



FORT ORD REUSE AUTHORITY

SPECIAL MEETING

FORT ORD REUSE AUTHORITY (FORA) ADMINISTRATIVE COMMITTEE

Thursday, January 2, 2020 at 8:30 a.m.

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

AGENDA

1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

2. PLEDGE OF ALLEGIANCE

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Committee action. Whenever possible, written correspondence should be submitted to the Committee in advance of the meeting, to provide adequate time for its consideration.

5. APPROVAL OF MEETING MINUTES

ACTION

- a. December 18, 2019 Meeting Minutes

6. JANUARY 10, 2019 BOARD MEETING AGENDA REVIEW

7. BUSINESS ITEMS

INFORMATION/ACTION

- a. Building Removal Bond Status Report
 - i. Successor Entity Designation
 - ii. Monterey County Regional Fire District Agreement & Issue Resolution
- b. Habitat Planning Update
 - i. Draft Habitat Conservation Plan
 - ii. Habitat Working Group
- c. 2018 Transition Plan Status

8. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Committee members as it pertains to future agenda items.

9. ADJOURNMENT

NEXT MEETING: January 15, 2020



FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m. Wednesday, December 18, 2019 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-chair Michael A. Houlemard, Jr. called the meeting to order at 8:30 a.m.

The following were present:

Dino Pick* (City of Del Rey Oaks)
Anya Spear (CSUMB)
Patrick Breen (MCWD)
Bill Collins (BRAC)
Todd Muck (TAMC)
Craig Malin* (City of Seaside)
Lisa Reinheimer (MST)

Hans Uslar* (City of Monterey)
Melanie Beretti* (County of Monterey)
Elizabeth Caraker (City of Monterey)
Steve Matarazzo (UCMBEST)
Vicki Nakamura (MPC)
Nicole Hollingsworth (17th State Senate)
*Voting member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey City Manager Hans Uslar.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Executive Officer Michael Houlemard noted that to date he has co-chaired over 600 Administrative Committee (“AC”) meetings and thanked Committee members for acknowledging his 23 years of service with the Fort Ord Reuse Authority (“FORA”) as he prepares for retirement at the end of the year.
- Mr. Houlemard reported the Board of Directors approved Assistant Executive Officer Joshua Metz as FORA Executive Officer beginning January 1, 2020.
- Doug Yount of Shea Homes reported Marina City Council unanimously approved the Dunes on Monterey Bay Project on December 17, 2019.
- Committee member Dino Pick reported the City of Del Rey Oaks adopted its first Housing Element in 25 years.

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. December 4, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Pick and carried by the following vote, the Administrative Committee moved to approve the December 4, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. DECEMBER 13, 2019 BOARD MEETING FOLLOW-UP

Mr. Metz reported the Board approved building removal bond draft legal documents at the December 13, 2019 Board meeting and validation action is in process to establish FORA's ability to issue the bonds. Pending the validation action outcome and final document Board review, bond issuance is expected as early as March 2020. Mr. Houlemard noted the County of Monterey ("The County") approved the Public Benefit Hearing and in order to move forward the Board will need to take action to address Monterey County Regional Fire District ("MCRFD") revenue loss. Additional discussion is required between the cities of Seaside, Marina and the County to determine which jurisdiction will "take the lead" as successor agency. Authority Counsel Jon Giffen reported validation action legal documents are being prepared and expects a court opinion by the first quarter of 2020. Mr. Metz noted MCRFD revenue loss and successor agency designation are two key items on the agenda for the January 2, 2020 AC meeting. Senior Project Manager Peter Said stated the Water/Wastewater Oversight Committee will no longer perform Marina Coast Water District ("MCWD") budget reviews and are working on a recommendation to approve MCWD capacity fees. Mr. Houlemard stated MCWD heard concern regarding capacity fee increases and asked that the item be pulled from the Board meeting agenda to allow additional time for discussion.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. ESCA Long Term Obligation Management Program Update

i. Follow up on Draft February 5th Initial ESCA Long Term Obligation Management Program Meeting Invitation

Senior Program Manager Stan Cook reported several agencies have submitted questions regarding how some of FORA's foundational documents relate to Environmental Services Cooperative Agreement ("ESCA") successor issues. Mr. Cook stated FORA special counsel Barry Steinberg and George Schlossberg of Kutak Rock LLP will hold an informal workshop at the FORA office on January 9th from 9:00 a.m. - 12:00 p.m. to address these concerns. Mr. Houlemard emphasized the need for attendance by representatives of the cities of Del Rey Oaks, Seaside, Marina, Monterey and the County, as well as California State University Monterey Bay ("CSUMB"), University of California Monterey Bay ("UCMBEST") and MCWD, as these agencies may be subject to underlying federal regulatory requirements. Mr. Cook distributed a Draft February 5th Initial ESCA Long Term Obligation Management Program Meeting Invitation to the Committee at the December 4th AC meeting, and hearing no schedule conflicts, stated the official meeting invitation will go out this week.

ii. 2019 Fort Ord Annual Land Use Control Report Status

Mr. Cook introduced Monterey County Assistant Bureau Chief for the Environmental Health Department Ric Encarnacion who is currently collecting all Annual Land Use Control reports for submittal to the Department of Toxic Substances Control ("DTSC") as required by Memorandum of Understanding with the County. Mr. Cook explained in past years the DTSC annual reporting deadline of September 1st was informally extended to December 31st due to administrative and scheduling conflicts. Mr. Encarnacion will facilitate collection of jurisdictions' signatures on an official DTSC document in order to permanently extend the reporting deadline to December 31st going forward. Mr. Encarnacion will collect the required signatures and coordinate with DTSC should the document require amendment. Mr. Cook and staff responded to questions from members.

b. Habitat Conservation Plan Update

Mr. Metz stated the Habitat Planning Update item title will be modified to “Habitat Planning Update” and the Joint Powers Authority (“JPA”) Formation sub-item title will be modified to “Habitat Working Group” on future agendas as a result of December 13, 2019 Board action.

i. Draft Habitat Conservation Plan**ii. Joint Powers Authority Formation**

Mr. Houlemard reported the Board approved an ad-hoc committee to meet regularly to address the path forward for habitat management, particularly the following policy-related questions:

- 1) Is there a regional, collective intent to pursue the JPA?
- 2) What are the financial implications for each jurisdiction?
- 3) Is the National Monument included in this process?

Mr. Houlemard noted FORA has \$15.9M budgeted for habitat management, a portion of which funds Authority counsel services, consultant advising and administrative support. Mr. Metz reported an email poll was sent out with three proposed Habitat Working Group meeting dates and AC members discussed possible scheduling alternatives. Staff stated a new poll would go out to participants following the meeting and encouraged prompt responses from recipients.

Denise Duffy & Associates consultant Erin Harwayne reported United States Fish and Wildlife Services (“USFWS”) is compiling public comment letters while staff is cataloguing the inquiries and responses. Comment letters will be posted online concurrently as staff responds. Ms. Harwayne stated the National Environmental Policy Act/California Environmental Quality Act process requires the final Environmental Impact Report include all comment letters and responses. Additionally, USFWS requires Notice of Publication for the final Environmental Impact Statement, in addition to a compilation of public comments into a “Frequently Asked Questions” format (generalized inquiries and responses) for publication in the Federal Register.

c. 2018 Transition Plan Status

Ms. Flint gave a brief transition plan status update, noting that she is in the process of creating a website containing all Habitat Conservation Plan (“HCP”)/JPA related documents and background information, including ESCA documents which affect the Implementing Agreements. Ms. Flint reported scheduling presentations for each jurisdiction to address specific concerns and estimated adoption of the Implementing Agreements in March 2020. Mr. Houlemard noted additional agenda items must be submitted before the December 31, 2019 Executive Committee meeting in order to be included in the January 10, 2020 Board meeting agenda.

i. 2020 Committee Meeting Schedule

The Committee approved the proposed 2020 Administrative Committee Meeting Schedule. Mr. Metz noted the January 10, 2020 Board meeting will be held on a Friday, but all subsequent Board meetings are scheduled for the second Thursday of the month at 2:00 p.m.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT

Mr. Houlemard’s requested the meeting be adjourned in honor of the recovery of the former Fort Ord and future success by jurisdictions moving forward at 9:36 a.m.

Minutes Prepared By:
Natalie Van Fleet
Administrative Assistant

- START -

**DRAFT
BOARD PACKET**



FORT ORD REUSE AUTHORITY

REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, January 10, 2020 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON JANUARY 9, 2020.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

3. CLOSED SESSION

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Gov. Code §54956.9(d)(4): Anticipated Litigation, Initiation of litigation, one potential case
- c. Conference with Legal Counsel —, Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

6. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

7. CONSENT AGENDA

INFORMATION/ACTION

CONSENT AGENDA consists of routine information or action items accompanied by staff recommendation. Information has been provided to the FORA Board on all Consent Agenda matters. The Consent Agenda items are normally approved by one motion unless a Board member or the public request discussion or a separate vote. Prior to a motion, any member of the public or the Board may ask a question or make comment about an agenda item and staff will provide a response. If discussion is requested, that item will be removed from the Consent Agenda and be considered separately at the end of the Consent Agenda.

- a. Approve December 13, 2019 Meeting Minutes
Recommendation: Approve December 13, 2019 Meeting Minutes.
- b. Administrative Committee
Recommendation: Receive a report from the Administrative Committee.
- c. Habitat Planning Update
Recommendation:
 - i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.
 - ii. Approve Economic Planning Systems (“EPS”) contract amendment for additional habitat management fiscal analysis as requested by Fort Ord Reuse Authority (“FORA”) jurisdictions, not-to-exceed sixty thousand dollars (\$60,000).
- d. Environmental Services Cooperative Agreement Quarterly Report
Recommendation: Receive an Environmental Services Cooperative Agreement (“ESCA”) Quarterly Status Report.

- e. 2018-19 Fiscal Year Audited Financial Report
Recommendation: Accept the Moss, Levy and Hartzheim, Certified Public Accountants Fort Ord Reuse Authority Year 2018-19 audited financial report as recommended by the Finance Committee.
- f. Public Correspondence to the Board
Recommendation: Receive Public Correspondence to the Board.

8. BUSINESS ITEMS

INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. 2018 Transition Plan Implementation
 - i. Assignment of A) FORA-ESCA contract obligation to Successor-In-Interest City of Seaside, B) Economic Development Conveyance (“EDC”) Memorandum of Agreement and C) Local Redevelopment Authority (“LRA”) Obligations and Responsibilities.
 - ii. Transition Planning Update.
Recommendation:
 - 1. Receive a report regarding the FORA Federal government LRA obligations, including the implementation of the June 11, 2000 EDC agreement, and the March 2007 ESCA Agreement.
 - 2. Approve the attached Memorandum of Agreement with the City of Seaside regarding its acceptance of FORA’s obligations under the EDC and ESCA and designation as federal recognized LRA.
- b. 2020 Elect Board Officers
Recommendation:
 - 1. Receive a report from the 2020 Nominating Committee.
 - 2. Approve Nominating Committee’s proposed slate or seek Board nominations, Executive Officer will conduct an election.
- c. Marina Coast Water District Capacity Fees and WWOC Recommendation
Recommendation: Approve MCWD Compensation Plan for Capacity Fees (Resolution 20-xx)

9. PUBLIC COMMENT PERIOD

INFORMATION

*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 or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

10. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

11. ADJOURNMENT

NEXT MEETING: February 13, 2020 AT 2:00 P.M.

