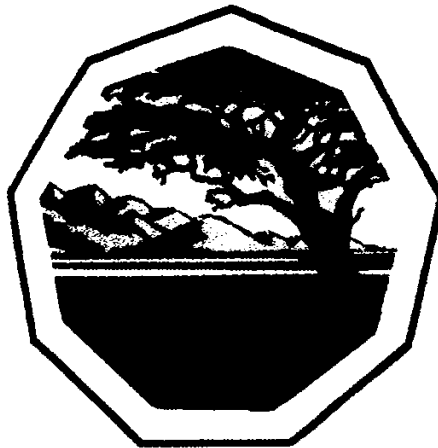


Fort Ord  
Reuse Authority



Board Packet  
For  
Board Meeting  
February 13, 2009



# Fort Ord Reuse Authority

100 12<sup>th</sup> Street, Building 2880, Marina, CA 93933  
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

**BOARD OF DIRECTORS MEETING**  
**Friday, February 13, 2009, at 3:30 pm**  
**FORA Conference Facility/Bridge Center**  
**201 13<sup>th</sup> Street, Building 2925, Marina (on the former Fort Ord)**

## AGENDA

1. CALL TO ORDER AND ROLL CALL
2. CLOSED SESSION
  - a. Conference with legal counsel - Existing litigation [§54956.9(a)]  
Name of case: Save Our Peninsula Committee v. FORA
3. PLEDGE OF ALLEGIANCE
4. ACKNOWLEDGEMENTS
5. PUBLIC COMMENT PERIOD: Members of the audience wishing to address the Board on matters within the jurisdiction of the Authority but not on the agenda may do so during the Public Comment Period. You may speak for a maximum of three minutes on any subject. Public comments on specific agenda items will be heard at the time the matter is being considered by the Board.
6. CONSENT AGENDA ACTION
  - a. January 9, 2009 board meeting minutes
7. OLD BUSINESS ACTION/ INFORMATION
  - a. Habitat Conservation Plan approval process ACTION/ INFORMATION
  - b. Imjin Office Park - update INFORMATION
  - c. Water for Monterey County Project and Regional Urban Water Augmentation Program - updates INFORMATION
  - d. Central Coast Veterans Cemetery ACTION/ INFORMATION
8. NEW BUSINESS ACTION
  - a. Confirmation of 2009 Fort Ord Reuse Authority committee appointments ACTION
  - b. Fort Ord Reuse Authority Mid-Year Budget ACTION
  - c. East Garrison loan payments ACTION/ INFORMATION

- 9. EXECUTIVE OFFICER'S REPORT
  - a. Administrative Committee report INFORMATION
  - b. Finance Committee report
    - (i) Minutes INFORMATION
    - (ii) Modifications to the FORA investment policy ACTION
  - c. Executive Officer's trip to Washington, DC / American Recovery and Reinvestment Act INFORMATION
- 10. ANNOUNCEMENTS AND CORRESPONDENCE
- 11. ADJOURNMENT

(Information about items on this agenda is available at the FORA office at 100 12<sup>th</sup> Street, Building 2880, Marina, on the former Fort Ord or by calling 831-883-3672 or by accessing the FORA website at [www.fora.org](http://www.fora.org).)

**MINUTES  
OF THE  
FORT ORD REUSE AUTHORITY  
BOARD OF DIRECTORS' MEETING  
Fort Ord Reuse Authority Conference Facility/Bridge Center  
February 13, 2009**

**APPROVED**

1. CALL TO ORDER AND ROLL CALL

Chair Rubio called the meeting to order at 3:31pm and requested a roll call of the voting members

The following were present:

Chair/Mayor Rubio (City of Seaside)	Supervisor Parker (County of Monterey)
Mayor McCloud (City of Carmel)	Mayor Russell (City of Del Rey Oaks)
Councilmember Gray (City of Marina)	Jim Cook (County of Monterey)
Councilmember Kampe (City of Pacific Grove)	Mayor Pendergrass (City of Sand City)
Councilmember Mancini (City of Seaside)	

Arriving after this roll call were 2<sup>nd</sup> Vice Chair/Councilmember McCall (City of Marina) and 1<sup>st</sup> Vice Chair/Supervisor Potter (County of Monterey). Absent were Councilmember Selfridge (City of Monterey) and Councilmember Barnes (City of Salinas). Mr. Cook was serving as Supervisor Calcagno's alternate.

Chair Rubio adjourned the meeting to the Closed Session.

2. CLOSED SESSION

The Closed Session item was a conference with legal counsel regarding existing litigation concerning the Save Our Peninsula Committee v. FORA case.

SECOND ROLL CALL: Following the Closed Session, Chair Rubio reconvened the meeting and requested a full roll call. All voting members present during the Closed Session were still present, with the addition of Councilmembers McCall and Barnes and Supervisor Potter.

Ex-Officio members present:

Dr. Bruce Margon (UC Santa Cruz)	Tony Boles (CSU Monterey Bay)
Vicki Nakamura (MPC)	Dan Albert, Jr. (MPUSD)
Debbie Hale (TAMC)	COL Darcy Brewer (U.S. Army)
Gail Youngblood (BRAC)	Kenneth Nishi (Marina Coast Water District)

Arriving after the roll call was Alec Arago (17<sup>th</sup> Congressional District). Absent were representatives from the 15<sup>th</sup> State Senate District, the 27<sup>th</sup> State Assembly District, and Monterey-Salinas Transit.

Authority Counsel Bowden reported out of Closed Session that the Board had given him direction.

With a quorum present, Chair Rubio reconvened the meeting.

3. PLEDGE OF ALLEGIANCE

Chair Rubio asked Supervisor Parker, who agreed, to lead the Pledge of Allegiance.

4. ACKNOWLEDGEMENTS

Chair Rubio acknowledged the presence and welcomed new board member, Supervisor Jane Parker. He noted that Jim Cook, County alternate, was sitting in for Supervisor Calcagno and Dan Albert, Jr., also an alternate, was representing Monterey Peninsula Unified School District. UCSC Vice Chancellor/Dr. Bruce Margon announced that Sares Regis from San Mateo had been selected as the development firm to construct, operate and design a new "green" building in the UC MBEST complex, which will primarily serve technology-oriented tenants.

5. PUBLIC COMMENT PERIOD - none

6. CONSENT AGENDA

There was one item on the Consent Agenda: Item 6a (January 9, 2009 board meeting minutes). There were no board or public comments. **Motion to approve the January 9, 2009 meeting minutes was made by Mayor Russell, seconded by Councilmember Mancini, and carried.**

7. OLD BUSINESS

Item 6a - Habitat Conservation Plan ("HCP") approval process: Executive Officer Houlemard reported that "substantial progress" had been made since the last board meeting and called attention to the three draft documents attached to the board report (the HCP Implementing Agreement, a sample ordinance for the jurisdictions to approve, and the Joint Exercise of Powers Agreement Creating the Fort Ord Regional Habitat Cooperative ("Cooperative"). Director of Planning and Finance Steve Endsley stated that the meeting with the federal and state regulators on February 4<sup>th</sup> had been "energizing" and explained the purpose and content of the three documents previously mentioned. He said that timing now is of utmost importance if the final draft of the HCP is to be ready for the regulatory solicitors' review by mid- or late March 2009. He said if all goes according to the schedule, the document would be out for public review and comments sometime in May 2009. Councilmember Mancini asked about the voting in the Cooperative (Section 4.3). Mayor Russell asked what the jurisdictions' monetary obligation would be and Executive Officer Houlemard responded that the jurisdictions would be responsible for collecting the developer fees, which would cover their habitat financial obligations. Supervisor Parker asked for clarification of Section VII-B(h) re private property rights in the Ordinance, and Authority Counsel Bowden responded that the template used to draft this document included exercise of police power, but the intent of the Fort Ord HCP was not to take, but preserve, private property. Ms. Parker commented that Section VII-C lacked sufficient clarity and Mr. Bowden replied that he would fix that. There were no public comments. Executive Officer Houlemard remarked that the three documents had been reviewed over time by the Administrative Committee, each of the jurisdictions, the responsible regulatory agencies, and several counsel. He urged all to send Mr. Bowden, Mr. Endsley or him any further comments before March 15<sup>th</sup>. **Motion to receive the staff report and forward the draft documents to the Administrative Committee for further review, comments and a recommendation to the Board was made by Councilmember McCall, seconded by Councilmember Kampe, and carried.**

Item 7b – Imjin Office Park – update: Director of Planning and Finance Steve Endsley said that the latest information was in the staff report. There were no board or public comments.

