invoice to COUNTY Auditor-Controller for payment. COUNTY

Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

- 5.3 All COUNTY Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by COUNTY. Surcharges and additional fees not included the AGREEMENT must be approved by COUNTY in writing via an Amendment.

6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

- 7.1 Evidence of Coverage:
- 7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- 7.1.2 This verification of coverage shall be sent to the COUNTY's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by COUNTY. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by COUNTY's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to

transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

- 7.4.2 Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY's contract administrator and COUNTY's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by COUNTY, annual certificates to COUNTY's Contract Administrator and COUNTY's Contracts/Purchasing Division. If the certificate is not received by the expiration date, COUNTY shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles COUNTY, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the COUNTY or prepared in connection with the performance of this AGREEMENT, unless COUNTY specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to COUNTY any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to COUNTY any COUNTY records which CONTRACTOR used or received from COUNTY to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and COUNTY rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: COUNTY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of COUNTY or as part of any audit of COUNTY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of

Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all agreements with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of COUNTY, nor immediate family of an employee of COUNTY. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc,) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 10.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of COUNTY.
- 10.4 Any subcontractor shall comply with all of COUNTY requirements, including insurance and indemnification requirements as detailed in SAMPLE AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.
- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices

Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to COUNTY's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

- 13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

- 14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

- 15.1 Assurance of Performance: If at any time COUNTY believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If COUNTY accepts the plan it shall issue a signed waiver.

- 15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

- 16.1 In the case of default by CONTRACTOR, COUNTY may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by COUNTY shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

17.0 DEBARMENT AND SUSPENSION

- 17.1 By signing this AGREEMENT CONTRACTOR agrees to comply with applicable federal suspension and debarment regulations, including but not limited to Title 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

By signing this AGREEMENT, CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency; and

Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

18.0 FORCE MAJEURE

- 18.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 18.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 18.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

19.0 NON-APPROPRIATIONS CLAUSE

- 19.1 Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for COUNTY for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, COUNTY will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which

appropriations shall have been budgeted for COUNTY or are otherwise available for payments.

20.0 BACKGROUND CHECKS

- 20.1 CONTRACTOR shall be required to obtain State and Federal level criminal background clearance(s) for all personnel required to work within COUNTY facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office.

A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to COUNTY prior to the personnel being allowed to work within such COUNTY facilities. CONTRACTOR shall be responsible for the cost of these background check costs unless otherwise informed by COUNTY. In some circumstances, a specific COUNTY department may request that COUNTY Sheriff's Office perform the background checks.

All CONTRACTOR personnel who are designated to provide services at any of the COUNTY Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office specifically.

21.0 NOTICES

- 21.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to COUNTY's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

County of Monterey
Resource Management Agency
168 W. Alisal Street, 2nd Floor.
Salinas, CA 93901-2439
Attn: G. H. Nichols, PE
Tel. No. 831-755-5386
Fax No. 831-755-5877
NicholsN@co.monterey.ca.us

TO CONTRACTOR:

The Labor Compliance Managers
1873 Luxton Street
Seaside, CA 93955
Attn: Lindley Robertson, MPA, Owner and
Executive Officer
Tel. No. 408-516-7238
Fax No. 408-564-8353
rlindaly@yahoo.com

22.0 LEGAL DISPUTES

- 22.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

23.0 TRAVEL REIMBURSEMENT

- 23.1 Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of COUNTY's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