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

Placeholder for Item 7a

Regular Board Meeting Minutes December 13, 2019

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Administrative Committee

Meeting Date: January 10, 2020

Agenda Number: 7b

INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee held meetings on December 4, 2019 and December 18, 2019. The approved minutes for these meetings are provided as **Attachments A and B**.

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** _____
Heidi L. Gaddy Joshua Metz



APPROVED

FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m., Wednesday December 4, 2019 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Dino Pick called the meeting to order at 8:31 a.m.

The following were present:

Dino Pick* (City of Del Rey Oaks)
Anya Spear (CSUMB)
Patrick Breen (MCWD)
Layne Long* (City of Marina)
Todd Muck (TAMC)
Craig Malin* (City of Seaside)

Jonathan Brinkmann (LAFCO)
Melanie Beretti* (County of Monterey)
Elizabeth Caraker* (City of Monterey)
Steve Matarazzo (UCMBEST)
Vicki Nakamura (MPC)
*Voting member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey Community Development Department Manager Elizabeth Caraker.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Senior Program Manager Stan Cook provided the Administrative Committee (“AC”) with an Environmental Services Cooperative Agreement (“ESCA”) draft Long-Term Obligation Management Program meeting calendar. Mr. Cook requested the AC review the draft schedule and return to the December 18, 2019 meeting with feedback and confirm management personnel attendance for the first scheduled meeting on February 5, 2020.
- Executive Officer Michael Houlemard reported staff and colleagues traveled to Washington, D.C. two weeks prior and met with the US Army regarding the future transfer of ESCA long-term obligations, as well as how economic development conveyance may be impacted.

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. November 13, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the November 13, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. DECEMBER 13, 2019 BOARD MEETING AGENDA REVIEW

Assistant Executive Officer Josh Metz reviewed the items proposed to appear on the draft Board agenda for December 13, 2019. Mr. Houlemard noted that the Executive Committee will likely approve adding LAFCO Indemnification Agreement as a Consent Item.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Habitat Conservation Plan Update

Mr. Metz reported the November 20, 2019 public review meeting's main focus was the Environmental Impact Survey/Environmental Impact Report ("EIS/EIR") and noted public comment period ends December 16, 2019. At the November 20th "all permittees" meeting Mr. Metz reported jurisdictions raised concerns regarding funding and legal liability associated with Joint Powers Authority ("JPA") formation. He stated staff continues to work with the Habitat Conservation Plan ("HCP") consultant team to address these questions and have scheduled follow-up meetings on December 11, 2019 with the County of Monterey and Cities of Seaside and Marina to clarify financial aspects of JPA. Mr. Metz emphasized that FORA will no longer be in place to facilitate these discussions after its June 30, 2020 sunset and encouraged permittees to designate a lead agency to coordinate the JPA and HCP administration.

i. Draft Habitat Conservation Plan

Denise Duffy & Associates consultant Erin Harwayne provided a review of information presented at the November 20th "all permittees" meeting, and public meeting. Ms. Harwayne stated FORA, as lead California Environmental Quality Act agency, must certify the EIR prior to June 30, 2020 in order to be used by jurisdictions for Incidental Take Permits going forward. If the EIR is not certified by FORA by that time each jurisdiction will be responsible for performing its own EIS/EIR at the jurisdiction's expense. Mr. Metz emphasized it is much easier to amend existing EIS/EIR than to create new ones and regardless of whether the JPA, is formed the certified EIR would be a valuable document to the entire region. Ms. Harwayne and Mr. Metz responded to questions from members and public.

ii. Joint Powers Authority Formation

Mr. Metz introduced the item and noted that jurisdictions have expressed concern regarding two aspects of JPA formation: legal liability and financial feasibility. He reported the consultant team is developing a comparative analysis of FORA's HCP and other California HCPs, focusing on start-up costs, operating costs and administration methods. Regional Government Services consultant Kendall Flint and Economic Planning Systems consultants will review "legal" issues, initial costs and how JPA formation may be affected by development pace at the December 11th meetings with the County of Monterey, City of Marina, and City of Seaside. Ms. Flint emphasized that a lead jurisdiction must be identified as soon as possible and begin scheduling weekly JPA formation meetings no later than January 2020 in order to meet the April 1, 2020 deadline established in the Base Reuse Plan. FORA will not be setting these meetings; however, staff and consultant team are available to facilitate. Ms. Flint stated a list of JPA formation questions submitted by Monterey County, Seaside, and Marina are being compiled for discussion and encouraged all to submit questions. Staff and consultants answered additional questions from members and public.

**Chair Dino Pick of Del Rey Oaks requested a Habitat Management Plan ("HMP") and HCP cost-benefit analysis by jurisdiction. Ms. Flint stated EPS would provide this information at the December 11th meeting.*

**Committee member Melanie Beretti of Monterey County requested a copy of the current list of questions and Ms. Flint stated she would provide the list attached to the meeting invitation.*

**Mr. Houlemard noted FORA staff and Ms. Flint's assistance in JPA formation is included in FORA's budget. He reported Board members approve JPA formation due to consolidation of jurisdictional efforts and FORA is prepared to incur costs of assisting JPA formation, including legal counsel and consultant fees.*

b. 2018 Transition Plan Status

Ms. Flint gave a brief status update noting to date she has not received back any questions, details, legal opinions from the proposed signatories. Ms. Flint encouraged all Permittees' counsels review the agreement and submit any final comments/concerns so that a final Transition Planning Implementing Agreement can be adopted by the respective counsels between January and February of 2020. Ms. Flint and staff responded to questions from members and public.

i. 2020 Proposed Meeting Schedule

Mr. Metz introduced the item and Mr. Houlemard noted the FORA Administrative Committee meets twice a month, on the Wednesday one week prior to the FORA Board meeting and on the Wednesday following the Board Meeting. This item will be brought back to the Administrative Committee for approval/adoption on December 18, 2019. Staff responded to questions and comments from the Committee.

c. Eucalyptus Road Storm Water Infiltrator Repair

Senior Project Manager Peter Said provided background regarding the Eucalyptus Road storm water infiltrator repair project and noted the proposed Construction Management Plan has been approved by Department of Toxic Substances Control and US Army. Environmental Protection Agency approval is expected by year end. Mr. Said reported engineering consultants decreased the project's scope by developing a solution to replace the five failing storm water infiltrators with three storm water basins. Mr. Said stated construction is expected to begin February 2020 and noted this is the only Capital Improvement Plan project that is repair rather than roadway construction or mitigations. He stated staff will bring this information to the Board to request approval to solicit bids and award necessary contracts in order to complete construction by May 2020. Mr. Said responded to questions from the members and the public.

d. Marina Coast Water District Capacity Fees and Water/Wastewater Oversight Committee

Mr. Said reported the Water/Wastewater Oversight Committee ("WWOC") met on December 2, 2019 and reviewed Marina Coast Water District ("MCWD") 10-year master plans, which are the basis for the capacity fees. The Committee approved the master plan on the condition MCWD hold a technical engineer's meeting with the development community to refine the plans. At the technical meeting, MCWD decreased the scope in the master plans which reduced the proposed fees by \$13M. The WWOC has been reviewing the capacity fees since June 2019, and the documents have been available for public review for the last six months. The development community has strong concerns about the methodology and the planning level contingency of 48%. Mr. Said advised the Committee the Building Industry Association submitted letters outlining the development communities' position. The WWOC reviewed the increase in fees, and noted that the increase includes a Community Facilities District ("CFD") replacement for the FORA CFD. The FORA CFD currently collects a certain amount of money to pay for water augmentation. MCWD will need to collect the same amount, the way they will collect the funds is through the capacity fees. In addition, it includes cost indexing as the capacity fee from 2013

has not been indexed. In reviewing those components, there is a significant increase in the fees of about 45%. After viewing these documents for a number of months the WWOC approved to recommend the Draft Capacity Fees to the FORA Board, with the caveat that if a 10% or more reduction occurs within the next two months from another technical meeting between MCWD and the developer community, the WWOC would support the reduction. Mr. Said responded to questions and comments from the committee and public.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT at: 9:30 a.m.

Minutes Prepared By:

Heidi Gaddy

Deputy Clerk

Natalie Van Fleet

Administrative Assistant

Attachement B to Item 7b

Regular Administrative Meeting Minutes December 18, 2019

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Habitat Planning Update

Meeting Date: January 10, 2020

Agenda Number: 7c

INFORMATION/ACTION

RECOMMENDATION(S):

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.
- ii. Approve Economic Planning Systems (“EPS”) contract amendment for additional habitat management fiscal analysis as requested by Fort Ord Reuse Authority (“FORA”) jurisdictions, not-to-exceed sixty thousand dollars (\$60,000) (**Attachment A**).

BACKGROUND:

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan (“BRP”), FORA must complete an HCP for “take” of Federally-listed species and a 2081 ITP for take of State-listed species as required by the Endangered Species Act (“ESA”) and California Endangered Species Act (“CESA”), respectively. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, State listing of California Tiger Salamander (“CTS”), changing CDFW and USFWS staffing, added funding requirements, and adjustments to HCP/2081 ITP requirements.

Funding the HCP program is based on building to a habitat endowment that would generate sufficient annual interest earnings to fund protection “in perpetuity,” restoration and enhancement of habitat as mitigation for take, and management of the funds. The Cities, County, and other members of a future Joint Powers Authority, called the “Cooperative,” would be issued Federal and State ITPs and oversee stay-ahead provisions so that species take would not exceed completed mitigations.

HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (“CFD”) special taxes collected from former Fort Ord development. FORA has paid several million dollars for the environmental review and document preparation so far as performed by consultants and staff. The required Endowments were originally projected to be \$9 million but are now expected to cost between \$48 to \$66 million. By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFD funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate to USFWS/CDFW (“Wildlife Agencies”). Wildlife Agencies provided strong input into the design of the HCP so that funding is scalable and must fund Habitat Management Area management and additional mitigations five percent ahead of impacts.

In late 2016, USFWS issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which resulted in major revisions to the species covered and the areas included as Federal permit “preserved” habitat. In July 2017, FORA distributed a

second screen check draft HCP to Wildlife Agencies and Permittees, because the edits were significant. CDFW took eleven months to send in comments on the July 2017 HCP draft document. Many of CDFW staff comments brought up issues that were already resolved through discussions with prior CDFW staff. FORA staff met with CDFW several times in 2018 to resolve the issues. FORA staff and consultants made edits in response to CDFW and the other stakeholders.