Item 7c – Water for Monterey County Project and Regional Urban Water Augmentation Program – updates: Andrew Barnsdale from the Energy Division of the CA Public Utilities Commission (“CPUC”) provided an update presentation on CalAm’s Coastal Water Project and the regional water project [Water for Monterey County (“WMC”)], focusing on the procedural process in obtaining CPUC approval. He said that the comment period for the draft Environmental Impact Report (“EIR”) would end on April 1<sup>st</sup>. The Commission will also be accepting comments at four public hearings in north Monterey County, scheduled during the first week of March, and over the Internet. He said that all the water agencies in the area have been helpful in defining the regional water plan, in particular, the WMC Coalition group. He said that Angie Macon, an administrative law judge at CPUC, will hold hearings after April 1<sup>st</sup> on the non-economic issues, and the proposed decision is expected to be available by year’s end. The CPUC board of commissioners will then consider each of the alternatives at a public meeting, and then vote. Eric Zigas, CPUC consultant, was introduced and talked about the draft EIR. He said there are 17 or 18 copies of the three volume document in the County and compact discs are also available for those desiring to review it. Discussion by the board followed. There were no public comments.

Item 7d – Central Coast Veterans Cemetery: Executive Officer elaborated on the three staff recommendations. There were several board questions. Public comments included the following: Jack Steward, Vice Chairman of the Citizens’ Advisory Committee (“CAC”), thanked all for their efforts in moving this project along and said donation applications are available for those interested in contributing to the endowment fund. Ila Mettee-McCutchon, a member of the CAC, commented on the creation of the foundation and the fund-raising program currently underway and encouraged all to support efforts to make the veterans’ cemetery a reality. **Motion to approve use of up to \$15,000 for soliciting/selecting an endowment parcel purchaser and to invest a portion of FORA’s share of the land sales revenue to help create the state-enacted endowment fund was made by Supervisor Parker, seconded by Councilmember Mancini, and carried.**

## 8. NEW BUSINESS

Item 8a – Confirmation of 2009 Fort Ord Reuse Authority committee appointments: Chair Rubio thanked all the volunteers who agreed to serve as either primary or alternate members on the Finance Committee or the Legislative Committee this year. (The lists of Chair Rubio’s recommendations are in the board report.) **Motion to confirm Chair Rubio’s 2009 appointments to the afore-mentioned committees was made by Supervisor Potter and seconded by Mayor Russell.** There were no board or public comments and the motion carried.

Item 8b – Fort Ord Reuse Authority Mid-Year Budget: Executive Officer Houlemard provided a short presentation, which showed the revenues and expenditures in the approved 2008-09 budget and the mid-year 2008-09 budget, along with details that had resulted in the variances. He said the severe drop in revenue anticipated from the Community Facilities District fees, due to the cessation of most of the redevelopment projects on former Fort Ord, was the major reason. He added that the Finance and Executive Committees had concurred with the two staff recommendations. **Motion to concur with the recommendations to accept the 2008-09 mid-year budget and approve reallocating \$300,000 to obligations was made by**

**Councilmember Mancini and seconded by Supervisor Potter.** There were no public comments, and the motion carried.

Item 8c – East Garrison loan payments: Executive Officer Houlemard provided the background to the issues resulting in East Garrison's interest payment default, the terms and conditions of which had been outlined in the 2006 Memorandum of Understanding. **Motion to direct the Executive Officer to provide a report next month and engage the County staff in resolving the issues was made by Supervisor Potter, seconded by Councilmember McCall, and carried.**

9. EXECUTIVE OFFICER'S REPORT

There were three items in this report: Item 9a (Administrative Committee report), Item 9b [Finance Committee report: (i) Minutes and (ii) Modifications to the FORA investment policy] and Item 9c [Executive Officer's trip to Washington, DC / American Recovery and Reinvestment Act ("ARRA")]: Re Item 9b(ii): Executive Officer Houlemard said FORA's auditor had also reviewed and recommended the modified investment policy. Mr. Houlemard noted that the investment policy is not usually approved by the Board but these are exceptional economic times. There were no board or public comments. **Motion to approve the modifications to FORA's investment policy was made by Supervisor Potter, seconded by Councilmember McCall, and carried.**

Re Item 9c: Executive Officer Houlemard expressed his thanks to Congressman Sam Farr and his chief of staff, Rochelle Dornatt, for getting provisions inserted into the ARRA that would have benefited closed military installations, e.g., the \$300 million in additional clean-up funding, but reported that this text was removed during the House and Senate conference meeting. He said there is still opportunity for additional funding in the Defense Authorization bill, which Congressman Farr is actively pursuing. He remarked that First Lady Michelle Obama has indicated strong support for the needs of military communities. Alec Arago provided update comments about the ARRA, noting that the funds have been earmarked almost exclusively to existing programs. He said Congressman Farris is working diligently to obtain FORA's "fair share." TAMC General Manager Debbie Hale, who was also in Washington, DC, during the inaugural ceremonies, said she is continuing to work with FORA staff, and also coordinate with CalTrans, to determine if any of FORA's transportation projects qualify for the ARRA funding opportunities.

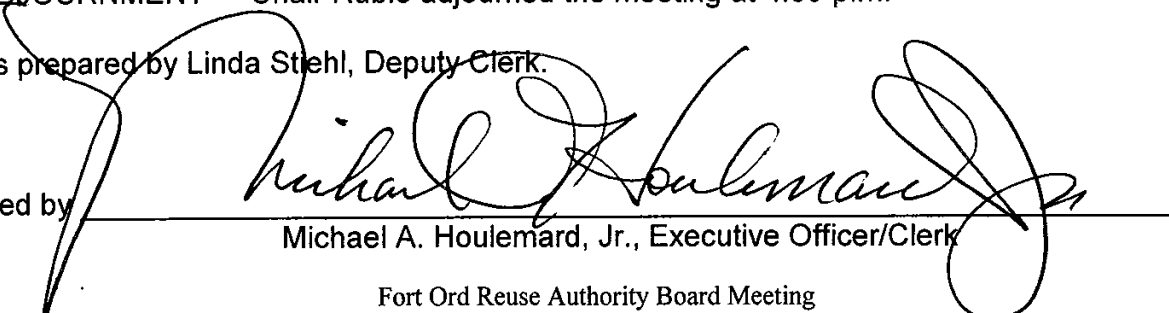
10. ANNOUNCEMENTS AND CORRESPONDENCE

Chair Rubio acknowledged the presence of Councilmember Gray. Councilmember Mancini announced the new 2-1-1 program, which offers a wide variety of referral assistance options to help county residents find the services they request and need. He noted that this program is zip code based to the caller.

11. ADJOURNMENT - Chair Rubio adjourned the meeting at 4:59 p.m.

Minutes prepared by Linda Stehl, Deputy Clerk.

Approved by

  
Michael A. Houlemard, Jr., Executive Officer/Clerk

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** Habitat Conservation Plan approval process

**Meeting Date:** February 13, 2009

**Agenda Number:** 7a

**ACTION/INFORMATION**

### RECOMMENDATION(S):

1. Receive status report regarding preparation of Habitat Conservation Plan ("HCP") and State of California 2081 Incidental Take Permit ("2081 permit") Process; give direction to staff.
2. Provide direction regarding attached documents.

### BACKGROUND/DISCUSSION:

#### **Recent Developments:**

1. On November 14, 2008, staff advised the Fort Ord Reuse Authority ("FORA") Board regarding comments made by U.S. Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") that caused concern that there might be further delay to the HCP process. FORA staff contacted USFWS and CDFG regional executives to address outstanding issues and secured agreement to reinvigorate the process to close on remaining issues. FORA, its HCP consultant ICF Jones & Stokes ("Jones & Stokes"), and FORA member agencies and jurisdictions held working meetings on December 3, 2008 and on December 17, 2008. The HCP working group reviewed several outstanding issues, including:
  - a) Defining the role of a future Joint Powers Authority,
  - b) Determining HCP costs and identifying an entity to hold HCP endowments,
  - c) Determining borderlands management costs and responsible parties,
  - d) Developing a framework to integrate existing 2081 permits into the basewide HCP and 2081 permit, and
  - e) Determining the HCP revisions to accommodate USFWS requirements for a "self-regulating" HCP.