EXHIBIT A
PAYMENT PROVISIONS
The Labor Compliance Managers

Master Agreement for On-Call Labor Compliance Monitoring Services

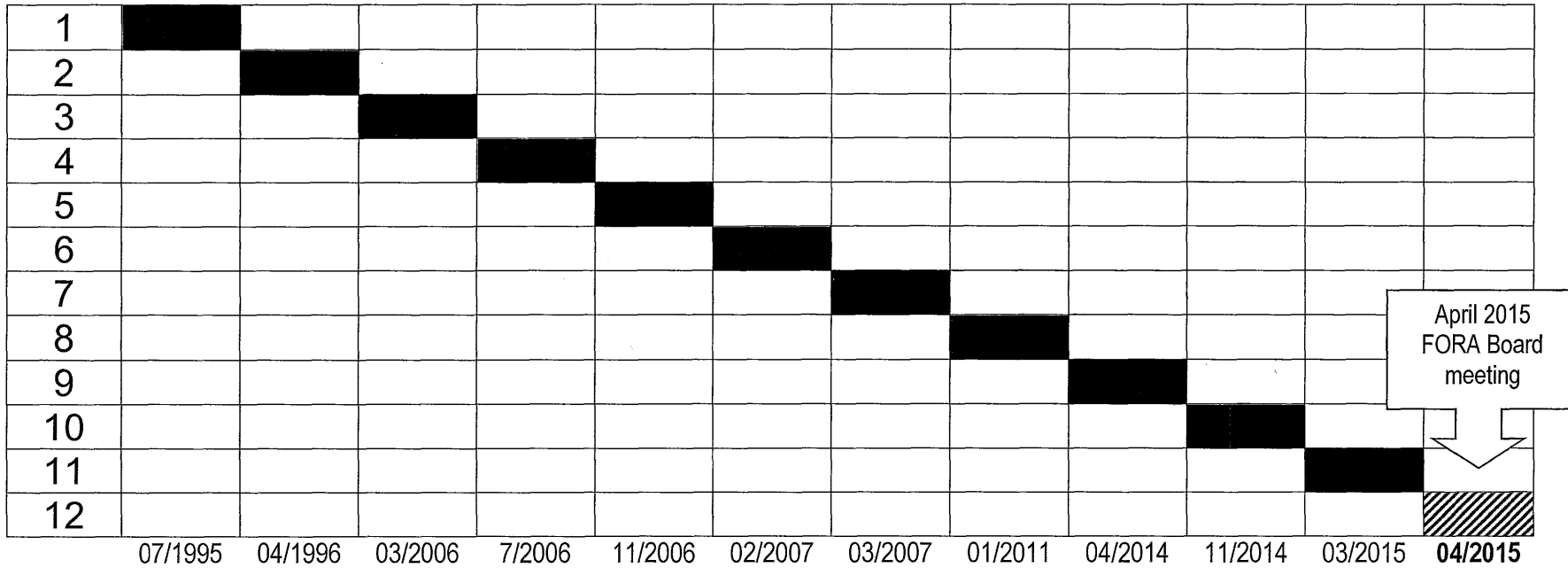
This EXHIBIT A shall be incorporated by reference as part of the Agreement dated December 1, 2013, governing work to be performed under the above referenced Agreement, the nature of the working relationship between the County of Monterey Resource Management Agency ("COUNTY") and The Labor Compliance Managers ("CONTRACTOR"), and specific obligations of the CONTRACTOR.

Under the direction, coordination, and scheduling of COUNTY, CONTRACTOR shall provide wage rate and labor compliance monitoring and documentation services from time to time on an as-needed basis on a number and variety of proposed public sector construction projects funded with federal, state, and local public funding, in accordance and compliance with the requirements contained in the applicable federal and state laws and/or grant requirements. COUNTY will assign projects to CONTRACTOR in a manner which best promotes the interest of the COUNTY. Such interests may include similarity of services, and/or proximity to each other, and/or criteria. COUNTY reserves the right to contract for similar services from other firms on other contracts or projects without utilizing the firms to be selected herein.

PAYMENT FOR SERVICES: Payment to CONTRACTOR for the services provided under this Agreement shall be made on an hourly time-and-material basis at the rate of \$125/00 per hour. Payment for reimbursable expenses, including *subcontractors and subconsultants*, printing and computer plots, delivery services, computer supplies/disks, mileage, etc., will be made at actual cost (NO MARK-UP). Mileage cost shall not exceed COUNTY-approved mileage rates in effect at the time. Appropriate documents shall be provided with all requests for reimbursement.

The Total Fee amount paid under this Agreement *shall not exceed \$50,000.*

FORA Prevailing Wage History 1995 to Present



1. Adoption of Ordinance No. 95-01
2. Adoption of Master Resolution Chapter 3
3. FORA Legal Counsel Clarifies Prevailing Wage Policy
4. Trades Council requests PW Reports.
5. FORA Board debates PW Policy
6. Trades Council Sues for PW enforcement.
7. Master Resolution Amendment (Res. 07-4) Clarifies 1st Generation Construction.
8. 6th Appellate District Court Appeals Decision Trades Council v. Cypress Marina Heights, LLP.-PW obligation upheld
9. Complaints and concerns for enforcement
10. FORA Staff Presentation on Prevailing Wage Program Overview
11. FORA Staff Status of Enforcement
12. Options for PW program Presentation

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Fort Ord Reuse Authority Building Removal Update	
Meeting Date:	September 11, 2015	INFORMATION
Agenda Number:	6e	

RECOMMENDATION:

- i. Receive Fort Ord Reuse Authority Building Removal Update report.
- ii. Receive notice to release Industrial Hygienist Request for Proposal

BACKGROUND:

The U.S. Army conveyed real property to the Fort Ord Reuse Authority (FORA) under an Economic Development Conveyance (EDC) Memorandum of Understanding that outlines terms and conditions of a local Base Realignment and Closure (BRAC) recovery program with the restriction that FORA and the Jurisdictions received the property with the buildings "as-is, where-is". The buildings, declared surplus to military needs, have proved to be a significant barrier to implementing the terms of the EDC Memorandum of Understanding (MOU) and the Fort Ord Base Reuse Plan (BRP). FORA has been assigned specific responsibility for certain building removal/clearance obligations under a combination of State Law and Board policy.