Because USFWS is the lead agency on the HCP under the National Environmental Policy Act, their solicitor does the final screen check review before release of the Public Draft. Those editorial comments from the USFWS came in late November and early December of 2018. The comments included the request to remove the Implementing Agreement, updates to mitigation summaries in the Conservation Strategy chapter to better align with the current assessment framework, and a redraft of the Funding chapter to more explicitly depict Bureau of Land Management's role. USFWS completed the solicitor review of the HCP Environmental Impact Statement/ Environmental Impact Report ("EIS/EIR") in October 2019.

DISCUSSION:

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

Authority Counsel, ICF, Denise Duffy & Associates, Reimer Associates Consulting, Inc., CDFW, and USFWS.

Prepared and Approved by _____
Joshua Metz

Attachment A
Fort Ord Reuse Authority
Habitat Conservation Plan Implementation Support
DRAFT Scope of Work

Economic & Planning Systems, Inc. (EPS) appreciates the opportunity to assist the Fort Ord Reuse Authority (FORA) to evaluate implementation options related to the potential implementation of the Fort Ord Multi-Species Habitat Conservation Plan (HCP). In support of HCP implementation, EPS prepared a cash flow model documenting the strategy to fund habitat management costs over the permit term and in perpetuity in the post-permit term. The financing model established a framework by which habitat management costs would be funded via development-related revenues and through the capitalization of an endowment.

With the anticipated sunset of FORA in 2020, many questions remain regarding how habitat management obligations will be funded. As the FORA jurisdictions consider implementation of a Joint Powers Authority (JPA) that would assume responsibility for HCP implementation, the FORA jurisdictions are seeking additional information regarding many pertinent elements of the HCP and the supporting financial modeling completed by EPS. Specifically, questions relating to EPS's work include the basic framework of the proposed endowment funding strategy, habitat management and endowment fund capitalization cost responsibilities for each jurisdiction, and jurisdictional responsibilities and options related to replacement funding mechanisms.

Over the last several months, EPS has been supporting discussions surrounding HCP implementation by conducting numerous sensitivity analyses related to the HCP financial model as well as cost allocation scenarios related to jurisdictional responsibilities for endowment capitalization requirements. EPS has also conducted a detailed review of the existing HCP cost model that establishes the projected habitat management costs associated with HCP implementation.

With consideration to the magnitude of outstanding issues and remaining questions related to HCP implementation and JPA formation, the FORA Board directed staff to implement an ad hoc committee (Habitat Working Group) whereby representatives of the FORA jurisdictions meet on a weekly basis to discuss HCP and JPA related issues.

This scope of work describes EPS's anticipated effort to support the Habitat Working Group's discussion, deliberation, and decision-making process. It is important to recognize that anticipated efforts will evolve based on the needs of the Habitat Working Group, and this scope represents EPS's best effort to provide an informed scope of work and budget estimate based on currently anticipated needs.

Scope of Work

Task 1: Habitat Working Group Support

Under this task, EPS will provide technical support to inform discussions surrounding HCP implementation and JPA formation. While the precise scope of analysis under this task will be informed by ongoing discussions of the Habitat Working Group, several specific elements are anticipated at this time:

- **Supporting Technical Analysis.** EPS anticipates providing additional technical analysis in support of specific questions on the part of working group members. For example, one request includes evaluating the financial capacity of remaining, unentitled development by jurisdiction to support endowment capitalization requirements. EPS has budgeted approximately 70 hours of technical analysis (an average of 6 hours per week distributed evenly between EPS project management and technical staff) to provide supporting technical analysis. *Estimated Budget: \$15,000.*
- **HCP Cost Modeling.** To better understand the origin of projected annual habitat management costs, a substantive effort to update the HCP cost model may be warranted. This update would include reconstruction of the existing cost model, escalation of costs to reflect current dollars throughout the source tables as well as summary tables, elimination of unused data, and integration of model navigation features. Note that this effort does *not* include updating any cost assumptions in the model, other than the aforementioned escalation to current dollars using the currently applied Consumer Price Index adjustment factor. EPS anticipates that this effort would require the full attention of an EPS technical analyst with project management oversight for approximately 2 weeks. *Estimated Budget: \$15,000.*
- **Policymaker Presentations.** EPS anticipates participating in several public presentations to policymakers of the respective FORA jurisdictions to review outcomes from the Habitat Working Group or other elements of the HCP financial modeling and funding strategy. EPS will prepare presentation materials for, attend, and participate in up to 3 public presentations. *Estimated Budget: \$10,500.*
- **Response to Comments.** Several comments received on the Draft HCP and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) pertain to elements of the funding model and financing strategy. EPS anticipates assisting the EIS/EIR consultant and FORA staff with response to these comments and has budgeted approximately 25 hours of project management staff time in this regard. *Estimated Budget: \$6,500.*
- **Meeting Attendance.** The Habitat Working Group is expected to meet on a weekly basis from January through March, with an anticipated meeting duration of 2 hours. Of the 12 anticipated meetings, EPS anticipates attending up to 4 in person meetings (with associated travel expenses) and up to 4 meetings via conference call. *Estimated Budget: \$10,000.*

Staffing and Budget

All work will be overseen by Managing Principal David Zehnder. Principal Ellen Martin will serve as Project Manager and will be responsible for the day-to-day work associated with this assignment. Other EPS staff will assist with research and technical analysis.

The estimated budget for all scope elements is estimated to be **\$57,000**. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount. EPS's Hourly Billing Rates are attached as part of this Scope of Work.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Environmental Services Cooperative Agreement Quarterly Report	
Meeting Date:	January 10, 2020	INFORMATION/ACTION
Agenda Number:	7d	

RECOMMENDATION:

Receive an Environmental Services Cooperative Agreement (“ESCA”) Quarterly Status Report.

BACKGROUND:

In Spring 2005, the U.S. Army (“Army”) and the Fort Ord Reuse Authority (“FORA”) entered into negotiations toward an Army-funded Environmental Services Cooperative Agreement (“ESCA”) for removal of remnant Munitions and Explosives of Concern (“MEC”) on 3,340 acres of the former Fort Ord. FORA and Army signed the ESCA agreement in early 2007. Under the ESCA terms, the Army awarded FORA approximately \$98 million to perform Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) MEC cleanup on those parcels. FORA also entered into the Administrative Order on Consent (“AOC”) with U.S. Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (“DTSC”) (collectively referred to as Regulators) defining FORA’s contractual conditions to complete the Army remediation obligations for the “ESCA parcels.” FORA received ESCA property ownership after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer in 2009.

To complete the ESCA and AOC obligations, FORA entered into a Remediation Services Agreement (“RSA”) in 2007 by competitively selecting LFR Inc. (now Arcadis) to provide MEC remediation services. Arcadis remediation services are executed under a combination of cost-cap insurance policy through American International Group (“AIG”) and Army ESCA Contingent Funding, assuring financial resources to complete the work and offer other protections for FORA and the jurisdictions. Arcadis ESCA contracting team included Westcliffe Engineers, Inc. and Weston Solutions, Inc. to provide Engineering, MEC Remediation and Public/Regulatory Outreach services.

The ESCA requires FORA, acting as the Army’s contractor, to address safety issues resulting from historic Fort Ord munitions training operations. Through the ESCA, FORA and the ESCA Remediation Program (“RP”) team have successfully addressed three (3) historic concerns: 1) yearly federal appropriation funding fluctuations that delayed Army cleanup and necessitated costly mobilization and demobilization expenses; 2) Regulator questions about protectiveness of previous actions for sensitive uses; and 3) the local jurisdiction, community and FORA’s desire to reduce MEC property access risks.

Of the \$98 million that FORA ESCA RP received, FORA paid \$82.1 million up front, to secure an AIG “cost-cap” insurance policy. AIG controlled the \$82.1 million in a “commutation” account and payed Arcadis directly as work was performed. AIG provided up to \$128 million assuring additional work (known and unknown) is completed to the Regulators satisfaction (see table below). Under those agreements, AIG paid Arcadis directly while FORA oversaw Arcadis compliance with the ESCA and AOC requirements. On January 25, 2017, Arcadis notified FORA that the ESCA commutation account was exhausted and that future Arcadis work would be paid

under the terms of the AIG “cost-cap” insurance policy until March 30, 2019. Starting April 2019, the Army ESCA Contingent Funds have been used to pay for ESCA work. Arcadis continues to provide FORA with quarterly invoicing estimates.

Post-ESCA Amendment ESCA Fund Status as of September 2019:

Item	2017 & 2019 Amendment Allocations	Accrued through September 2019	Invoiced to AIG Cost Cap-Policy
Line Item 0001 Environmental Services			
FORA Self-Insurance or Policy			
State of California Surplus Lines Tax, Risk Transfer, Mobilization			
Contractor's Pollution Liability Insurance			
ARCADIS/AIG Commutation Account -plus- AIG insurance			
Original FORA Administrative Fees			
Line Item 0001: Subtotal			
Line Item 0001A: Environmental Services Post-Cost-Cap Insurance - Hourly			
Line Item 0001B: Environmental Services Post-Cost-Cap Insurance - Lump Sum			
Line Item 0002: thru 31 Dec 2019 DTSC and EPA Technical Oversight Services			
Line Item 0003: thru 30 June 2020 FORA ESCA Adm. Funds			
Line Item 0003A: FORA ESCA Admin. Oversight Post-Cost-Cap Insurance			
Line Item 0004: thru 30 June 2028 Post-Closure MEC Find Assessments			
Line Item 0005: thru 30 June 2028 Long Term/LUC Management			
Total			
	ESCA Remainder		N/A

The ESCA properties have received Records of Decision (“RODs”), documenting controls required to protect public health and safety, and Land Use Control Implementation Plan/Operation and Maintenance Plans (LUCIP/OMP) implementing, operating and maintaining ROD controls tailored to individual site conditions and historic MEC use. The Final ESCA LUCIP/OMP documents were accepted by the Army and Regulators in February 2019. The future property owner staff (California State University Monterey Bay, City of Del Rey Oaks, Monterey County, City of Monterey and Monterey Peninsula College [MPC]) have received LUCIP/OMP site-specific training workshops. The ESCA properties received the last EPA Remedial Action Completion letter February 2019. The EPA has outlined the requirements for a site-wide ESCA remedial

completion and associated site-wide EPA Remedial Action Completion documents which are in progress. ESCA property cannot be transferred to the jurisdictions and remain closed for public access until DTSC Covenants Restricting Use of Property amendments, Army deed modifications and issuance of the Army CERCLA Warranties/Deed Amendments are completed. In 2019, FORA requested the Army CERCLA Warranties/Deed Amendments for the ESCA CSUMB Off-Campus, Seaside and MPC properties.