A follow-up conference call was held on January 12, 2009 and an in-person meeting on February 4, 2009. Conference calls were also held with Bureau of Land Management ("BLM"), USFWS, and CDFG on January 15, 2009 and with Monterey County on January 21, 2009. Jones and Stokes indicate that there can be a "submittable" document ready to turn over to USFWS and CDFG solicitors by mid-March 2009 as the February meeting was successful and narrowed remaining issues significantly. FORA Executive Officer Michael Houlemard has facilitated the last two meetings.



In addition, FORA staff and counsel completed drafts of a Joint Powers Agreement, **(Attachment A)** Implementing Agreement, **(Attachment B)** and jurisdictional enabling ordinances **(Attachment C)** that would serve as the governing agreements for the overall HCP. These documents have been circulated to all parties with numerous comments received to date that have strengthened the documents. Staff welcomes further input as these important ancillary documents are readied for review by USFWS and CDFG solicitors.

2. On September 30, 2008, a conference call including representatives from FORA, USFWS, Denise Duffy ("DD&A") [National Environmental Policy Act ("NEPA")/California Environmental Quality Act ("CEQA") consultant], BLM, and others was held and the schedule noted in #3 below was endorsed.
3. HCP working group meetings were held on September 9 and 16, 2008 to discuss the steps to complete the Public Draft HCP and schedule. At the September 9 meeting, representatives of the FORA Administrative Committee were given an opportunity to engage FORA's consultant about issues related to schedule and content. At the September 16 meeting, FORA's jurisdictions discussed the remaining chapters with USFWS and confirmed that the project schedule remains on target for release of a review draft document by January 2009.
4. On June 18, 2008, the HCP working group reviewed the revised Monitoring Chapter and provided feedback to Jones & Stokes on the Implementation and Funding Chapters.
5. On May 5, 2008, DD&A held a conference call meeting of the principals to schedule final Environmental Impact Statement ("EIS")/Environmental Impact Report ("EIR") document processing.

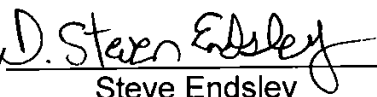
**FISCAL IMPACT:**

Reviewed by FORA Controller 

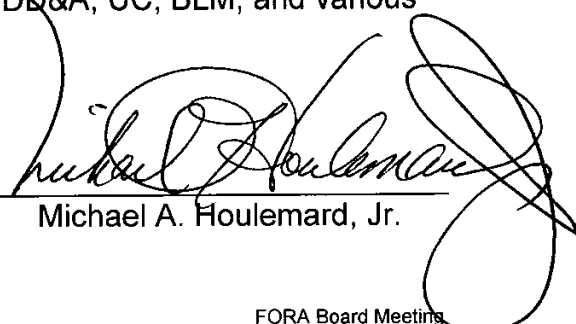
Funding for this item was included in the FY 07 and 08 budgets and was carried over to the FY 09 budget.

**COORDINATION:**

Executive Committee, Administrative Committee, Legislative Committee, Coordinated Resources Management and Planning Team, City of Marina, County of Monterey, U.S. Army, USFWS and CDFG personnel, Jones & Stokes, DD&A, UC, BLM, and various development teams.

Prepared by   
Steve Endsley

Approved

  
Michael A. Houlemard, Jr.

**JOINT EXERCISE OF POWERS AGREEMENT**

**CREATING THE**

**FORT ORD REGIONAL**

**HABITAT COOPERATIVE**

**October , 2009**  
(To Be adopted Date)

## JOINT EXERCISE OF POWERS AGREEMENT

### CREATING THE FORT ORD REGIONAL HABITAT COOPERATIVE

This Joint Exercise of Powers Agreement ("Agreement"), is dated for reference on October , 2009 ("Effective Date"), and is entered into by and among:

- a. Fort Ord Reuse Authority ("FORA")
- b. County of Monterey ("County"),
- c. City of Marina ("Marina"),
- d. City of Seaside ("Seaside"),
- e. City of Del Rey Oaks ("Del Rey Oaks"),
- f. City of Monterey ("Monterey"),
- g. California Department of Parks and Recreation ("State Parks"),
- h. The Regents of the University of California ("UC"),
- i. California State University ("CSU"),
- j. Monterey Peninsula College ("MPC"),
- k. Monterey Peninsula Regional Park District ("Park District"), and
- l. Marina Coast Water District ("Water District"),

Each Party is a public agency as defined in Government Code Section 6500. The parties may be referred to collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title I of the Government Code of the State of California authorizes the Parties to create a joint exercise of powers entity that has the power to exercise jointly the powers common to the Parties.

B. The Parties are empowered by law to undertake certain projects and programs.

C. This Agreement creates an entity to implement the **Installation-Wide Multispecies Habitat Conservation Plan** ("HCP") for the former Fort Ord, California. The HCP provides a multi-agency mechanism to protect natural resources on the former Fort Ord. The Parties expect the HCP to enable them to achieve certain land use planning and development goals and provide comprehensive species and ecosystem conservation.

D. The Parties have a common interest in creating an entity capable of implementing the HCP in accordance with the **Implementing Agreement for Installation-Wide Multispecies Habitat Conservation Plan for Former Fort Ord** ("Implementing Agreement"). The HCP and Implementing Agreement identify certain duties and obligations that must be fulfilled to support the issuance of permits to the Parties under the Federal Endangered Species Act. Those permits are intended to enable urban development and other development projects on property owned or controlled by the Parties at the Former Fort Ord.

## AGREEMENT

**NOW, THEREFORE**, the Parties, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

### 1.0 DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for purposes of this Agreement have the meanings specified herein.

“Act” means the Joint Exercise of Powers Act, Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title I of the Government Code of the State of California (Sections 6500-6599).

“Board” means the governing board of the Fort Ord Regional Habitat Cooperative Board of Directors.

“Community Facilities District (“CFD”) Funds” means fees paid by developers of real property on the former Fort Ord as adopted as a basewide tax to pay for environmental impacts of the development of the former Fort Ord.

“Cooperative” means the Fort Ord Regional Habitat Cooperative created by this Agreement. The Cooperative is responsible for HCP implementation, oversight and policy direction under the Implementing Agreement.

“Endowment” means a) the HCP Endowment Fund, b) the Fort Ord Natural Reserve Endowment and c) the Implementation Assurances Fund described in HCP Chapter 9.3.1. Funds generated by the Fort Ord Reuse Authority’s Community Facilities District development fees will be used to establish these three separate funds to offset both capital and operation HCP costs.

“Endowment Manager” means the entity, which will be selected from the California Department of Fish and Game’s list of preapproved endowment managers, that will hold the collected CFD Funds or other capital resources to pay to the Cooperative according to the terms described herein.

“HCP” means the Installation-Wide Multispecies Habitat Conservation Plan.

“HMA” means Habitat Management Area as defined within the HCP.

“Implementing Agreement” means the **“Implementing Agreement for Installation-Wide Multispecies Habitat Conservation Plan for Former Fort Ord,”**

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

### 2.0 PURPOSE

This Agreement achieves the following objectives:

A. Establishes Fort Ord Regional Habitat Cooperative (the "Cooperative") to fulfill duties and obligations in accordance with the Implementing Agreement and the HCP, including, but not limited to, the management and expenditure of funds that are derived from fees/exactions collected by the Parties for the purpose of implementing the HCP.

B. Requires the Cooperative to:

- 1) oversee, monitor, and report on HCP implementation;
- 2) manage the Reserve System in accordance with HCP;
- 3) secure or receive funding for conservation management purposes;
- 4) provide public information and outreach regarding the HCP; and
- 5) exercise the powers described in Section 6.