Closure/downsizing of the U.S. Army Fort Ord Military Reservation in 1994 (1991 Base Realignment and Closure Round) left in excess of 3,500 buildings (from 400 to 65,000 square feet in size) and 45 square miles of land. After almost 20 years and numerous adaptive reuse attempts, these remaining buildings cannot be economically converted for the recovery effort. The hazardous material complications elevate removal costs substantially higher than original U.S. Army estimates. Building removal costs may exceed residual land value.

The Army left behind approximately 1,600 buildings that offered little or no use to the civilian community, ranging in age from the early 1900's to the late 1980's. These buildings have become dilapidated over time, contain various forms of hazardous materials, and are frequently targeted sites for vandalism and illegal dumping. In Seaside there are 26 of these buildings (approximately 2 million square feet) which are large, multi-story concrete structures in close proximity to occupied military housing, military serving office buildings and civilian schools, college campus buildings and other various uses. The remaining dilapidated buildings are not reusable and it has become cost prohibitive to remodel them given the amount of hazardous materials, health and safety code issues, and engineering challenges.

Since 1996, FORA has actively pursued understanding former Fort Ord building removal complexities and costs and applying lessons learned to manage removal costs while protecting human health and the environment. FORA has removed over five hundred World War II (WWII) era wooden structures (approximately 4,000,000 square feet), achieving approximately 90% building material recycling rate (by weight). Initially, Fort Ord-wide deconstruction efforts were focused on WWII era wooden structures, some of the oldest infrastructure in the Fort Ord inventory. Over the course of FORA's building removal program, the potential for job creation and economic recovery through opportunities in deconstruction, building reuse, and recycling

were researched, and remediation techniques were established that created efficiency and identified cost savings.

FORA shared lessons learned with CSUMB to establish their own approximately 330 former Army building removal program. To date, CSUMB has deconstructed approximately two hundred WWII era wooden structures, recycling approximately 90-97% of the non-hazardous building materials (by weight) including metal, concrete, and wood. In the summer of 2011, CSUMB removed its last wooden structures; making future development space and removing a substantial amount illegally dumped waste.

When Fort Ord closed, the United States Environmental Protection Agency (EPA) listed the entire base as a Comprehensive Environmental Response Compensation and Liability Act (CERCLA) site from "fence-line to fence-line" due to groundwater and other contamination. Traditionally, building blight removal is supported by Brownfields funds. Statutorily, Brownfields funding cannot be used on CERCLA cleanup sites, making the former Fort Ord ineligible to apply.

The Seaside Surplus II area abuts the CSUMB campus and CSUMB study area. The Seaside Surplus II area also abuts occupied military homes and the Department of Defense building on Gigling Road. Portions of the Seaside Surplus II area surround existing buildings reused in place, including the Presidio of Monterey Police station, Monterey College of Law, Monterey Peninsula College Police Officer Training Academy and National Guard buildings.

The Seaside study area contains thirty-eight concrete structures (one building has been removed). Eight buildings have been reused, four buildings have not been determined as required for removal and twenty-six dilapidated buildings require removal. The dilapidated buildings have been vandalized, copper wiring and piping has been stolen, and windows and doors have been broken. The multi-story buildings do not have elevators, are not ADA compliant, and none meet earthquake safety codes. These twenty-six structures prevent implementation of the 1997 BRP, redevelopment of the area, and have a negative impact on surrounding properties. The area is the northeast gateway to the City of Seaside and CSUMB with Gigling Road on its southern boundary; a major artery into and out of Seaside, and difficult for police to patrol.

In late 2013 the California State University system announced \$30M in funding being awarded to the CSUMB campus building removal program over the next six months to two years. As CSUMB implements their building removal program, FORA and the City of Seaside will work closely with CSUMB staff to incorporate lessons learned, costing and building removal techniques into the Deconstruction/Building Removal Business Plan work.