Please note that Regulatory approval of remedial completion does not determine land use. FORA will transfer land title to the appropriate jurisdiction for reuse programming. Underlying jurisdictions are authorized to impose or limit zoning, decide property density or make related land use decisions in compliance with the FORA Base Reuse Plan.

ESCA Amendments Update:

ESCA Amendment 2017: ESCA Remedial Action Completion has initiated Army Long-Term “Obligations (“LTO”) on ESCA property (see table above, Line Item 0004, Post-Closure MEC Find Assessments and Line Item 0005, Long-Term/LUC Management). Under the ESCA, FORA contracted for \$4,234,443, to take on the Army LTO until 2028. FORA (and its Successor) will need continued qualified ESCA LTO support services through 2028. The contracting firms of Arcadis, Weston Solutions, Inc. and Westcliffe Engineers, Inc. have provided ESCA-specific Engineering, MEC Remediation and Public/Regulatory Outreach services for over a decade and are uniquely knowledgeable/qualified to provide FORA with ESCA property LTO support services. May 2019 the FORA Board adopted Resolution 19-05 authorizing the FORA Executive Officer to retain the current ESCA team of Arcadis, Westcliffe Engineers, Inc. and Weston Solutions, Inc. to assist FORA by providing LTO support services at a cost not to exceed \$1,328,741. In June, FORA received and accepted proposals from Arcadis, Weston Solutions, Inc., Westcliffe Engineers, Inc., resulting in three (3) ESCA LTO Support Service contracts until 2028.

ESCA Amendments 2019: In 2018, Army BRAC Headquarters (HQ) in Washington D.C. changed their document review and approval process resulting in extended Army review of ESCA documents, driving ESCA work/costs beyond the March 30, 2019 AIG cost-cap insurance termination date. On August 2018, the FORA Board authorized the FORA Executive Officer and FORA Special Counsel, with FORA Executive Committee direction, to enter into Army negotiations for additional funds covering ESCA costs beyond the AIG cost-cap insurance policy expiration date. FORA staff met with Army BRAC HQ staff in Washington, D.C in December 2018. On February 20, 2019, Army BRAC HQ and U.S. Army Corps of Engineers contract support team visited/inspected the ESCA properties to finalize the Scope of Work and Estimate, which the Army accepted. On March 31, 2019, FORA received ESCA Agreement Modification 00010 with \$343,455 of Army funds covering ESCA costs beyond the AIG cost-cap insurance policy expiration date. In May 2019, the FORA Board authorized the Executive Officer to enter into an agreement with Arcadis to continue providing ESCA services using the Army Contingent Funds. In June 2019 that contract was executed.

In August 2019, FORA, as directed by the Army requested a two-month extension of the ESCA funding for an additional \$40,362 in Army Contingent Funds to cover Arcadis and FORA accounting costs to September 30, 2019. The Army accepted the request and issued ESCA Agreement Modification 00011 to fund the request.

In September 2019, FORA, as directed by the Army, will request a three-month ESCA extension and Arcadis and FORA accounting costs to December 31, 2019. FORA staff met with BRAC HQ staff in Washington, D.C. in November 2019 to review this request. The Army approved the request and is in the process of releasing the funds.

FISCAL IMPACT:

Reviewed by FORA Controller _____

The actual cost to FORA of these Army obligations will be fully reimbursed.

COORDINATION:

Administrative Committee; Executive Committee; Authority Counsel; Special Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army, EPA; and DTSC.

DRAFT

Prepared by _____ Approved by _____
Stan Cook Joshua Metz

Placeholder for Item 7e

**2018-19 Fiscal Year
Audited Financial Report**

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT AGENDA	
Subject:	Public Correspondence to the Board
Meeting Date:	January 10, 2020
Agenda Number:	7f
	INFORMATION/ACTION

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

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: 2018 Transition Plan Implementation

Meeting Date: January 10, 2020

Agenda Number: 8a

INFORMATION/ACTION

- i. Assignment of A) FORA-ESCA contract obligation to Successor-In-Interest City of Seaside, B) Economic Development Conveyance (“EDC”) Memorandum of Agreement and C) Local Redevelopment Authority (“LRA”) Obligations and Responsibilities.
- ii. Transition Planning Update

RECOMMENDATION:

- 1) Receive a report regarding the FORA federal government LRA obligations, including the implementation of the June 11, 2000 EDC Agreement, and the March 2007 ESCA Agreement.
- 2) Approve the attached Memorandum of Agreement with the City of Seaside regarding its acceptance of FORA’s obligations under the EDC and ESCA and designation as federal recognized LRA.

BACKGROUND:

FORA was created under state law to be the LRA as required in federal law. Under the terms of that federal law, FORA was eligible to receive funding from the Department of Defense (DoD) in the 1990s as well as in the last decade. Further, as the, FORA was the designated agency for receiving federal property under federal law that created EDCs of former military properties closed under the Base Realignment and Closure Act. As well, in 2005, special federal provisions allowed the U.S. Army (Army) to negotiate contracts with federally recognized LRAs for cooperative services including environmental cleanup.

Given the federal provisions noted above, FORA implemented its three county obligations in compliance with these federal provisions. In particular, FORA negotiated the EDC for significant portions of the former Fort Ord for the purpose of creating jobs, housing, services, enterprises and other purposes under an adopted base reuse plan. FORA also negotiated an ESCA contract with the Army to complete munitions and explosives removal for 3,340 acres of former Fort Ord property. Each of these agreements require a FORA Successor-In-Interest (Successor) be appointed and contain provisions outlining the terms and conditions for assigning FORA’s responsibilities.

Discussion/Report:

As reported last month, Army BRAC HQ Chief Thomas Lederle requested FORA and City of Seaside (Seaside) meet with BRAC and U.S. Secretary of DoD OEA to discuss ESCA status and FORA Successor requirements. Seaside has stepped expressing interest in becoming FORA's Successor and sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton and Assistant City Attorney Sheri Damon to attend those meetings with the FORA Executive Officer and Senior Program Manager.

- On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff to discuss the following ESCA Successor Issues:
 - FORA Transition/FORA Successor process/progress
 - Seaside – as the proposed ESCA Successor
 - ESCA Long-Term Obligation Management Program
 - ESCA Pollution Legal Liability Insurance
 - ESCA Successor and EDC authorities, obligations and interdependence

At the meeting FORA staff and Special Counsel provided an ESCA status and FORA Board Members, Executive Officer and Seaside Counsel Members/staff provided Mr. Lederle with an update on the ESCA Successor efforts.

Mr. Lederle and Army attorneys provided both FORA and Seaside with guidance on the Army's ESCA Successor requirements.

On November 19, 2019, FORA and Seaside met with Mr. Patrick Obrien, Director, OEA to discuss FORA's June 30, 2020 closure and FORA ESCA Successor plans. Since many of the ESCA obligations include multiple real property conveyance documentation and transfers that directly grow from the EDC, the attendees discussed the coordination required between these FORA responsibilities. An outgrowth of that conversation was the suggestion that FORA explore and conclude on the assignment of the EDC agreement obligations, the OEA LRA designation as well as the ESCA Successor issue.

Attached is an agreement between the FORA and Seaside outlining the basic terms for Seaside to become FORA's ESCA, EDC and LRA Successor. If Seaside were to become FORA's Successor, this has implications for future potential funding

FISCAL IMPACT:

Reviewed by FORA Controller _____

Funding for the ESCA contract is provided by the Army and funding for the 2018 transition plan are included in the 2019/202) budget.

COORDINATION:

Administrative Committee; Executive Committee; Authority Counsel; Special Authority Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army; EPA; and DTSC.

ATTACHMENTS:

Attachment A: Draft Memorandum of Agreement

Prepared by _____ Approved by _____
Stan Cook Joshua Metz

1 **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**
2 **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT SUCCESSOR**
3 **TRANSITION PLAN IMPLEMENTING AGREEMENT**
4
5

6 **RECITALS**
7

8 WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a
9 Corporation of the State of California established under California State Law Government
10 Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort
11 Ord property and is acknowledged as the federally recognized local reuse authority for
12 property transfers from the Army, to the governing local jurisdictions or their designees;
13 and
14

15 WHEREAS Fort Ord, California was placed on the National Priorities List
16 (Superfund) in 1990 due to leaking underground storage tanks, contaminated
17 groundwater and a 150-acre landfill; and
18

19 WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under
20 CERCLA Section 120 outlining the Army's Comprehensive Environmental Response,
21 Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the
22 former Fort Ord. The Army remains responsible for certain actions under that FFA. The
23 FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for
24 FORA's ESCA obligations so long as FORA or its successors are in compliance with the
25 AOC; and
26

27 WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to
28 and in accordance with the Defense Base Closure and Realignment Act of 1990, as
29 amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").
30

31 WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as
32 amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.
33 No. 106-65 (1999), and the implementing regulations of the Department of Defense (32
34 CFR Parts 90 and 91), FORA acquired portions of the former Fort Ord consisting of
35 approximately five thousand two hundred (5,200) acres of land, including all buildings,
36 personal property, appurtenances, rights-of-way, and drainage areas upon and subject to
37 the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the
38 United States of America.
39

40 WHEREAS, the MOA provided for transfers of property in accordance with the
41 Army's clean-up schedule. Subsequent to the MOA execution, FORA and the local
42 communities decided to pursue an early transfer process pursuant to Title 42 United
43 States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate
44 reuse and economic recovery for the communities affected by the Fort Ord closure.
45

46 WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the

1 EPA Administrator and the concurrence of the Governor of California, transferred title of
2 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all
3 action to protect human health and the environment had been completed. Concurrent with
4 this transfer without the otherwise required CERCLA covenant mandated by Title 42
5 United States Code, section 9620 (h)(3) , FORA accepted title and agreed to perform the
6 Army's environmental remediation with funding from the Army. Excluded from FORA's
7 performance obligation are matters related to the groundwater at the former Fort Ord, as
8 well as other Army responsibilities enumerated in the ESCA and elsewhere.

9
10 WHEREAS, in 2007 an *“Administrative Order on Consent (“AOC”) [Docket No. R9-
11 2007-003] [was] entered into voluntarily by the United States Environmental Protection
12 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and
13 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of
14 potential removal actions, one or more remedial investigations and feasibility studies
15 (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for
16 contaminants present on portions of the former Fort Ord located at Monterey, California
17 (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in
18 connection with such CERCLA response actions.”*, and

19
20 WHEREAS, in 2007, the Army executed an amendment to the Federal Facilities
21 Agreement; and

22
23
24
25 WHEREAS, in 2007 the Army and FORA executed an Environmental Services
26 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United
27 States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701)
28 whereby FORA would perform the Army's environmental responsibilities as the Army
29 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with
30 the Army providing funding to perform these services; and

31
32 WHEREAS, the ESCA has been amended several times, the amendment in 2017
33 which provides approximately \$6.8 million to complete the property transfer process and
34 to perform the required long-term land management tasks, including Munitions and
35 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring
36 and reporting through June 30, 2028; and

37
38 WHEREAS, due to changes and delays in the transfer of properties, modifications
39 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA Line
40 Item Number 0004 Post Closure MEC Find Assessments \$528,651 and ESCA Line Item
41 Number 0005 for Long-Term Management and Land Use Control (LUC) management are
42 \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),
43 [need Stan and Helen to confirm these numbers. Stan/FORA/ARMY to confirm that Mods
44 10,11 and 12 do not affect the ability to fully implement the original task list of LTO which
45 were estimated to require \$6.8 to complete (i.e. that Mods 10-12 do not re-allocate a
46 portion of the 6.8 to current tasks]; and

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WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the ESCA contract, and

WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: <http://fortordcleanup.com/documents/administrative-record/>, and

WHEREAS, the City of Seaside is prepared, subject to Army funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020;

NOW, THEREFORE,

1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan.