### **3.0 TERM, TERMINATION, AND WITHDRAWAL**

3.1. This Agreement becomes effective when ratified by the last endorsing Party. It will continue until terminated. The Agreement may be terminated by a majority of the Parties after ninety-day advance written notice thereof to the other Parties. The Agreement may be terminated immediately by a written supplemental mutual agreement of the Parties.

3.2. Any Party may withdraw from this Agreement upon 90 days written notice to the other Parties. The withdrawing party remains obligated, to the same extent, if any, that the remaining Parties are obligated, to contribute money to pay any debts, liabilities and obligations of the Cooperative arising from or related to actions taken by the Cooperative while the withdrawing party was a party to the Agreement.

3.3. Upon withdrawal, the withdrawing party shall no longer be a Party, and the term "Parties" as used in this Agreement shall thereafter mean the remaining Parties to the Agreement. Withdrawing parties cease to enjoy the regulatory benefits conferred upon Parties by the California Department of Fish and Game and the United States Department of Fish and Wildlife.

### **4.0 COOPERATIVE**

4.1. Creation of Cooperative. There is hereby created under the Act an agency and public entity to be known as the "Fort Ord Regional Habitat Cooperative." As provided in the Act, the Cooperative is a public entity separate from its Parties. Debts, liabilities and obligations of the Cooperative are its own and not those of the Parties.

4.2. State Filing. Within thirty days after the effective date of this Agreement or any amendment hereto, the Cooperative will cause a notice of this Agreement and any amendment hereof to be prepared and filed with the office of the Secretary of State of the State of California as provided in Section 6503.5 of the Act.

4.3. Governing Board. The Cooperative will be governed by a thirteen-member Board of Directors. The Board shall consist of one representative from each of the twelve parties and the Executive Officer of the FORA. Upon the sunset of FORA the Board will be reduced from thirteen members to the eleven remaining Party representatives. Each Party's legislative body shall appoint that Party's representative and may also appoint one alternate representative, both of whom shall serve at the pleasure of the appointing body. The term of office of any Board member and alternate terminates when such member or alternate is replaced or when such member or alternate ceases to be an elected official of the appointing body. Each Party's governing city council or board shall appoint a new representative to the Board whenever the Party's seat on the Board becomes vacant.

4.4 Each Board member has one vote. The Board shall make decisions relating to the governance, budget and administration of the Cooperative.

4.5 Members of the Board serve without compensation, but are entitled to reimbursement for expenses incurred on behalf of the Cooperative at the direction of the Board.

4.6 FORA shall provide staff to support the activities of the Cooperative until the Board elects to secure other staff support or FORA elects to discontinue the service. The Cooperative shall reimburse FORA for costs of providing staff support according to an annual budget approved by the Board. The annual budget shall include a spending cap beyond which the Cooperative shall not be required to reimburse FORA. Upon FORA's sunset on June 30, 2014, any remaining FORA HCP obligations will be transferred to the Cooperative.

4.7 Meetings of Board.

4.7.1 Regular Meetings. The Board shall hold a regular meeting at least twice per year at dates and times established by the Board. The Board may establish a meeting schedule at more frequent intervals. The Board Chair may cancel or reschedule meetings for any reason.

4.7.2 Legal Notice. Meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code, (Sections 54950-54961)).

4.7.3 Minutes. The Cooperative Secretary shall cause minutes of meetings of the Board to be kept and shall, as soon as possible after a meeting, cause a copy of the minutes to be forwarded to members of the Board.

4.7.4 Quorum. A majority of the members of the Board constitutes a quorum for the transaction of business, except that less than a quorum may adjourn meetings.

4.8 Officers: Duties; Bonding.

4.8.1 The Board shall select from its members a Chair who shall serve as

Chair of the Cooperative and a Vice Chair who shall serve as Vice Chair of the Cooperative. The Chair and the Vice Chair shall have the duties assigned by the Board or set forth in by-laws adopted by the Board.

4.8.2 The FORA Executive Officer will serve as Secretary of the Cooperative until the sunset of FORA or until the Board appoints a replacement. The Secretary, or his/her designee: a) is the custodian of Cooperative records, b) will cause minutes to be prepared and submitted to the Board for approval, c) acts as Secretary at Board meetings, d) keeps a record of the proceedings of the Cooperative in a journal of proceedings, and e) performs duties incident to the office.

4.8.3 The FORA Director of Planning and Finance will act as Treasurer of the Cooperative until the Board appoints a replacement. The Treasurer is the custodian of Cooperative revenue, from whatever source, and, as such, has the powers, duties and responsibilities specified in Section 6505.5 of the Act.

4.8.4 The FORA Controller will be the Controller of the Cooperative until the Board appoints a replacement. The Controller has the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Controller shall draw checks to pay demands against the Cooperative under the direction of the Board.

4.8.5 The Cooperative shall reimburse FORA for its costs of providing the services of the Secretary, Treasurer, and Controller, as applicable, according to an annual budget approved by the Board. The annual budget shall include a spending cap beyond which the Cooperative shall not be required to reimburse FORA.

4.8.6 The Cooperative Treasurer and Controller are designated as the public officers or persons who have charge of, handle, or have access to Cooperative property. Such officers shall file an official bond in the amount such officers determine is necessary as required by Section 6505.1 of the Act, provided, that such bond shall not be required if Cooperative property or funds has an aggregate value less than \$1,500.00.

4.8.7 The Treasurer and Controller of the Cooperative are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required by Government Code Section 6505 every year during the term of this Agreement; and (b) a report in writing on the first day of February, May, August and November of each year to the Board and the Parties, which report shall describe the amount of money held by the Treasurer and Controller of the Cooperative, the amount of receipts since the last such report, and the amount paid out since the last such report.

4.8.8 The Board may: a) appoint such other officers and employees as it may deem necessary and b) retain independent counsel, consultants and accountants.

4.8.9 Upon sunset of FORA, the Cooperative shall assume FORA's liabilities, obligations and responsibilities under this agreement and the Cooperative shall select its own employees and officers. The Cooperative shall remain liable for performing FORA's obligations under this Agreement. Nothing in this agreement shall be construed to authorize FORA to assign any of its responsibilities or obligations under this agreement to a third party

without the prior approval of the U.S. Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG").

## **5.0 COMMITTEES**

5.1. Habitat Liaison Committee. The Cooperative shall establish a Habitat Liaison Committee and appoint up to three Cooperative representatives. Bureau of Land Management ("BLM"), USFWS, and CDFG may each appoint up to three representatives to promote HCP implementation coordination. Liaison Committee representatives may be elected officials or may be staff of the Cooperative, BLM, USFWS, and CDFG.

The Habitat Liaison Committee shall make non-binding recommendations to the Board regarding ways to coordinate HCP implementation with UC, State Parks, and BLM's activities in the HCP area and regarding the preparation and submittal of grant applications.

5.2. Public Advisory Committee. The Cooperative shall establish a Public Advisory Committee to advise the Cooperative regarding various aspects of HCP implementation, including, but not limited to (a) expenditure of funds for HCP implementation, (b) general permitting procedures for projects covered by the HCP, (c) management of the Reserve System, and (d) adherence to HCP requirements. The Public Advisory Committee shall make non-binding recommendations to the Board regarding creation and management of the Reserve System and make other recommendations consistent with the HCP. The Board based on relevant expertise or ability to represent interested or affected segments of the public shall appoint members of the Public Advisory Committee in accordance with guidelines established by the Board and consistent with the HCP.

## **6.0 POWERS**

6.1 The Cooperative has the powers granted to joint powers authorities in Articles 2 and 4 of the Act. The Cooperative may do acts necessary to exercise those specific powers including but not limited to any of the following: (a) make contracts; (b) employ agents and employees; (c) receive, collect, and disburse funds; (d) receive grants contributions and donations of property, funds, and services; (e) sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to HCP implementation.

6.2 Cooperative powers are limited only by restrictions on the Parties for exercise of similar powers as provided in Section 6509 of the Act.

## **7.0 TERMINATION OF POWERS**

The Cooperative shall continue to exercise the powers herein conferred upon it until the termination of this Agreement.