Figure 1: History of Building Removal Activity

Activity	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
FORA Deconstruction	█	█	█	█	█	█	█												
FORA Asbestos		█																	
FORA Reuse Hierarchy			█																
FORA Contractor Quals			█																
FORA LBP		█	█	█	█	█	█												
FORA Characterization						█													
FORA Imjin							█												
FORA 2nd Ave								█											
FORA/CSUMB Recovery									█										
FORA/Dunes										█									
FORA East Garrison											█								
FORA Imjin Office Park												█							
FORA ESCA Removal													█						
FORA 4470																█			
FORA/CSUMB Grant App																	█	█	
FORA Grant App																			█
Seaside Highlands								█	█										
CSUMB											█	█			█			█	█
Army RCI										█	█	█	█	█					

DISCUSSION:

On August 5th, 2015 Seaside Staff met with FORA Staff concerning a plan to meet the surplus II obligation. Two plans were presented, the first to remove Hazardous Materials only; the second to remove a representative selection of buildings to determine actual costs of demolition. Preliminary cost estimates were discussed. All agreed that the foundational requirement to move forward on building removal, regardless of the plan, was to perform an Industrial Hygienist Survey (IHS).

The Request For Proposals (RFP) for the Industrial Hygienist (IH) is ready to be released.

FISCAL IMPACT:

Reviewed by FORA Controller _____

COORDINATION:

City of Seaside, Administrative Committee; Executive Committee; FORA Authority Counsel

Prepared by _____
Stan Cook

Approved by _____
Michael A. Houlemard, Jr.

DRAFT

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Outstanding Receivables

Meeting Date: September 11, 2015

Agenda Number: 8a

INFORMATION

RECOMMENDATIONS:

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update for August 2015.

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 and Preston Park is among the parcels subject that FORA's Development Fee Schedule overlay. In March 2009, the FORA Board approved an MOU between FORA and Marina whereby a portion of the Preston Park Development Fee were paid through project reserves. In 2009, Marina transferred \$321,285 from the Preston Park project account, making an initial Development Fee payment for the project. The remaining balance is outstanding and was the subject of litigation.

In November 2014, Marina and FORA agreed to settle pending litigation primarily by Marina acquiring FORA's interest in Preston Park. In February 2015, FORA and Marina finalized settlement agreement terms. FORA will apply \$2.08 million of the \$35 million settlement amount to the outstanding development fees to address this outstanding receivables on FORA's books. Marina has no objection to the settlement funds being applied to the residual fees. It was anticipated that Marina would complete the purchase of FORA's interest in Preston Park by the end of June. However, the closing date is deferred to September pending completion of an outstanding capital project required by Marina's lender to be completed - prior to funding.

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 _____
Ivana Bednarik

Approved by _____
Michael A. Houlemard, Jr.

Placeholder for Item 8b

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: September 11, 2015

Agenda Number: 8c

INFORMATION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee met on August 5, 2015 and the approved minutes will be included in the final Board packet. The August 19, 2015 meeting was cancelled.

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 _____
Maria Buell Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Post Reassessment Advisory Committee

Meeting Date: September 11, 2015

Agenda Number: 8d

INFORMATION

RECOMMENDATION(S):

Receive a Post Reassessment Advisory Committee (PRAC) activity/meeting report.

BACKGROUND/DISCUSSION:

The PRAC met on Friday, July 17, 2015 and received status updates and deliberated regarding the Trails Working Group, Economic Development related items, Blight Removal, and Regional Urban Design Guidelines. TAMC Assistant Planner Virginia Murrillo presented the TAMC Wayfinding Plan Presentation. Members discussed trails planning efforts and requested a Post Reassessment Work Plan update at the next scheduled meeting.

The next meeting of the PRAC is scheduled for 9:00 am on Thursday, September 10, 2015.

The PRAC delayed approval of its June 19, 2015 meeting minutes until its next meeting due to lack of obtaining a quorum at its July meeting.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

PRAC, California State University Monterey Bay, Transportation Agency for Monterey County, Bureau of Land Management, Administrative and Executive Committees.

Prepared by _____
Josh Metz

Approved by _____
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Regional Urban Design Guidelines Task Force

Meeting Date: September 11, 2015

Agenda Number: 8e

INFORMATION

RECOMMENDATION(S):

Receive Regional Urban Design Guidelines (RUDG) Task Force (Task Force) Update.