3. Insurance Policies. FORA agrees to designate or transfer its insurance coverages to Seaside under the **Coverage A under the AIG PLL and the CHUBB policy.** FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claim-related obligations. Seaside acknowledges that these coverages will expire in 2022 and 2024, respectively, and that successor designations will be subject to approval by the insurers. Seaside’s successful receipt of insurance coverage is a condition precedent to becoming FORA’s ESCA and local reuse authority successor.

4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.

5. ESCA records and contracts funds. FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA’s ESCA obligations.

1 6. Technical Assistance. FORA agrees to continue to provide technical assistance
2 and funding to complete the ESCA transfer process through June 30, 2020, including
3 specialized legal, drafting and other staff or contract support.
4

5 7. Obligations. Seaside agrees to assume the local reuse authority designation
6 and the remaining reporting, monitoring, and stewardship or other identified
7 responsibilities associated with the FORA-Army 2007 ESCA as FORA's Successor
8 through the end of the ESCA Contract June 30, 2028 in order to complete property
9 transfers and the ESCA to the extent that ESCA performance does not obligate or put at
10 risk Seaside's municipal non-ESCA funds. Exhaustion or unavailability of ESCA funds
11 with which to compensate Seaside for the performance of ESCA obligations will constitute
12 a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations
13 to perform the surviving FORA obligations.
14

15 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside
16 agrees to provide evidence of its fiduciary and technical capability to comply with the
17 terms of the ESCA and manage the contract financial assets with associated invoicing
18 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA
19 fiduciary capability.
20

21 a. To assume FORA's ESCA Long Term Obligations Management Program,
22 as approved by the US Army, EPA and DTSC
23

24 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required
25 under the contract provisions as currently amended through 2028, but
26 with allowances for indirect administrative overhead to assure the Army,
27 EPA and DTSC of continued ESCA technical capacity.
28

29 ii. ESCA Long-Term Obligation Support Services Contract. Enter into
30 Support Services Contracts through 2028 with specialists Arcadis,
31 Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified
32 vendors), including allowances for indirect administrative overhead to
33 assure the Army, EPA and DTSC of continued ESCA technical capacity.
34

35 iii. Representation. Contract with Counsel reasonably qualified on
36 environmental issues with experience in working with state and federal
37 entities (Army, EPA and DTSC) for review and compliance as noted in
38 the ESCA and the AOC.
39

40 9. Coordination. Enter into agreements with the ESCA underlying jurisdictions
41 (Monterey Peninsula College, California State University Monterey Bay, Monterey County,
42 the cities of Del Rey Oaks and Monterey and Marina Coast Water District) for the property
43 transfers and other necessary property-related rights to effectuate the reuse and the
44 oversight, reporting, response, and other long-term stewardship obligations listed in the
45 ESCA through 2028 on behalf of the Army.
46

1 10. ESCA Amendment. The parties agree to work cooperatively to successfully
2 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor
3 and execute the ESCA upon review and approval of terms and conditions. Seaside
4 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army
5 Corps of Engineers (“USACE”) oversight and grant management requirements for funding
6 to Seaside under the ESCA terms, provided however, that the Successor activities are
7 fully funded, including without limitation provision for PLL insurance coverage, funding
8 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the
9 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a
10 reimbursement funded by the Army through the end of the ESCA obligations.

11
12 11. Administrative Order on Consent. The parties agree to work cooperatively to
13 successfully receive EPA and DTSC approval that Seaside is the formal Successor to
14 execute an AOC upon review of terms and conditions.

15
16 12. Amendment. This Agreement or any provision hereof may be changed,
17 waived, or terminated only by a statement in writing signed by the Party against which
18 such change, waiver or termination is sought to be enforced.

19
20 13. No Waiver. No delay in enforcing or failing to enforce any right under this
21 Agreement will constitute a waiver of such right. No waiver of any default under this
22 Agreement will operate as a waiver of any other default or of the same default on a future
23 occasion.

24
25 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or
26 conditions of this Agreement are to any extent declared invalid, unenforceable, void or
27 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or
28 order or decree of which becomes final, the Parties agree to amend the terms in a
29 reasonable manner to achieve the intention of the Parties without invalidity. If the terms
30 cannot be amended, the invalidity of one or several terms will not affect the validity of the
31 Agreement as a whole, unless the invalid terms are of such essential importance to this
32 Agreement that it can be reasonably assumed that the Parties would not have contracted
33 this Agreement without the invalid terms. In such case, the Party affected may terminate
34 this Agreement by written notice to the other Party without prejudice to the affected Party’s
35 rights in law or equity.

36
37 15. Entire Agreement. This Agreement is intended by the Parties as a final
38 expression of their agreement and is intended as a complete and exclusive statement of
39 the terms and conditions thereof. Acceptance of or acquiescence in a course of
40 performance rendered under this Agreement shall not be relevant to determine the
41 meaning of this Agreement even though the accepting or acquiescing Party had
42 knowledge of the nature of the performance and opportunity for objection.

43
44 16. Choice of Law. This Agreement will be construed in accordance with the
45 laws of the State of California.

1 17. Further Assurances. Each Party agrees to execute and deliver all further
2 instruments and documents and take all further action that may be reasonably necessary
3 to complete performance of its obligations hereunder and otherwise to effectuate the
4 purposes and intent of this Agreement.

5
6 18. Headings. The headings of the sections hereof are inserted for convenience
7 only and shall not be deemed a part of this Agreement.

8
9 19. Notices. Any notice, demand, offer, or other written instrument required or
10 permitted to be given pursuant to this Agreement shall be acknowledged by the Party
11 giving such notice, and shall to the extent reasonably practicable be sent by hand
12 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,
13 overnight courier, electronic mail, or registered mail, in each case to the other Party at the
14 address for such Party set forth below (Note: A Party may change its place of notice by a
15 notice sent to all other Parties in compliance with this section):

16
17 City of Seaside
18 Attn. City Manager
19 440 Harcourt Avenue
20 Seaside, CA 93955

Fort Ord Reuse Authority
Attn: Executive Officer
920 2nd Avenue, Suite A
Marina CA

21
22 w/ an email copy to cityattorney@ci.seaside.ca.us

23
24 20. Term of Agreement: This Agreement shall be effective on the Effective Date
25 specified at the beginning of the Agreement and shall remain in effect unless and until
26 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort
27 Ord Reuse Authority. [Do we need to provide for survival beyond 30 June 2020? And
28 expiration in 2028?] [Not sure what/who would take the survivorship beyond FORA?
29 LAFCO?]

30
31 21. Authorization. Each party affirms that it is fully authorized to enter into this
32 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to
33 review and approval of documents by the City Attorney, to enter into the terms and
34 conditions of this Memorandum of Agreement, the AOC and the ESCA and sign related
35 ESCA and AOC reporting and financial documents.

36
37
38
39 *****

40 IN WITNESS WHEREOF, each Party has executed the Agreement with the
41 approval of its governing body as of the date first written above.

42
43 CITY OF SEASIDE:

44
45
46 _____

Date: _____

1 Craig Malin
2 City Manager

3
4 APPROVED AS TO FORM:

5
6
7 _____

8 CITY ATTORNEY

9
10
11 FORT ORD REUSE AUTHORITY:

12
13
14 _____ Date: _____

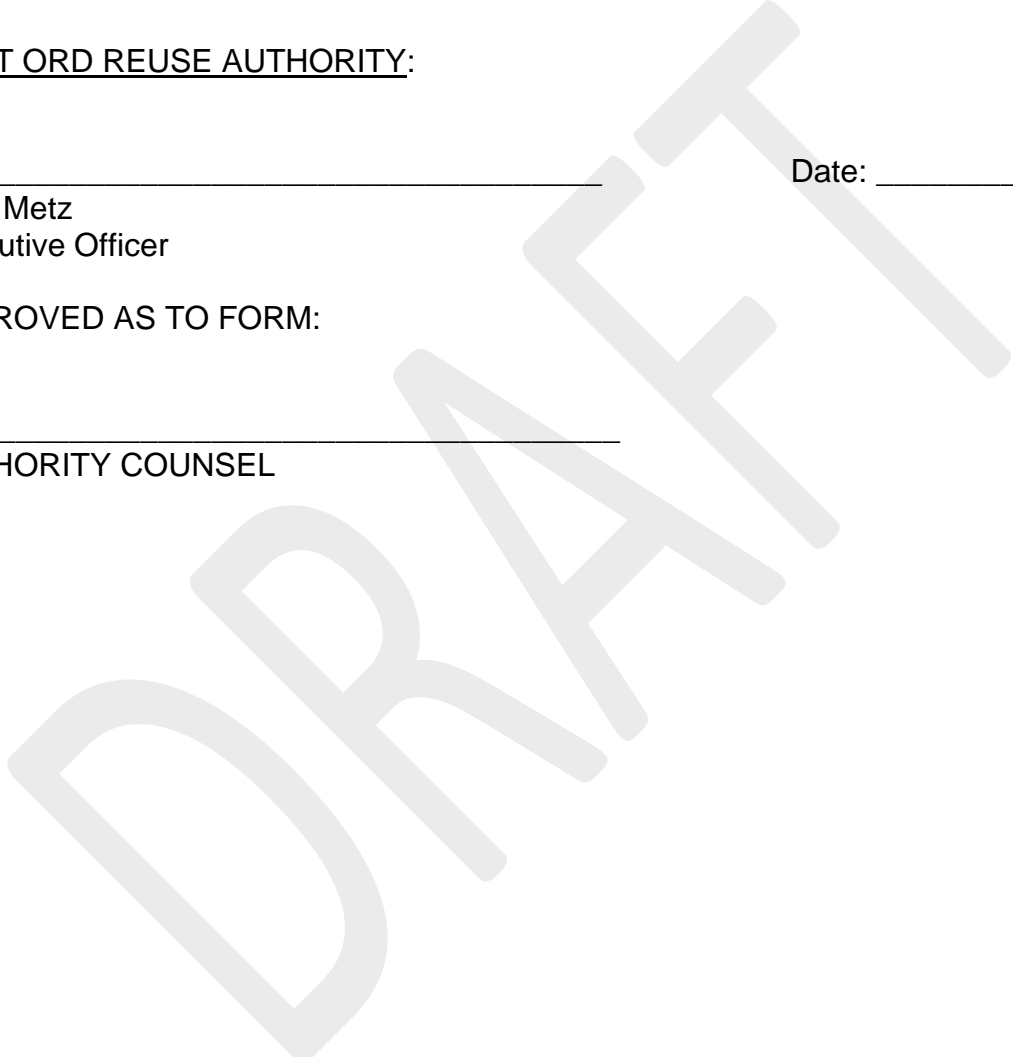
15 Josh Metz
16 Executive Officer

17
18 APPROVED AS TO FORM:

19
20
21 _____

22 AUTHORITY COUNSEL

23
24



Placeholder for Item 8b

2020 Elect Board Officers

This item will be included in the final Board packet.