## **8.0 DISBURSEMENTS AND DEPOSITS OF FEES**

8.1 The Implementing Agreement requires Marina, Seaside, Del Rey Oaks, Monterey (collectively the "Cities") and the County to enforce the collection of FORA Community Facilities District ("CFD") Fees or consider the adoption of a separate Development Fee to



fund the HCP.

8.2 The County and the Cities shall enforce CFD fee collection or impose and collect a separate Development Fee. The County and Cities shall disburse to the Endowment Manager any such revenues semi-annually, on or about December 31 and June 30. The Endowment Manager shall hold revenues from the Development Fee in an interest-bearing account under the Mitigation Fee Act (Gov. Code, § 66000 et seq.) until disbursement or expenditure in accordance with this Agreement. The Cooperative shall use any revenues from the Fees only for the purposes for which they were imposed, and for no other purpose.

## **9.0 ENDOWMENT**

9.1 HCP Chapter 9 "Cost and Funding" describes HCP implementation costs, funding sources and assurances. The HCP cost model (Appendix [redacted] to the HCP) is a planning-level estimate of total HCP costs. The cost model was developed to conservatively estimate HCP implementation expenses of the Cooperative, UC, State Parks, and BLM over the permit term. The cost model was designed to demonstrate that all costs were accounted for and reasonably estimated. In the Implementing Agreement, the Parties commit to adequately fund the costs associated with the HCP. CFD Funds and annual appropriations from state and federal budgets will be the primary HCP funding sources.

9.2 FORA will continue to collect CFD Funds through June 30, 2014 and the Cities and County will continue to collect CFD Funds after June 30, 2014 to fund the Endowment, which includes: a) the HCP Endowment Fund, b) the Fort Ord Natural Reserve Endowment and c) Implementation Assurances Fund held by the Endowment Manager. FORA, the Cities and the County will contribute 25% of CFD Funds collected to the Endowment until the \$ [redacted] million endowment is fully funded.

9.3 Initial habitat management funding will be provided by the BLM, State Parks, U.S. Army (consistent with the 1997 Habitat Management Plan ["HMP"]), and FORA, and by separate agreement CSU, MPC, and UC. HCP Section 7.1 "Stay-Ahead Provision" states that the proportion of dedicated reserve acreage for each HCP species' habitat transferred from the Army shall be at least 5% higher than the proportion of allowable development-related impacts on each species' habitat. In order to meet the stay-ahead provision, reserve lands in Habitat Management Areas ("HMA") must also have funding to ensure management according to the conservation strategy (see Section 9.2). The HCP is designed so that habitat and habitat management funding are provided prior to impact on an HCP species' habitat.

9.4 The Cooperative shall use funds from the HCP Endowment Fund to implement HCP habitat management obligations on HMA land to be held by Monterey County, Monterey Peninsula Regional Park District, Monterey Peninsula College, and City of Marina. The Cooperative shall also use funds from the HCP Endowment Fund for monitoring on HMAs within the HCP area, regardless of ownership (i.e., including BLM, State Parks, and UC lands).

9.5 FORA provides \$75,000 annually to the UC/Natural Reserve System ("UC/NRS") for their interim management of the 605-acre Fort Ord Natural Reserve ("FONR"). The

Cooperative will provide annual funding to the UC/NRS sufficient to meet the annual costs of complying with the HCP on FONR lands until FORA has fully funded the FONR Endowment.

9.6 The Cooperative will use funds from the Implementation Assurances Fund to ensure adequate funding of necessary remedial measures to address any of the changed circumstances described in HCP Chapter 8, Section 8.6. The Cooperative will also use funds from the Implementation Assurances Fund to augment HCP annual revenues if CFD Funds do not keep pace with HCP funding needs or federal or state appropriations unexpectedly decline. Upon permit issuance, FORA (and the County and Cities after June 30, 2014) shall provide an amount not less than \$500,000 a year to the Endowment Manager until an endowment of \$5.0 million is reached. The Endowment Manager will reinvest interest from this fund to ensure that it keeps pace with inflation and the rising costs of HCP implementation.

#### **10.0 COOPERATIVE ACCOUNTABILITY**

The Cooperative is accountable for revenue from the Endowment Manager disbursed to the Cooperative and must report receipts and disbursements. No later than October 31 of each year the Cooperative, County and Cities shall prepare and furnish to each other an annual report of their respective collection, disbursement and expenditures of, and any interest earned on, revenue from the Fees. The Cooperative is solely responsible for compliance with requirements of the Mitigation Fee Act as they pertain to revenue from the Endowment Manager that has been disbursed to the Cooperative.

#### **11.0 FISCAL YEAR**

Unless and until changed by majority vote of the Board, the fiscal year of the Cooperative shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

#### **12.0 DISPOSITION OF ASSETS AND REAL PROPERTY**

Upon termination of this Agreement, and after the repayment of advances and contributions in accordance with Section 14, assets acquired as the result of the joint exercise of powers under this Agreement, other than real property and funding for the restoration or management of real property, shall be distributed to the Parties in proportion to an individual Member's overall unreimbursed contribution of assets to the Cooperative. The Cooperative shall transfer any real property, and any funding for the restoration or management of real property, acquired by the Cooperative as the result of the joint exercise of powers under this Agreement to one or more public agencies or nonprofit conservation organizations.

#### **13.0 CONTRIBUTIONS AND ADVANCES**

With the Board's approval, any Party may contribute or advance public funds, personnel, equipment or property to the Cooperative for any of the purposes of this Agreement. Such advances must be repaid in the manner agreed upon by the Cooperative

and the Party making the advance when it is made. Except as otherwise expressly provided in this Agreement, no Party is obligated to pay the Cooperative's administrative expenses.

#### **14.0 ACCOUNTS AND REPORTS**

14.1 The Cooperative shall establish and maintain such funds and accounts as may be required by good accounting practice and as may be required by the terms of any state or federal grant that the Cooperative may receive. The books and records of the Cooperative shall be open to inspection at reasonable times by the Parties and their representatives. The Cooperative shall give an audited written report of financial activities for the fiscal year to the Parties within six months after the close of the fiscal year.

14.2 To the extent required by Section 6505.6 of the Act, the Controller of the Cooperative shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Cooperative in compliance with Section 6505.6 of the Act. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the Parties and, if required by Section 6505.6 of the Act, with the Auditor Controller of the County. Such report shall be filed within twelve months of the end of the fiscal year or years under examination.

14.3 Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Cooperative and shall be a charge against any unencumbered funds of the Cooperative available for the purpose.

14.4 The Cooperative may replace the annual special audit with an audit covering a two-year period.

#### **15.0 CONFLICT OF INTEREST CODE**

The Cooperative shall adopt a conflict of interest code as required by law and shall comply with the terms of Fair Political Practices Commission Ethics Training requirements.

#### **16.0 LIABILITY AND INDEMNIFICATION**

The Parties shall defend, hold harmless and indemnify the other Parties and their officers, agents, and employees against claims, demands, damages, costs, expenses or liability arising out of the indemnifying parties' actions and inactions under this Agreement.

#### **17.0 BREACH**

Breaches this Agreement do not excuse either further breaches by the party in breach or breaches by non-breaching. The remedies given to the Parties hereunder or by law are cumulative and not elective. The exercise of one right or remedy does not impair other rights and remedies.

**18.0 SEVERABILITY**

If a court finds any term of this Agreement to be illegal or otherwise unenforceable, remaining provisions will be unaffected.

**19.0 SUCCESSORS; ASSIGNMENT**

This Agreement binds and benefits successors to the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

**20.0 AMENDMENT OF AGREEMENT**

This Agreement may be amended only by supplemental written agreement executed by the Parties.

**21.0 FORM OF APPROVALS**

Approvals required in this Agreement, unless the context specifies otherwise, must be given by resolution. When consent or approval is required in this Agreement it may not be unreasonably withheld.