BACKGROUND/DISCUSSION:

The RUDG Task Force met at 9:00am on Thursday, June 25, 2015 to review a RUDG Administrative Draft. Task Force, Staff and consultants have made significant incorporating existing plans and community input. Members reviewed draft materials in detail and provided feedback. Along with member input, representatives from the CSUMB Campus Master Planning process and consultant team contributed feedback and suggestions. Community representation from Fort Ord developers, construction trades, and a broad set of community interests also yielded constructive feedback.

The Task Force met again on August 18 and 27 to review updates to the RUDG document. Members and stakeholders met for 7 hours during these two meetings. Discussion focused on continuing refinement of presented documents and content and suggestions for format adjustments. The current approach involves separating BRP directed RUDG from other process related content into two distinct documents: RUDG (for Board approval and policy use) and Design Fort Ord (non-binding process/context document). Members provided additional input to strengthen language linking the RUDG with specific BRP policy direction.

Members recommended delaying DRAFT RUDG presentation to incorporate new content and format adjustments. Staff plans to present updated format and content examples for Board information during the September meeting, and presenting the DRAFT RUDG in October.

Approved June 25 and August 18 minutes are attached (**Attachment A**).

The next RUDG Task Force meeting was set for 11:00 am, Thursday September 10, 2015.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

Administrative Committee and Dover, Kohl & Partners.

Prepared by _____
Josh Metz

Approved by _____
Michael A. Houlemard, Jr.



FORT ORD REUSE AUTHORITY

REGIONAL URBAN DESIGN GUIDELINES TASK FORCE REGULAR MEETING NOTES

12:00 p.m., August 18, 2015 | FORA Conference Room
920 2nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER AND ROLL CALL

RUDG Task Force Chair Michael Houlemard called the meeting to order at 9:05 a.m. The following were present:

Members:

John Dunn, City of Seaside
Victoria Beach, City of Carmel-by-the-Sea
Layne Long, City of Marina
Carl Holm, Monterey County
Elizabeth Caraker, City of Monterey
Anya Spear, CSUMB

FORA Staff:

Michael Houlemard
Jonathan Garcia
Josh Metz
Steve Endsley
Ted Lopez

Others:

Bob Schaffer
Jane Haines
Kathy Biala
Steve Matarazzo
Tim O'Halloran
Bob Schaffer
Hernan Guerrero and Jason King,
DKP (via phone)
Lisa Brinton
Beth Palmer
Wendy Elliott

2. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Chair Michael Houlemard and FORA Economic Development Coordinator Josh Metz thanked County of Monterey staff for their in-depth review / written comments of the draft RUDG. Ms. Wendy Elliott noted for the record, the draft RUDG cover page photo depicting multi-family housing is incorrect and should not be used because the property is zoned for single-family housing.

3. APPROVAL OF MEETING MINUTES

a. June 25, 2015 Meeting Minutes.

MOTION: John Dunn moved, seconded by Carl Holm, to approve the June 25, 2015 minutes as presented.

MOTION PASSED: Unanimous.

4. PUBLIC COMMENT PERIOD

None.

5. BUSINESS ITEMS

a. Receive updated RUDG completion Strategy

Chair Houlemard discussed the format to review the draft RUDG. A page-by-page review of the draft would be conducted by RUDG task force members to identify changes / additions needed. The task force goal is to finalize the draft RUDG and release it for public comment. In addition, the project review objective is to complete RUDG in time for the December 11, 2015 FORA Board meeting.

FORA Economic Development Coordinator Josh Metz reviewed a power point presentation which provided a project timeline for draft guideline presentation to the FORA Board, comment periods, and

final RUDG presentation. Mr. Metz emphasized the importance of task force members to complete their review of the draft RUDG to recommend changes, corrections and clarifications. The intent is to release the draft RUDG for a 30-day public review / comment period.

b. Review draft RUDG v3.0

There was extensive discussion on the draft RUDG by task force members and community participants present. General consensus revolved around clarifying language in the draft RUDG to describe the purpose, applicability and consistency with the Base Reuse Plan (BRP). The task force reached a consensus to recommend the following draft RUDG changes, corrections and clarifications:

- Clarify the Introduction Section:
 - Expand/broaden the description.
 - Use lay terminology where possible to aid public understanding.
 - Include key terms definitions (such as “design-related measure”).
 - Reference the BRP and Master Resolution and LINK to the listed principles.
 - Include Decision Tree/Flow Chart for where/when the Design Guidelines apply.
- Strengthen connection between BRP language and nine (add principles if necessary to be inclusive of the BRP standards) reuse guideline principles that make up the RUDG to consist:
 - p.61 ““Urban design guidelines will establish standards for road design, setbacks, building height, landscaping, signage, and other matters of visual importance.”
 - Road Design.
 - Setbacks.
 - Building Height.
 - Landscaping.
 - Signage (relate this to TAMC’s Wayfinding Plan process).
 - Other matters of visual importance.
- Highlight the connection of each of the recommended RUDG principles to these 6 required elements (i.e. bullet points beneath each RUDG title).
 - See page 21 in Hwy 1 Design Guidelines for example of sidebar footnotes linking content to BRP language.
- Remove the Applicability Matrix.
- Define/describe how/why street neighborhood connectivity is “regional” issue. Relationship of street network form and traffic flow/movement patterns.
- Change “Requirements” to “Guidelines” or “Principles,” “shall” to “should,” and “must” to “should be” or use action words like “design,” “permit,” “connect,” etc.
- Use active voice in description of “Principles” i.e. “Connect all new neighborhood streets to adjacent streets where connecting stubs are available” vs. “All new neighborhood streets **must**...” And “Permit secondary entrances on side rear facades...” instead of “Secondary entrances shall be permitted on side rear facades...”
- On page 2.11 section “1. Park,” add italicized text to second to last sentence: “Parks often have a minimum of 8 acres, *or may be smaller to meet city or county requirements.*”
- On page 2.15, TF asked what does “Sensitive Drives” mean? Can you find a better term?

- Clarify connection between Walkable Streets cross-sections and existing FORA street design standards.
 - Clarify criteria for on-street vs off-street parking.
 - Run lane width recommendations by public safety officials.
- Eastside Parkway design review discussed. The BRP Program Environmental Impact Report (EIR) evaluated certain assumptions about standard roadways on Fort Ord. FORA has yet to complete an Eastside Parkway project specific California Environmental Quality Act (CEQA) process. Eastside Parkway roadway widths may change in the future through the CEQA process. (Note: FORA staff will research the pro's and con's of reducing draft Eastside Parkway cross section travel lanes to 11').
 - Generally agreed to reduce lane widths to 11' in RUDG renderings. Initiate contact with TAMC to receive input on lane widths reduction to 11' (and to include TAMC approval for any changes to road designs, new criteria).
- Plain English term for "legible" – i.e. identifiable.
- Select and finalize cover page (no picture depicting multi-family housing).
- Provide a description using examples how the design guidelines are to be used by either a developer, regional agency, organization or local government jurisdiction. Incorporate examples.

The RUDG task force will continue their review of the draft RUDG beginning with page 2-22, Legible Centers. The next RUDG meeting will be held Thursday, August 27, 2015 at 10:00 a.m.

6. **ITEMS FROM MEMBERS**

None.

7. **ADJOURNMENT**

The meeting was adjourned at 2:30 p.m.



FORT ORD REUSE AUTHORITY

REGIONAL URBAN DESIGN GUIDELINES TASK FORCE REGULAR MEETING NOTES

9:00 a.m., June 25, 2015 | FORA Conference Room

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

1. CALL TO ORDER AND ROLL CALL

Chair Daniel Dawson called the meeting to order at 9:00 a.m. The following were present:

Members:

John Dunn, City of Seaside
Victoria Beach, City of Carmel-by-the-Sea
Layne Long, City of Marina
Carl Holm, Monterey County
Daniel Dawson, City of DRO
Elizabeth Caraker, City of Monterey

FORA Staff:

Jonathan Garcia
Josh Metz
Steve Endsley
Crissy Maras

Others:

Bob Schaffer
Jane Haines
Phyllis Meurer
Steve Matarazzo
Hernan Guerrero and Jason King,
DKP (via phone)
Anya Spear
Gene Doherty
Chris Placco
Ron Chesshire
Barbara Maloney
Wendy Elliott

2. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

None.

3. APPROVAL OF MEETING MINUTES

a. May 1, 2015 Meeting Minutes

MOTION: John Dunn moved, seconded by Anya Spear, to approve the May 1st minutes as presented.

MOTION PASSED: Unanimous

4. PUBLIC COMMENT PERIOD

The committee heard from Bob Schaffer, who announced workforce housing availability at the Dunes on Monterey Bay development for those making up to \$111K annually.