WATER WASTE WATER OVERSIGHT COMMITTEE

BUSINESS ITEMS

Subject:	Marina Coast Water District Capacity Fees and WWOC Recommendation	
Meeting Date:	January 10, 2020	ACTION
Agenda Number:	8c	

RECOMMENDATION(S):

Approve MCWD Compensation Plan for Capacity Fees (**Resolution 20-XX**)

BACKGROUND:

In 1998, following a public request for proposals, the Fort Ord Reuse Authority (FORA) Board selected Marina Coast Water District (MCWD) as purveyor and signed the 1998 Facilities Agreement (FA) for the provision, construction, and operation of facilities for the former Fort Ord Project Area. As a result of this agreement, FORA formed the Water Wastewater Oversight Committee (WWOC) which was tasked to review and recommend:

- 1) Appropriate actions regarding facilities operation
- 2) Operating and Capital improvement budgets (compensation plans)
- 3) Public sewer and water facilities Master Plans
- 4) Long term financial planning and fiscal management advice, and to
- 5) Coordinate and Assure MCWD facilities compliment the Base Reuse Plan, and the FORA Capital Improvement Plan

MCWD annually presents to the WWOC a Compensation Plan for its rates and capacity fees. The rates are set through a State 218 process. Capacity fees are based on approved Master Plans which identify existing and future facilities needed to implement the Base Reuse Plan. The WWOC's role is to 1) review and recommend Master Plans as a basis for capacity fees, 2) make a compensation plan recommendation to the FORA Board. The FORA Board then considers adoption of the annual compensation plan.

DISCUSSION:

Why consider a compensation plan in 2020?

The 1998 Facilities Agreement contractually requires FORA to annually review and approve MCWD compensation plans no later than June 30. Therefore, the FORA Board must consider the proposed MCWD compensation plan for updated capacity fees prior to its sunset on June 30, 2020.

It is also important to understand that the FORA Board functioned as the sole representative body to the Water District for the Project Area (former Fort Ord) while the sole owners were the Jurisdictions. Multiple property owners now exist as a result of FORA's reuse and redevelopment efforts in the development areas. However, these multiple owners need adequate representation on the Special District's Board. Therefore,

the FORA Board advocated for MCWD annexation of the redeveloped areas of the former Fort Ord into the MCWD Service Area. In Fiscal Year 2018/2019, MCWD annexed portions of the former Fort Ord and identified other potential areas dependent upon future development. The annexed area will vote for representation starting November 2020.

However, there will be a gap between FORA sunset and November 2020 when the Ord Community will be un-represented and in which MCWD must continue to operate. Therefore, in addition to its contractual obligation, FORA should approve a compensation plan to carry MCWD through until a representative is voted in.

The MCWD Master Plans (Water, Sewer, Recycled)

After reviewing the Master Plans, the WWOC voted to recommend them as a basis for the capacity fees on October 24, 2019. The Master Plans used the jurisdictional land use assumptions for 2019/20. These assumptions included 10-year projected development on specific parcels. The land use assumptions, including the Base Reuse Plan resource constrained buildout cap, allowed MCWD Master Planning Consultant Tony Akel, to evaluate and project the existing and future demand and the necessary infrastructure improvement needed over the next 10 years. The proposed capital improvement program (CIP) reflects these plans. The WWOC coordinated and assured the Master Plans CIP complimented the Base Reuse Plan's CIP. The Master Plans CIP provided construction cost estimates for each project, and the aggregate CIP cost is the basis for the Capacity Fee. The updated September 18, 2019 Master Plans for Water, Sewer, and Recycled Water (3 separate documents) can be found on MCWD website:

www.mcwd.org

The MCWD Capacity Fee methodology change

MCWD prepared a Capacity Fee Report (**Attachment 1**), summarized the Fee tables (**Attachment 2**), provided the proposed use factors (**Attachment 3**), received comments from the public, and held an engineering peer review at the direction of the WWOC on 9/20, 10/10, 10/24, and 11/8. MCWD has provided the questions and responses (**Attachment 4**).

The updated Capacity Fee Report proposes a different methodology from the previous Capacity Fee Report. The existing capacity fee used a "combined buy-in (Existing Asset Value) and future cost (Total CIP)" approach resulting in fees charged based on Equivalent Dwelling Unit (EDU) evaluation of each customer (Total Units).

Current Methodology: Average Cost

$$\frac{\text{Existing Asset Value} + \text{Total CIP}}{\text{Total Units}}$$

The proposed 2019 Capacity Fee recommends a change in methodology to one that is a summation of the average existing asset value and the average future user share. This method is meant to cover the cost of existing recycled water not anticipated in the previous study, water and wastewater system facilities in present value, as well as the cost of future system expansion.

Proposed Methodology: Hybrid Buy-In + Marginal Future Cost

$$\frac{\text{Existing Asset Value}}{\text{Total Units}} + \frac{\text{Future User Share of CIP}}{\text{Future Units}}$$

FORA Staff Analysis

With FORA's Sunset on June 30, 2020, it is necessary to create a FORA community facilities district special tax (CFD Fee) fee replacement in order to continue implementing the BRP. This includes the BRP's required water augmentation CEQA mitigation. With MCWD becoming the successor agency to this mitigation for which reuse within the Ord Community is dependent, it is important for MCWD to shift from receiving a portion of the CFD Fee from FORA to directly collecting a capacity fee. This "Hybrid Buy In" method allows for MCWD to collect capacity fees for the existing and future Water Augmentation mitigations needed to implement the Base Reuse Plan. Table 3 of the Capacity Fee Report (**Attachment 2**) shows the added cost of the Recycled Water Capital Improvement Plan. This includes the existing cost for the Regional Urban Water Augmentation Project (RUWAP) and the shared pipeline facilities with Pure Water Monterey.

FORA staff analyzed the proposed capacity fee to understand the impact of shifting the responsibility of FORA mitigations to MCWD. First, staff adjusted the existing capacity fee to account for inflation since 2013. Secondly, staff estimated a 14.3 percentage of the total BRP CEQA mitigations are for Water Augmentation. This resulted in FORA using 14.3% of the CFD Fee as a rough comparison. Please note: FORA functions on a "pay-as-you-go" structure. The CFD Fee is not meant to be split by percentage; however, for purposes of this analysis, staff considered 14.3% of the developer fee as a means to compare the impacts. Lastly, staff compared the existing capacity fee and the proposed capacity fee. This per unit comparison is shown below.

The Proposed change to the Ord Community Capacity Fee results in an increase from \$8,010 per EDU to \$19,104 per EDU. However, Staff Analysis shows this change to be a 24.2% increase in cost on average once the FORA Community Facilities District Special Tax (CFD) is accounted for, as well as a cost indexing of the fee to the 2020 dollars using the 20 City Construction Cost Index between January 2013 and 2019.

Ord Community

<u>Proposed Capacity Fees - Hybrid Approach (Nearterm)</u>	<u>Current</u>	<u>Proposed</u>	<u>\$ Increase (Decrease)</u>
Water Capacity Fee - \$/EDU	\$8,010	\$19,104	\$11,094
Sewer Capacity Fee - \$/EDU	<u>\$3,322</u>	<u>\$5,930</u>	<u>\$2,608</u>
Total Capacity Fee	\$11,332	\$25,034	\$13,702

FORA Staff Analysis of MCWD existing Capacity Fee + FORA CFD Fee in comparison to Proposed Capacity inclusive of CFD replacement	Residential 9-12 units/acre	Multi- Family Apt	Hotel per Room	Retail (Grocery Store) 5,000 SF
Existing Fee	\$ 8,010	\$ 8,010	\$ 8,010	\$ 8,010
Existing Use Factors (EDU)	1.000 (.33/.33)	1.000 (.33/.33)	0.515 (.17/.33)	5.909 (.00039/.33) x 5000 SF
Per Unit (Existing Fee* EDU rate)	\$ 8,010	\$ 8,010	\$ 4,126	\$ 47,332
37% Construction Cost Index (2013-2019)	\$ 2,964	\$ 2,964	\$ 1,527	\$ 17,513
14.3% FORA CFD Fee (per use)	\$ 3,627	\$ 3,627	\$ 809	\$ 9,803
Present Value of FORA CFD + Capacity Fee	\$ 14,601	\$ 14,601	\$ 6,462	\$ 74,648
Proposed Fee inclusive of FORA CFD	\$ 19,104	\$ 19,104	\$ 19,104	\$ 19,104
Proposed Use Factors (EDU)	.848 (.28/.33)	0.857 (.21/.33)	0.393 (.11/.33)	5.893 (.00033/.33) x 5000 SF
Per Unit (Proposed Fee* proposed EDU rate)	\$ 16,209	\$ 16,375	\$ 7,505	\$ 112,577
\$ Change between existing and proposed	\$ 1,609	\$ 1,774	\$ 1,043	\$ 37,929
% Change between existing and proposed	11%	12%	16%	51%

Public Comments

Members of the development community provided comments at the multiple meetings held by MCWD and to the WWOC. BIA has submitted comments for the WWOC consideration of a recommendation. (**Attachment 5**)

FORA staff summary of the public questions is as follows:

What methods are available to the District to decrease the capacity fee impacts to developers as a result of the Districts estimate of conservative construction cost plus 81% Contingency (cost x 25% project related costs x 48.5% contingency)? How can MCWD better assess the risk and adjust the contingency prior to the proposed fee implementation on July 1, 2020?

The WWOC recommended MCWD meet with the developers to evaluate the Master Plans. In so doing, MCWD identified \$13M of un-needed projects. The developers requested an additional meeting with MCWD to evaluate the Capacity Fee methods and assumptions. MCWD, recognizing the need for further coordination, pulled the request for capacity fee approval from the FORA Board December 2019 Agenda, in favor of working further with the developers.

RECOMMENDATION:

The FORA Board has a contractual requirement to approve the MCWD compensation plans for capacity fees. MCWD has proposed a new capacity fee structure which accounts for a post-FORA CFD replacement (to begin July 1, 2020) and applies funds to the FORA approved Water Augmentation program. The WWOC has reviewed these fees and master plans with MCWD and the public and recommended MCWD hold an additional unrequired engineer meeting on 11/8. MCWD has chosen to work with the development community on finding further savings. Following these reviews and meetings, the WWOC recommends the FORA Board approve of the capacity fee compensation plan. (**Resolution 20-XX**).