**22.0 NOTICES**

Notices to the Parties shall be sufficient if delivered to the chief executive of the Party at the Party's principal location within five working days prior to any action to be taken or any meeting to be called. The following notice list contains the notification addresses of the Parties:

ATTN: Executive Officer  
Fort Ord Reuse Authority  
100 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933

ATTN: Housing &  
Redevelopment Director  
County of Monterey  
168 W. Alisal St., 3<sup>rd</sup> Floor  
Salinas, CA 93901

ATTN: Executive Officer  
Fort Ord Reuse Authority  
100 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933

ATTN: City Manager  
City of Marina  
211 Hillcrest Ave.  
Marina, CA 93933

Fort Ord Regional Habitat Cooperative

ATTN: City Manager  
City of Seaside  
440 Harcourt Ave.  
Seaside, CA 93955

ATTN: City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey  
Del Rey Oaks, CA 93940

ATTN: City Manager  
City of Monterey  
580 Pacific Street  
Marina, CA 93940

ATTN: City Manager  
City of Marina  
211 Hillcrest Ave.  
Marina, CA 93933

ATTN: State Parks District  
Superintendent

ATTN: Secretary of The  
Regents University of  
California  
1111 Franklin Street, 12<sup>th</sup>  
Floor  
Oakland, CA 94607-5200

ATTN: President  
California State University  
Monterey Bay

ATTN:  
Superintendent/President  
Monterey Peninsula  
College

ATTN: General Manager                      District  
Marina    Coast    Water

**23.0    SECTION HEADINGS**

Section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**24.0    COUNTERPARTS**

This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon the Parties. Electronic or photocopies of the fully executed Agreement are the same as duplicate originals.

**25.0    SIGNATURES**

Persons signing this Agreement represent and warrant that: 1) they have read and understand the Agreement, 2) they are authorized to sign this Agreement, and 3) the Party on behalf of whom the signature is offered has agreed to be bound by its terms.

Dated: \_\_\_\_\_, 2009

COUNTY OF MONTEREY

By: \_\_\_\_\_  
, County Administrator

APPROVED AS TO FORM:  
, County Counsel

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

Dated: \_\_\_\_\_, 2009

CITY OF MARINA

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

APPROVED AS TO FORM:  
City Attorney

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

Dated: \_\_\_\_\_, 2009

CITY OF SEASIDE

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

APPROVED AS TO FORM  
City Attorney

Dated: \_\_\_\_\_, 2009

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

CITY OF DEL REY OAKS

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

, City Manager

APPROVED AS TO FORM  
City Attorney

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

Dated: \_\_\_\_\_, 2009

CITY OF MONTEREY

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

, City Manager

APPROVED AS TO FORM  
City Attorney

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

Dated: \_\_\_\_\_, 2009

UNIVERSITY OF CALIFORNIA

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

Secretary of The Regents

APPROVED AS TO FORM:  
University Counsel

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

Dated: \_\_\_\_\_, 2009

CALIFORNIA STATE UNIVERSITY

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

President

APPROVED AS TO FORM:  
University Counsel

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

Dated: \_\_\_\_\_, 2009

MONTEREY PENINSULA COLLEGE

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

President

APPROVED AS TO FORM  
City Attorney

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

Dated: \_\_\_\_\_, 2009

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

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

APPROVED AS TO FORM  
Parks Attorney

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

Dated: \_\_\_\_\_, 2009

MONTEREY PENINSULA REGIONAL PARK DISTRICT

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

APPROVED AS TO FORM  
County Counsel

Dated: \_\_\_\_\_, 2009

FORT ORD REUSE AUTHORITY

By: \_\_\_\_\_  
, CHAIR

APPROVED AS TO FORM:  
, Authority Counsel

IMPLEMENTING AGREEMENT

for the

FORMER FORT ORD INSTALLATION-WIDE  
MULTISPECIES HABITAT CONSERVATION PLAN

by and among

FORT ORD REGIONAL HABITAT COOPERATIVE (A JOINT EXERCISE OF  
POWER AGENCY), FORT ORD REUSE AUTHORITY,  
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (ON BEHALF OF  
THE UC SANTA CRUZ CAMPUS),  
COUNTY OF MONTEREY,  
CITY OF MARINA,  
CITY OF SEASIDE,  
CITY OF DEL REY OAKS,  
CITY OF MONTEREY,  
CALIFORNIA STATE UNIVERSITY MONTEREY BAY,  
MONTEREY PENINSULA COLLEGE,  
MONTEREY PENINSULA REGIONAL PARK DISTRICT,  
MARINA COAST WATER DISTRICT, BUREAU OF LAND MANAGEMENT,  
UNITED STATES FISH AND WILDLIFE SERVICE,  
and  
CALIFORNIA DEPARTMENT OF FISH AND GAME



## **AGREEMENT**

### **1.0 PARTIES**

This Agreement implements the Former Fort Ord Installation-Wide Multispecies Habitat Conservation Plan ("HCP"). It is made by and among the:

- a) Fort Ord Regional Habitat Cooperative, a Joint Exercise of Power Authority ("JPA" or the "Cooperative"),
- b) Fort Ord Reuse Authority ("FORA"),<sup>1</sup>
- c) County of Monterey ("County"),
- d) City of Marina ("Marina"),
- e) City of Seaside ("Seaside"),
- f) City of Del Rey Oaks ("Del Rey Oaks"),
- g) City of Monterey ("Monterey"),
- h) United States Fish and Wildlife Service ("USFWS"),
- i) California Department of Fish and Game ("CDFG"),
- j) California Department of Parks and Recreation ("State Parks"),
- k) The Regents of the University of California ("UC"),
- l) California State University ("CSU"),
- m) Monterey Peninsula College ("MPC"),
- n) Monterey Peninsula Regional Park District ("Park District"),
- o) Marina Coast Water District ("Water District"), and
- p) Bureau of Land Management ("BLM").

These entities are referred to collectively as the "Parties." USFWS and CDFG are referred to collectively as the "Wildlife Agencies." Seaside, Marina, Del Rey Oaks, and Monterey may be referred to collectively as the "Cities." The Cooperative, FORA, County, Cities, State Parks, UC, CSU, MPC, Park District, and Water District BLM are referred to collectively as the "Permittees."

### **2.0 RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1 The HCP provides a comprehensive framework to ensure conservation, recovery, and enhancement of natural resources on the former Fort Ord. The HCP improves and streamlines the environmental permitting process for project areas described in the HCP that have the potential to impact endangered and threatened species or their habitats. The goals of the HCP are to: a) conserve species, wetlands, and ecosystems and b) contribute to recovery of endangered and threatened species within the former Fort Ord lands and c) balance open space, habitat, and urban development. To that end, the HCP describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on HCP Species and their habitats. The HCP also describes the necessary protections from future potential former Fort Ord real property development activities, as the basis for permitting take or impacts associated with development.
- 2.2 The HCP Joint Powers Authority ("HCP JPA") is a joint powers authority formed by the Permittees under Government Code sections 6500, et seq., to implement the HCP. The governing board of the HCP JPA is referred to as the Cooperative.
- 2.3 The HCP encompasses approximately 27,686 acres within northern Monterey County, approximately 100 miles south of San Francisco, formerly known as Fort Ord in which land use impacts are evaluated, and in which habitat conservation will occur.

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<sup>1</sup> When FORA sunsets (expected in 2015), it will cease to be a party to the HCP and a member of the JPA/Cooperative.