5. BUSINESS ITEMS

a. Review Draft Regional Urban Design Guidelines

Members reviewed sections 1 & 2 from the draft guidelines and provided feedback including: guidelines should reflect entitled projects or the text should state that the guidelines do not apply to already entitled projects; reorganization of the sections so the maps follow the guidelines; and several suggested edits to the trail maps and illustrative drawings. The consultants were directed to revise the text and maps, including presenting map options to the committee that would illustrate former Fort Ord trails and trail types, identify property boundaries and National Monument entrances, and correct labeling errors and/or omissions. Members additionally requested that the consultants review the minimum distance of guideline applicability from rights-of-way rather than from centerlines and that the draft guidelines be revised to include an index.

FORA Economic Development Coordinator Josh Metz reviewed a power point presentation which provided a project timeline for draft guideline presentation to the FORA Board, comment periods, and final RUDG presentation. Members suggested that the July FORA Board meeting presentation be postponed so the consultants could make the suggested edits and the committee could have an additional meeting with time to review the revised draft. Mr. Metz will poll the members and schedule another task force meeting in the near term.

Members additionally expressed the importance of Seaside main gate, retail and residential development plans coordinating with CSUMB master planning efforts to ensure consistency with the Base Reuse Plan. FORA staff agreed to facilitate those discussions.

A member of the public noted that the draft guidelines incorrectly stated that *federal* prevailing wages, rather than *state* prevailing wages, were applicable to former Fort Ord contracts. This correction will be made with the other revisions.

6. **ITEMS FROM MEMBERS**

None.

7. **ADJOURNMENT**

The meeting was adjourned at 11:45 a.m.

FORT ORD REUSE AUTHORITY BOARD REPORT	
EXECUTIVE OFFICER'S REPORT	
Subject:	Veterans Issues Advisory Committee
Meeting Date:	September 11, 2015
Agenda Number:	8f
INFORMATION	

RECOMMENDATION:

Receive an update from the Veterans Issues Advisory Committee (VIAC).

BACKGROUND/DISCUSSION:

The VIAC met on June 25, 2015. The approved minutes are included as **Attachment A**. The August VIAC meeting was cancelled. The next meeting will be September 24, 2015,

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

VIAC

DRAFT

Prepared by _____
 Robert Norris

Approved by _____
 Michael A. Houlemard, Jr.



FORT ORD REUSE AUTHORITY VETERANS ISSUES ADVISORY COMMITTEE REGULAR MEETING NOTES

3:00 p.m., Thursday, June 25, 2015 | FORA Conference Room
920 2nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER AND ROLL CALL

Acting Chair Jerry Edelen called the meeting to order at 3:00 p.m. The following were present, as indicated by signatures on the roll sheet:

VIAC Members:

Jerry Edelen, Acting Chair
Rich Garza, CCCVFC
Jack Stewart, CAC
James Bogan, UVC
Sid Williams, Mo. Co. Military/Vets
Edith Johnsen, Veterans Families
Peter Le, MCWD

FORA Staff:

Robert Norris
Crissy Maras

Others:

Preston Young, US Army POM
Mike Mitchell, VTC
Nicole Charles, Sen. Monning
Bob Shaffer
Candy Ingram

2. PLEDGE OF ALLEGIANCE

Acting Chair Edelen asked James Bogan to lead the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

None.

4. PUBLIC COMMENT PERIOD

The committee heard from Bob Shaffer, who announced Dunes on Monterey Bay workforce housing financing options for those making up to \$111K annually.

5. APPROVAL OF MEETING MINUTES

a. April 23, 2015 VIAC Minutes

MOTION: Sid Williams moved, seconded by Jack Stewart, to approve the minutes as presented.

MOTION PASSED: Unanimous

6. OLD BUSINESS

a. California Central Coast Veterans Cemetery Status Report

i. Discussion of CDVA Proposed Regulations

FORA is hosting monthly/bi-monthly CCCVC construction meetings. The project manager, Susan Rice, has offered to provide site tours to interested veteran groups. The CCCVC Foundation will design/build the memorial wall.

The committee received proposed CDVA regulations regarding non-monetary CCCVC donations (monuments, statues, headstones, etc.) to ensure consistency with USDVA cemeteries and federal grant requirements.

b. Ongoing Local Military Issue Media Coverage

FORA recently hired current FORA employee Josh Metz to fill the Economic Development Coordinator position. One of his tasks is to implement a 100-day plan that includes the integration of military and veteran issues into Fort Ord economic development. Members requested that Mr. Metz attend the next VIAC meeting to review the plan.

- c. VA/DoD Veterans Clinic Status Report
 - i. Historic Flag Pole Variance Update
 - ii. Construction Schedule

Sid Williams reported that the CDVA has agreed to flag pole installation, but the VA must submit installation designs for review and approval. Restoration funds and a retrofit contractor are in place. The pole will be retrofitted and stored at the VTC prior to installation at the clinic.