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

Marina Coast Water District, The Water Wastewater Oversight Committee, Building Industry Association - Bay Area, Administrative Committee

Prepared By _____
Peter Said

Approved By _____
Joshua Metz

Placeholder for Attachment to Item 8c

**MCWD Capacity Fee
Resolution 20-XX**

This item will be included in the final Board packet.

Attachments 1-4 to Item 7a
Water Wastewater Oversight Committee

- https://fora.org/WWOC/2019/Materials/1_MCWD_Capacity_Fee_Report_DRAFT_%2011-25-19.pdf
- https://fora.org/WWOC/2019/Materials/2%20_MCWD_Capacity_Fee_Tables_DRAFT_11-25-19.pdf
- https://fora.org/WWOC/2019/Materials/3_Appendix_C.pdf
- https://fora.org/WWOC/2019/Materials/4_MP-Capacity_Fee_Study_Comments-Responses.pdf



November 18, 2019

MCWD
Mr. Michael Wegley, PE, District Engineer
2840 4th Avenue
Marina, CA 93933
mwegley@mcwd.org

RE: Building Industry Associates (BIA) comments regarding MCWD Draft Capacity Fee Study for Water, Wastewater and Recycled Water

Executive Summary

BIA has formed and coordinated the development of a review team to obtain insights and identify issues that need to be addressed in MCWD's Draft Capacity Fee Study for Water, Sewer and Recycled Water. Pursuant to our September 20, 2019, letter to you we are now providing you with additional information for your consideration as you seek to finalize the Capacity Fee study and its associated master plan reports.

This Peer Review Technical Memorandum is intended to provide an initial review of the proposed Capacity Fees and master plan reports prepared by MCWD and its consultants. Conclusions of these documents are understood to be the basis of Capacity Fee planned for adoption by MCWD's Board of Directors.

While recognizing that there remain many facility as well as policy issues yet to be evaluated, we offer the following five key observations to the continued review and resolution of issues of the Capacity Fee Study:

- 1. Collaboration and Transparency:** Currently, the water and sewer rate increase proposed by MCWD is approximately 228% for Ord and 124% for Marina. BIA and its affiliates are therefore justifiably emphatic on the need to actively participate with MCWD in a collaborative and transparent process for the review and further development of the Capacity Fee Report and its underlying master plan documents. We have offered our time and expertise to meet with MCWD and its consultants to understand impediments to implementation and to collaborate in problem solving. We believe that further issue identification and resolution requires that MCWD to commit to a schedule of active meetings and workshops.
- 2. Future Development:** The Master Plans include areas for future growth not included in MCWD's existing service area. The amount of work and need for additional funds to extend water, sewer and recycled water facilities to this areas is not identified in the Master Plan Reports. BIA and its affiliates believe that the work in MCWD's existing service area should be the priority focus of these reports. We request that you provide additional details on the potential costs and impacts to the proposed Capacity Fees for

future work in areas outside of the service area or remove them from the studies.

3. **Cost Estimating Contingencies:** Estimated Construction costs developed in the Master Plan Reports include a 48.5 percent contingency above baseline construction costs to account for unforeseen events and unknown field conditions, and for Contractor's overhead and profit, general conditions, and sales tax. Additionally, Capital Improvement Costs also include an additional 25 percent of the estimated construction costs to account for administration, construction management, and legal costs. Therefore, the overall impact of project-related unknown conditions amounts to approximately \$26M of capital costs for water, sewer and recycled water while providing no meaningful benefits to the community.

We therefore strongly support MCWD doing everything it can to eliminate or reduce the 48.5 percent contingency by working to complete the engineering design for the CIPs. This would de-risk the projects by identifying previously unforeseen events and unknown field conditions. The 25 percent contingency is expected to remain in place to meet the engineering, legal and administrative needs of the CIPs including Contractors overhead and profit and sales tax.

4. **Alternative Project Delivery:** The opportunity exists for MCWD to procure Design-Build entities and deliver water, sewer and recycled water projects at potentially lower costs than by traditional Design-Bid-Build methods. The DB would be required to develop and submit to MCWD, proposals for the project design and construction under a single contract. DB entities would be required to develop and submit a Guaranteed Maximum Price (GMP) increasing the surety that the work would be completed potentially at or below master planned level cost estimates. DB entities would prepare a project design of 10% to as much as 30% to facilitate their development of the GMP.
5. **Recycled Water Supplies:** Available recycled water to the Tier 3 (Immediate Term) and Tier 4 (Long Term) users are insufficient to meet projected demands. The report identifies that:
 - a. "...currently identified Tier 3 users exceed the allocation and thus additional allocation would be required or portions of these users will be excluded pending the expanded allocation."
 - b. The "Tier 4 users are in excess of the current capacity allocation agreement with M1W and will require additional recycled water entitlements and improvements prior to service."

We are unsure the remedy that MCWD has adopted to ensure the availability of recycled water to meet identified demand.

6. **Population Projections:** None of the recent reports include a significant discussion of the demographics of MCWD's service area. No studies were apparently used to reach the population conclusions as to the volume and timing of future growth throughout MCWDs service area. We believe that this is a key set of assumptions that requires evaluation. The Master Plan Reports appear to have identified a 3% per year growth pace with no significant discussion or analysis. Through a quick review of the data from several credible sources we have determine the growth has not been and is not being projected at

3%. There is no contingency provided to meet scenarios of different (positive or negative) growth that may occur and the impact that would have on the cost and schedule for CIP implementation.

We appreciate this opportunity to submit our initial concerns and look forward to a process of collaboration and problem solving with MCWD and its consultants.

Administrative Issues

MCWD Community Collaboration

7. We strongly believe that the Builders Group and its members should be active participants in the review and approval process of these reports working and their underlying assumptions. BIA and its members should be allowed to work in partnership with MCWD to achieve common goals and objectives. Additionally, we believe that it is important to include FORA in this process based on overlapping responsibilities with MCWD. This is especially true regarding the administration and disposition of the Community Facilities District (CFD) the 3-Party Agreement that significantly limits the cost participation in the recycled water program, and on CFD and dissolution.
8. At the October 10, 2019 meeting BIA requested the formation of a technical advisory group to consist of engineering and planning experts from both MCWD and the Builders who could meet in a manner of collaboration similar to a systematic review process, similar to a value engineering review. We are pleased to have MCWD set a date of November 8 for a workshop.
9. BIA and representatives of the building community have stressed to MCWD the necessity of collaboration in the Capacity Fee and facility master plan review process. In its 2018 Year In Review, MCWD states that the review is “.. *share(d) with you as part of our ongoing commitment to communication, transparency and collaboration with our community.*”
10. It was generally agreed that fire flows dictate the size of the system. However, there was no receptivity to the idea of collaborating with the Fire Marshals from the service area to see if lower (cheaper) cost facilities could be used (flow rates & durations, storage volumes, pipeline diameters).

Fee Increase Schedule

11. MCWD had hoped to have process of master plan updates and fee establishment completed by December 2019. We understand the decision may be delayed a month. Unfortunately, the time provided by MCWD for our review and participation in the Capacity Fee Increase is inadequate for a true identification, communication and review of Fees and Master Plan Documents. The master plan and Capacity Fee study reports are the work products of more than 3-years of effort. Yet there have only been three opportunities to date to meet with MCWD on this topic. In some cases, MCWD has made significant and important changes to some of the CIPs without making any redistribution to public or more specifically to the Builders.
12. Builder Community would like more outreach. These issues with FORA should be worked out before fees are tripled to development committee. Getting this completed even by January seems too fast. Requested to extend the timeline out to this spring that provide several months before the sunset of FORA. Development community needs to have time to complete their own analysis.
13. If this 3-fold increase is rushed it will not be amicable. Policy choices included in these increases need to be debated.
14. Transparent Review Period and Collaboration Between MCWD & the Builders community Draft Capacity Fee Study was released June 25, 2019 and then revised and released in October 2019 without any announcement to group being invited by MCWD to outreach meetings.

Administrative Recommendations

15. We make the following recommendations regarding administrative issues associated with the review of the Capacity Fee Study and its associated reports:
 - a. BIA recommends that a Technical Advisory Group be convened to be made up of technical area experts from the Builders Community and MCWD. We appreciate MCWD efforts of setting working group meeting on November 8, 2019. These efforts need to continue beyond this meeting to reduce some of the unknowns included in the cost estimates.
 - b. Identify & schedule additional follow-up requirements.

Planning and Engineering

Planning

16. There are **6,160** residential units in the cap plus commercial and industrial uses to generate jobs. How many of the units are part of the future remaining units as of 2018? (Table 2.1 of the Water Master Plan).
17. The previous master plan assumed full build-out. The current plan uses FORA Planned and Entitled developments.
18. Near term projection is year 2035 and full buildout is year 2050.
19. Acres used should not have been included because outside irrigation would not use potable water. However, we understand the landscaping costs have been lowered in the latest revisions.
20. How many new homes are being estimated? The Base Reuse Plan was used not for full buildout but for 15 years of growth. The Plan for future growth is based on the number of jobs that can be created on the base to move forward with additional development. Development stops until 18,000 job generation goal is met.
21. Planned use and entitled use are included in the Reuse Plan.
22. Would it have been more equitable to separate the three uses rather than combined especially since everyone benefits from recycled water? CIP portions have been separated but total assets portions have not been separated.

Cost Estimates

23. The cost of FORA's obligation to the Water Augmentation Project was estimated to be \$40M in year 2008-2009. Using the ENR Constriction Cost Index to update this estimate to year 2019 results in an cost estimate over \$50M. Therefore, the increase by \$9.7M represents a large cost for that project alone. Given the impact to the importance on ratepayers it seems reasonable to have MCWD perform an updated cost estimate rather than relying solely on indexing. MCWD's last water system CIPs includes over 20-miles of pipeline, 4-million gallons of storage and 5,000 gpm of boosting capacity and should therefore be revaluated.
24. The cost of facilities constructed by the Builders should be reimbursed by MCWD where the Builders have designed and constructed the capital improvements.
25. The costs mainly focused on backbone infrastructure.
26. We understand from our October 23, 2019 meeting that costs for landscaping have been lowered in the latest version of the Water Master Plan.

EDU's

27. What background data, demographic studies of projected populations, residential and commercial numbers of EDU's have been developed for referenced for the Capacity Fee study? It appears as if the only source for population projections is the Base Reuse Plan. The accuracy of the near-term (year 2035) and full build-out (year 2050) are among the most important in the Capacity Fee report. Through a quick review of the data from several credible sources we have determine the growth has not been and is not be projected at 3%. Marina has grown 1.52% in the last five years.