- 2.4 The Parties have determined that the HCP will provide perpetual habitat for nineteen (19) species listed as endangered or threatened or that carry other legal status.
- 2.5 Permittees seek authorization from the Wildlife Agencies to "take" nineteen (19) special-status species and certain other species, as "take" is defined by federal and state law (see below at Section 3.46 of this Agreement), while carrying out certain future potential real property development and other activities.
- 2.6 The USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various federal laws, including the federal Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) ("FESA"), the Migratory Bird Treaty Act (16 U.S.C. § 701 et seq.) ("MBTA"), the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.) ("BGEPA"), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)) ("FWCA"), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) et seq.).
- 2.7 FESA prohibits the "take" of species listed as endangered or threatened under FESA, as take is defined under federal law. Under Section 10(a)(1)(B) of FESA (16 U.S.C. § 1539(a)), USFWS may issue a permit authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such "taking." The Permittees submitted the HCP to the USFWS, and applied for a federal permit for incidental take of Covered Species within the Permit Area. The incidental take permit issued by USFWS based on the HCP will be issued concurrently with the USFWS' execution of this Agreement.
- 2.8 CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various state laws, including the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) ("CESA"), the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) ("NCCPA"), the Native Plant Protection Act (Fish & G. Code, § 1900 et seq.) ("NPPA"), and California Fish and Game Code sections 1600 et seq., 1801, 1802, 3511, 4700, 5050 and 5515.
- 2.9 CESA prohibits the take of species listed as endangered, threatened or candidate species under CESA. The Permittees submitted the HCP to CDFG for approval and permitting for take under CESA. The take authorization issued by CDFG based on the HCP will be issued concurrently with CDFG's execution of this Agreement.
- 2.10 In April 1997, the U.S. Army Corps of Engineers issued the revised *Installation-Wide Multi-Species Habitat Management Plan for Former Fort Ord* ("HMP") on behalf of the U.S. Department of the Army ("U.S. Army"). The HMP was developed with input from federal, state, and local agencies concerned with the natural resources and the Army's real property disposal as it pertained to future potential reuse of Fort Ord. It provides a comprehensive species and habitat conservation program as part of the closure, disposal, and potential reuse of former Fort Ord lands. Specifically, the HMP establishes a habitat conservation area and corridor system and parcel-specific land use categories and management requirements. The HMP was intended to serve as the basis for a habitat conservation plan and to support the issuance of incidental take permits under Section 10(a)(1)(B) of the Federal Endangered Species Act and Section 2081 of the California Endangered Species Act.
- 2.11 The HCP was based on the framework established by the HMP. It contains measures to minimize and mitigate the impact of contemplated land uses on special-status species.

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- 2.12 The Permittees intend to allow developers, infrastructure project proponents and certain landowners to receive coverage under the federal incidental take permit and State take authorization for certain development and other activities, subject to the conditions in this Agreement, the HCP and the permits.
- 2.13 BLM has committed to implementation of its habitat management requirements under the HCP. The HCP JPA will fund and conduct biological monitoring within BLM's Natural Resource Management Area ("NRMA.")
- 2.14 The planning process for the HMP and HCP included intensive study of the special-status species, their habitats, and proposed development and other activities within the HCP area; discussions with the Wildlife Agencies; input from independent science advisors and the public; and environmental review under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) ("NEPA") and the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) ("CEQA").
- 2.15 The Permittees agree to commit land, natural resources, financial resources, human resources and other assets to conserve and manage the special-status species, their habitats and other natural communities, in exchange for regulatory assurances from the Wildlife Agencies in this Agreement.

### 3.0 DEFINITIONS

The following terms used in this Agreement have the meanings set forth below. Terms defined in FESA, CESA or NCCPA or the administrative regulations adopted under those statutes retain those meanings here. Definitions used in this Agreement may elaborate on, but do not conflict with, such statutory or regulatory definitions.

- 3.1 "**Agreement**" means this Implementing Agreement, which incorporates the HCP and the Permits by reference.
- 3.2 "**Authorized Take**" means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Permittees under Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to the Permittees under California Fish and Game Code section 2835.
- 3.3 "**BLM**" means the U.S. Department of the Interior's Bureau of Land Management.
- 3.4 "**Borderlands**" means development parcels adjacent to Habitat Management Areas. Management actions will be required on Borderlands to address the urban/wild land interface and protect the species and habitats within the Habitat Management Areas.
- 3.5 "**CDFG**" means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.6 "**CEQA**" means the California Environmental Quality Act (Pub. Resources Code §21000 et seq.) and rules, regulations and guidelines promulgated under that Act.
- 3.7 "**CESA**" means the California Endangered Species Act (Fish & G. Code, §2050 et seq.) and rules, regulations and guidelines promulgated under that Act.
- 3.8 "**Changed Circumstances**" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of this Agreement and Section 8.2.1 of the HCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.9 "**Conserve,**" "**Conserving,**" or "**Conservation**" means to use, and the use of, methods and procedures within the HCP Plan Area that are necessary to bring the federally and state-listed Covered Species to the point at which the measures provided

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under FESA and CESA are not necessary, and to maintain or enhance the condition of the non-listed Covered Species so that listing under FESA and CESA is unnecessary.

- 3.10 “Conservation Measure”** means each action detailed in Section 5 of the HCP that is a component of the Conservation Strategy.
- 3.11 “Conservation Strategy”** means the conservation and management measures described in Sections 5 and 6 of the HCP and as further required by the Permits to minimize, mitigate and monitor the impacts of Take of the Covered Species, plus reporting requirements described in Section 7.10 of the HCP, and the Permittees’ responses to Changed Circumstances described in Section 8.2.1 of the HCP. The Conservation Strategy is more particularly defined in Section 7, below.
- 3.12 “Cooperative”** means the governing board of the HCP Joint Powers Authority (“HCP JPA”). The HCP JPA is composed of appointed officials of the Permittees, as further described in Section 7 of the HCP. FORA’s authority and responsibilities under the HCP have been transferred to the HCP JPA for purposes of the HCP and this Agreement.
- 3.13 “Covered Activities”** means those land uses and conservation and management activities described in Section 3 of the HCP to be carried out by the Permittees, their agents, and Third Party Participants in the Permit Area that may result in Authorized Take of Covered Species during the term of the HCP, and that are otherwise lawful.
- 3.14 “Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for by the HCP and for which limited Take is authorized by the Wildlife Agencies under the Permits.
- 3.15 “Endowment”** means the a) HCP Endowment Fund, b) the Fort Ord Natural Reserve Endowment and c) the Implementation Assurances Fund described in Section 9.3.1 of the HCP. Funds generated by the Fort Ord Reuse Authority’s Community Facilities District development fees and other sources will be used to establish these three separate funds to offset both capital and operational HCP costs.
- 3.16 “Effective Date”** means the date when both Permits described in Section 3.38, below, are issued.
- 3.17 “Federal Covered Species”** means species considered Covered Species for the purposes of the Section 10(a)(1)(B) incidental take permits to be issued by USFWS. Federal Covered Species include HCP Species.
- 3.18 “Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered under FESA during the term of the HCP as of the date of such listing.
- 3.19 “Federal Permit”** means the federal incidental Take permit issued by the USFWS to the Permittees under Section 10(a)(1)(B) of FESA, as it may be amended from time to time.
- 3.20 “FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and rules, regulations and guidelines promulgated under that Act.
- 3.21 “FORA”** means the Fort Ord Reuse Authority.
- 3.22 “Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.23 “Habitat Management Area”** means the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels included in the Reserve System. Descriptions of Habitat Management Areas (“HMA”) are provided in Section 3.5 through 3.18 of the HCP.
- 3.24 “Habitat Managers”** means the HCP JPA and entities designated by the HMP to receive land within an HMA, including BLM, State Parks, UC, the County, the City of Marina, MPC and the Park District. Habitat Managers are responsible for management

of HCP Species and natural communities to meet the goals and objectives of the HCP Conservation Strategy.

- 3.25** “HCP” means the Habitat Conservation Plan prepared under Section 10 of FESA.
- 3.26** “HCP Species” means species that are considered Covered Species under the Section 10(a)(1)(B) permit issued by USFWS in addition to the species that are considered Covered Species under the Section 2081 permits issued by CDFG. USFWS is authorized to issue the Section 10(a)(1)(B) permit for both listed and unlisted species. However, CDFG may not issue take permits under Section 2081 for species other than those listed as threatened, endangered or candidates for listing. Thus, some species that are considered Covered Species for purposes of the Section 10(a)(1)(B) permit are not considered Covered Species for purposes of the Section 2081 permit. This Agreement, like the HCP, uses the term “HCP Species” for consistency and so that the Agreement is applicable to both the Section 10(a)(1)(B) and the Section 2081 permits, unless the use of the term “Covered Species” is necessary for clarity.
- 3.27** “Installation-Wide Multi-Species HCP EIS/EIR” means the Joint Environmental Impact Statement and Environmental Impact Report dated (XXXX XX, 200X) prepared to analyze the environmental impacts of the HCP and Permits under NEPA and CEQA.
- 3.28** “Joint Powers Authority” means the HCP Cooperative.
- 3.29** “Jurisdictional Wetlands and Waters” means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Section 1.3.5 of the HCP.
- 3.30** “Listed Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.31** “Local Jurisdictions” means the County, the Cities, MPC, and the Park District.
- 3.32** “Management Activities” means management actions required by the HCP that are necessary to achieve HCP biological goals and objectives.
- 3.33** “MBTA” means the federal Migratory Bird Treaty Act (16 U.S.C. §703 et seq.) and rules, regulations and guidelines promulgated under that Act.
- 3.34** “NEPA” means the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and rules, regulations and guidelines promulgated under that Act.
- 3.35** “Non-listed Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.36** “Party” or “Parties” means any or of the signatories to this Agreement.
- 3.37** “Permit Area” means the area within the Plan Area where the Permittees are seeking authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities, within the area covered by the Habitat Conservation Plan depicted in Figure 1-1 of the HCP, attached to this Agreement as Exhibit A.
- 3.38** “Permits” means the Federal Permit and the State Permit.
- 3.39** “Permittees” means the Cooperative, FORA, County, Cities, State Parks, UC, CSU, MPC, Park District, and Water District.
- 3.40** “Plan Area” means the geographic area analyzed in the HCP, located in the northern portion of Monterey County, as depicted in Figure 1-1 of the HCP, attached to this Agreement as Exhibit A. The Plan Area is further described in HCP Section 1.4
- 3.41** “Primary Habitat Managers” means BLM, State Parks, and UC.