Construction is progressing per the schedule provided to FORA in March 2014. Robert Norris has requested an updated construction schedule from the City of Marina.

- d. FORA Sacramento Mission Status Report

Acting Chair Edelen provided the status report, noting that CDVA representatives were supportive of local efforts to install the donor wall. The CDVA cannot issue a change order for wall installation in the current construction contract, but it's possible that a separate design/build contract can be awarded concurrently to provide wall installation prior to the completion of the first phase of cemetery construction. Acting Chair Edelen additionally noted that the successful groundbreaking ceremonies had a positive state and federal impact.

7. ITEMS FROM MEMBERS

Rich Garza announced that the annual Run for the Fallen event was scheduled for October 24th. Additionally, the Remember the Fallen photo tribute is looking for a venue to host the traveling exhibit that recognizes more than 700 California service members lost in Iraq and Afghanistan. Members provided venue suggestions.

Mr. Williams reported that the annual Stand Down event had been included in the Monterey County budget and funds will be in place prior to the next event.

Members requested a fundraising item be added to future agendas.

8. ADJOURNMENT

Acting Chair Edelen adjourned the meeting at 3:35 p.m.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Travel Report

Meeting Date: September 11, 2015

Agenda Number: 8g

INFORMATION

RECOMMENDATION(S):

Receive a travel report from the Executive Officer.

BACKGROUND/DISCUSSION:

Per FORA Travel Policy, the Executive Officer submits travel requests to the Executive Committee on FORA Board/staff travel. The Committee reviews and approves requests, and the travel information is reported to the Board as an informational item.

UPCOMING TRAVEL

International City/County Management Association Annual Conference (ICMA)

Destination: Seattle, WA
Date: Sept. 27-30, 2015
Traveler/s: Steve Endsley

The ICMA Annual Conference is the largest annual event in the world for local government managers and staff. Each year, through its highly praised Annual Conference, ICMA offers an abundance of educational, information-sharing, and networking tools to help you manage your community in today's complex environment.

International Economic Development Council Annual Conference (IEDC)

Destination: Anchorage, AK
Date: Oct. 3-8*, 2015 (*Adjusted from last Board Report*)
Traveler/s: Michael Houlemard and Josh Metz

IEDC is a non-profit, non-partisan membership organization serving economic developers. With more than 4,500 members, it is the largest organization of its kind. IEDC members are employed in a wide variety of settings including local, state, provincial and federal governments, public-private partnerships, chambers of commerce, universities and a variety of other institutions. The 2015 Annual Conference takes place October 4th-7th, but participants would arrive one day prior (3rd) in order to attend morning sessions on October 4th. *The conference ends late afternoon October 7th, Executive Officer will arrive in California on October 8th early afternoon. The theme of this Conference is "Foundational Transformations: Creating Future Growth & Prosperity." As such, it will explore topics relating to relationships and communication, infrastructure development and public financing, encouraging a robust private sector, and building effective economic development organizations and affiliates.

California Special Districts Association (CSDA) Board Clerk/Secretary Conference

Destination: South Lake Tahoe, CA

Date: Oct. 18-20, 2015

Traveler/s: Maria Buell

Ms. Buell will complete the CSDA Board Clerk Certificate Program. The Program focuses heavily on advanced Public Records Act, Ralph M. Brown Act, and Roberts Rules of Order training. Previous year's sessions have also included implementation of plain language guidelines, public outreach strategy, Fair Political Practices Commission compliance, and board member orientation procedures. This conference provides an excellent opportunity to coordinate with public agencies from across the state.

Association of Defense Communities (ADC) Base Redevelopment Summit

Destination: San Antonio, TX

Date: Oct. 21-23, 2015

Traveler/s: Michael Houlemard and 2 staff/Board members

The Forum is designed for current local redevelopment authorities, legacy base closure projects, and non-military reuse projects that are complex and large in scale and generally focuses on advancing economic opportunity through community-driven redevelopment. The 2015 Base Redevelopment Forum takes place October 21-23, but participants would arrive one day prior (20th) in order to attend morning sessions on October 21st. The Executive Committee approved this travel including a \$550 airfare limit on August 5.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Travel expenses are paid/reimbursed according to the FORA Travel policy.

COORDINATION:

Executive Committee.

Prepared by _____ Approved by _____
María Buell Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Public Correspondence to the Board

Meeting Date: September 11, 2015

Agenda Number: 8h

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

DRAFT

- END -

**DRAFT
BOARD PACKET**