- ABAG updated its Region Growth forecast in 2018 for its Sustainable Community Strategy. Their current forecasts expect 20% less population growth and a 2% increase in housing.
28. The Master Plan Reports present a 3% Growth Rate. When last discussed, the engineering team (11-08-19) responded that the actual populations were unimportant to the engineering analysis. However, the connection fees and the FORA development limits are based on population and population rate projections.
 29. Appendix C provides the updated water demand for calculation of equivalent dwelling. There are 20 fixture units included in one EDU.
 30. There will be 175 gpd returning to the wastewater treatment plant per EDU. An EDU has dropped from 0.33 to 0.28. AF/EDU. One EDU designated for a hotel or condo would have less consumption than the single-family unit EDU. It appears to be unknown how much it will cost at the counter for 1 building permit (.01 EDU or 28% of an EDU)?

Sea Water Intrusion

31. Monterey 1 Water completed their Pure Water Project. The RUWAP will serve both the MCWD Water Augmentation Program and Pure Water Monterey with 1,427 AFY water from sources other than groundwater within MCWD and up to 3,700 AFY to the Peninsula
32. Augmentation with recycled is intended to stop seawater intrusion. Wells can continue to be used rather than abandoned. Currently, the plan is to use Monterey One recycled water. We understand the injections wells were removed from the CIPs based on feedback from the Development Community.

Planning & Engineering Recommendations

33. MCWD should consider preparing new cost estimates to improve connection fee accuracy for projects with cost estimates more than 10-years old.
34. Conduct or research recent demographic information that is available to use a more accurate estimate than 3%.
35. Upon review of a detailed study of water use in the Monterey Peninsula and other nearby water agencies to develop estimates, it is apparent more granularity can be done to develop more precise equivalent dwelling unit consumptions.

Financial

Planning Assumptions

36. It appears that the costs for CIPs should be lower because some of the units identified as future use have already been built. It is therefore essential to identify the basis for estimating existing and future users and how future users have been determined. Ongoing development is moving forward, however Builders are generally unsure of their proportionate Capacity Fees will be determined for works in progress.
37. The current total cost of the Water, Sewer and Recycled Water CIP at build-out has been estimated at \$178 million. The near-term CIP projects (including some interest from existing loans) is \$136 million.
38. Did the alternative water sources discussed in the Water Master Plan get included in the costs for water service infrastructure requirements to service potential future development?
39. Current calculation is an average based on total buildout.
40. Water system existing users share \$29.3 million of the costs and \$44.0 million to be shared by future users.
41. Methodology overview looks like future users are carrying the burden. Who is paying debt?
42. Why is Marina recycled water use less than Ord? -It is mostly going to be development in the Ord Community.

43. Over \$10,000 has been allocated for water augmentation.

Where is the Money?

44. BIA requests details to identify how much FORA should be collecting and providing to MCWD for the RUWAP. It appears that money has not been provided to MCWD and may have been spent on other things. It appears that the FORA and MCWD are doubling fees for water augmentation.
45. Aren't the current EDUs paying for a portion of the future infrastructure?
46. MCWD has a three-party agreement with FORA, Marina and M1Water to receive only \$4.3M as committed to date for the groundwater barrier project. What funds have been set aside by FORA for the Water Augmentation Project?
47. Because of FORA's dissolution, no future funding from FORA has been assumed in new CIP calculations. FORA's obligation of \$3,491 is an estimate of what is being charged for water augmentation at full build-out.

FORA and the Fee Increase

48. On January 18, 2002, FORA adopted Resolution No. 02-1 establishing the Fort Ord Reuse authority Base-wide Community Facilities District (CFD) to collect fees for, among other impacts caused by development, 2,400 AFY of water augmentation to support the BRP; and,
49. Important relationships between FORA and MCWD (such as the three-party agreement placing a limit on FORA's cost participation in the recycled water project and the collection and disbursement of fees for the CIP) have yet to be defined within the context of the dissolution of FORA.
50. If FORA still states that they are collecting fees for water they should provide the associated funds to MCWD.
51. Additionally, it is unclear to us who will be responsible for the management of the housing cap after FORA is gone.

Fees

52. What is the basis for using such high contingency fees (+50 to -30%)
53. Current Sewer Capacity Fees are \$6,859 Marina and \$11,332 for Ord.
54. Where is the draft report that formed the basis for CFD Apportionment in July and how does it relate to the proposed Capacity Fees?
55. What was the response to seeing the capital increase to four times the current development fees? Were lower cost alternatives or alternative approaches sought?

Financial Recommendations

56. Recommend that MCWD get money from FORA before they are dissolved.
57. The money collected by FORA should be put in different restricted funds rather than comingled in one account.
58. Identify other non-MCWD Projects that the service area will need to absorb after FORA sunsets?
59. Identify costs for future buildout in future service areas.
60. Identify EDU fees upfront for facilities other than one single family home to present a more transparent fee structure to the building community.

Legal

61. Water and sewer charges cannot exceed the reasonable cost of providing service unless approved as a special tax by two-thirds of the electorate.
62. It is essential that the proposed Capacity Fee be prepared in strict compliance with the requirements of the Mitigation Fee Act. To that end, a nexus study is required to be made in written form and must be updated whenever new fees are imposed, or existing fees are increased. The report must establish the relationship between the amount of any capital facilities fee and the use for which it is collected.
 - a. Has MCWD made the use of Best Information Available; that is defensible; and, equitable to existing & future users?
63. Apparently, holding an approved Tentative Map and development agreement does not render a developer immune from Capacity Fee increases. The legality of this assertion should be verified for its impact on fully entitled projects.

Recommendations on Legal Issues

64. Identify if MCWD made a determination as to the effects of the proposed Capacity Fee with respect to Marina's housing needs as established in the housing element of the General Plan and the FORA Base Reuse Plan.
65. Recommend that MCWD develops a nexus study for any Capacity Fee increases moving forward.

Fee Methodology

The following are the key components to the increase in system Capacity Fees:

66. The increased costs for the Master Planned Facilities (potable water, sewer and recycled water). The methodology that is now being used includes "depreciation indexing" using ENR values.
67. Contingency factors for unknowns have increased capital costs by 185%.
68. MCWD has changed methods of analysis from the use of Average Cost to Hybrid Method.

Recommendations on Fee Methodology

69. BIA has requested analysis of the above and resulting impacts on fees from MCWD but these requests have not received response. Much of the methodology has been used in previous Capacity Fee studies. Apparently, MCWD continued the use of these items rather than making prudent adjustments to them.
70. It has not been made clear why the Hybrid cost methodology is better than the Average Cost method of analysis.



Contra Costa Centre Transit Village
1350 Treat Blvd., Suite 140
Walnut Creek, CA 94597
TRANSMITTED VIA EMAIL

WATER/WASTEWATER OVERSIGHT COMMITTEE (WWOC)
Brian McMinn, Co-Chair
FORT ORD REUSE AUTHORITY
920 2nd Avenue, Suite A, Marina CA 93933 | FORA CIC

November 20, 2019

RE: December 2, 2019 WWOC Agenda: Consideration of Extension to Recommendation of the Draft Capacity Fees Report.

Dear Chair McMinn and Members of the WWOC,

BIA Bay Area (BIA) respectfully requests that the WWOC defer action at its December 2, 2019 meeting on the Draft Capacity Fees Report. Continuation of this item is requested to permit sufficient time for BIA member builders in the Fort Ord Reuse Area and MCWD Staff to work together on solutions to resolve concerns, discrepancies and differences in the Draft Capacity Fee Study. Also, due to the Thanksgiving Holiday, the hastily scheduled special WWOC meeting is highly inconvenient for many of the BIA member builders in the Ord Community, and, judging from committee remarks at the October meeting, the December 2nd special meeting is inconvenient for WWOC members as well.

BIA continues to be highly concerned that the Draft Capacity Fee Study endorses massive increases in connection fees for new homes and businesses in the Ord Community. BIA urges the WWOC to

- 1) recognize the severe impact of these massive fee increases and acknowledge the need for a much more detailed review of the Draft Capacity Fee Study to validate fee methodology, existing facility costs, growth projections, water demand, etc., and
- 2) to ask MCWD to return with reductions in the maximum justifiable fee calculations.

BIA is submitting a Memorandum of Comments and Concerns regarding the Draft Capacity Fee Study for Water, Wastewater, and Recycled Water. This memorandum details many of the concerns that BIA member builders continue to express regarding the Draft Capacity Fee Study.

Early Outreach to Ord Builders Should Have Been Planned from the Beginning

After the long process of drafting water, recycled water and wastewater master plans, MCWD finally conducted two stakeholder workshops (September 5, 2019 and again on October 10, 2019). A third workshop, requested by BIA and the WWOC, was held on November 8, 2019 and focused on the Draft Water, Wastewater, and Recycled Water Master Plans. During these workshops, BIA member builders raised numerous questions and concerns regarding the Draft Master Plans and the Draft Capacity Fee Study.

While BIA has appreciated that MCWD offered these opportunities to provide questions, concerns, and recommendations to the Master Plans and Fee Study, there's been frustration that the Agency failed to adequately outreach to home builders and commercial developers during the process of compiling the Master Plans and the Draft Capacity Fee Study.

MCWD should have conducted long range outreach and collaboration with the developers that were building homes, paying fees and installing improvements during the drafting of the Master Plans and Fee Study. If this outreach had occurred, it is likely BIA and MCWD would be able to present a unified recommendation to the WWOC at this time. However, several builders have commented that although they were in nearly daily contact with MCWD as they have constructed homes during the last three years, no one at MCWD mentioned the Draft Master Plans and Draft Capacity Fee process.

Among the items that BIA has stated and continues to question:

- Contingencies: All projects in all three Master Plans are burdened with a construction contingency allowance of 48.5% plus 25% project related contingency allowances, an accumulated contingency of 85%. When asked to justify these extremely high contingency allowances, MCWD replied:
“Based on previous project experience, MCWD maintains these contingencies are consistent with previous planning efforts.”
- Collaboration: Stronger communication, coordination and collaboration with the building community is needed as the FORA transition proceeds. As of yet BIA has not seen commitment from FORA on this issue.
- Assumptions: Future development and pace of growth are out of step with neighboring agencies such as AMBAG which projects a much lower growth rate for the region over a similar time frame.
- Alternative project deliveries such as design/build that would offer cost savings are not considered.
- Fee methodology: The recommendation by Bartle Wells to abandon the Average Cost methodology in favor of the Hybrid Buy In methodology is a significant contributor to the huge escalation in capacity fees.

Fee increases of the magnitude of the proposed MCWD capacity fee increase have major reverberations throughout the development process. This proposal to add thousands of dollars to the cost of residential units should not be enacted without strong outreach and should be balanced vis-a'-vis project feasibility.

Thank you for your attention to this issue. We look forward to working with you over the next several months to reach consensus on fair study and application of fee levels.

Yours truly,

Dennis Martin
BIA Bay Area

- END -

**DRAFT
BOARD PACKET**