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- 3.42 “Reserve System”** means the land transferred from the United States Army to designated Habitat Managers and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement, and restoration objectives of the Conservation Strategy of the HCP. The Reserve System consists of land included within the Habitat Management Areas.
- 3.43 “Resource Management Plan”** means a site-specific implementation and management plan for HMA prepared under Section 10.3 of this Agreement.
- 3.44 “Section”** means a section of the HCP
- 3.45 “State Covered Species”** means species considered Covered Species for the purposes of the Section 2081 permits issued by CDFG. State Covered Species include only those HCP Species which are state-listed or candidate species.
- 3.46 “State Listed Species”** means the Covered Species listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, and the Covered Species listed as threatened or endangered, or as candidates for such status under CESA during the term of the HCP, as of the date of such listing.
- 3.47 “State Permit”** means the state Take permit issued to the Permittees under Section 2081 of the California Fish and Game Code, as it may be amended from time to time.
- 3.48 “Take” and “Taking”** have the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also have the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA.
- 3.49 “Third Party Participants”** means developers, infrastructure project proponents, and other persons or entities that qualify for and receive Take authorization from a Permittee in exchange for compliance with applicable conservation measures and other terms and conditions of this Agreement, the HCP and the Permits.
- 3.50 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a HCP Species or geographic area covered by the HCP that could not reasonably have been anticipated by the plan developers and USFWS at the time of the plan’s negotiation and development, and that result in a substantial and adverse change in the status of a HCP Species. “Unforeseen Circumstances” under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more HCP Species.
- 3.51 “USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.52 “Wildlife Agencies”** means USFWS and CDFG.

#### **4.0 PURPOSES**

##### 4.1 This Agreement:

- a) defines the Parties’ rights and responsibilities,
- b) provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the HCP Species caused by the Covered Activities within the Plan Area,
- c) provides for conservation of HCP Species within the Plan Area.

##### 4.2 The purposes of this Agreement are to:

- a) ensure implementation of the terms and conditions of the HCP, this Agreement, the Federal Permit, and the State Permit;
- b) provide long term assurances to the Permittees that, under the federal “No Surprises” provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), as long as

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the terms and conditions of this Agreement, the HCP, and the Permits are fully satisfied, no additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources will be required of the Permittees, either to minimize and mitigate the impacts of Authorized Take, or to provide for the conservation and management of the HCP Species in the Plan Area, except as provided in this Agreement and the HCP or required by law; and

- c) describe remedies for breach of this Agreement.

## **5.0 INCORPORATION OF THE HCP**

The HCP is incorporated into this Agreement by this reference. This Agreement specifies the rights and obligations of the Parties under the HCP, recognizing that the HCP is a plan, not a contract. If this Agreement conflicts with the HCP, this Agreement shall control. Otherwise, this Agreement and the HCP shall be interpreted to be consistent with and complementary to each other.

## **6.0 LEGAL FINDINGS AND REVIEW BY THE WILDLIFE AGENCIES**

### **6.1 USFWS Findings**

As further described in the Federal Permit, the USFWS has found that the HCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of FESA for each Federal Covered Species that is a Federal Listed Species within the jurisdiction of the USFWS. This finding supports the Take authorization for Federal Listed Species conferred to the Permittees as of the Effective Date.

For each Federal Covered Species that is not a Federal Listed Species as of the Effective Date, the USFWS has found that the HCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of FESA that would otherwise apply if such HCP Species were a Federal Listed Species. This finding supports the Take authorization for Federal Non-listed Species that shall automatically be conferred to the Permittees if and when the species is listed under FESA.

The Take of Federal listed plant species is permitted under FESA, and therefore Take authorization for Federal listed plants is not necessary. Plant species included on the list of Federal Covered Species are listed on the Federal Permit in recognition of the conservation measures and benefits provided for those plants under the HCP. As of the Effective Date, reference in this Agreement or the HCP to the Authorized Take of Federal Covered Species shall, for the purpose of incidental Take authorized under Section 10(a)(1)(B), refer solely to Federal Listed Species other than plants on the Federal Covered Species list. If a plant listed on the Federal Covered Species list becomes subject to the take prohibition under FESA while this Agreement and the Federal Permit are in effect, Permittees shall automatically receive incidental Take Authorization for that plant.

Concurrent with the USFWS' execution of this Agreement, and on satisfaction of other requirements, the USFWS will issue to Permittees the Federal Permit under Section 10(a)(1)(B) of FESA. That Permit will authorize incidental Take by the Permittees of each Federal Covered Species within the jurisdiction of USFWS resulting from Covered Activities in the Permit Area. The Federal Permit is conditioned on compliance with this Agreement, the HCP, and the Federal Permit.

### **6.2 CDFG Findings**

As further described in the State Permit and associated findings under the CESA, the CDFG has found that the HCP satisfies the permit issuance criteria listed in Sections 2081(b) and (c) of the California Fish and Game Code for State Covered Species. This finding supports the Take authorization for State Covered Species conferred to the Permittees as of the Effective Date.

Concurrent with CDFG's execution of this Agreement, and on satisfaction of other requirements, CDFG will issue to the Permittees the State Permit under Section 2081 of the California Fish and Game Code. That Permit authorizes the Take by the Permittees of each State Covered Species within the jurisdiction of CDFG resulting from Covered Activities in the Permit Area. The State Permit is conditioned on compliance with this Agreement, the HCP, and the State Permit.

### **6.3 Environmental Review**

#### **6.3.1 Federal Law – National Environmental Policy Act**

Issuance of the Federal Permit under Section 10(a)(1)(B) of FESA to the Permittees by USFWS is an action subject to review under NEPA. USFWS is the lead agency under NEPA. Prior to the Effective Date, USFWS evaluated the HCP under NEPA.

#### **6.3.2 State Law – California Environmental Quality Act**

Approval of the HCP and issuance of the State Permit under section 2081 of the California Fish and Game Code to the Permittees by CDFG is an action subject to review under CEQA. FORA is the lead agency. CDFG is the trustee agency, and Permittees are responsible agencies. Prior to the Effective Date, the Cooperative and CDFG evaluated the HCP under CEQA in the **EIS/EIR**, and issued findings addressing whether the implementation of the HCP would cause significant adverse impacts to the environment. Unless otherwise required by CEQA or other applicable law, the Permittees shall rely on and use relevant portions of the **EIS/EIR** and related Findings when conducting environmental review of Covered Activities.

### **7.0 CONSERVATION STRATEGY**

Sections 5, 6, 7.10, and 18.2.1 of the HCP describe a Conservation Strategy that includes:

- a) the biological goals and objectives of the HCP;
- b) avoidance and minimization measures to reduce impacts resulting from Covered Activities;
- c) establishment of the Reserve System; Reserve System management that includes habitat creation, enhancement and restoration and species population enhancement;
- d) Plan Area monitoring;
- e) reporting; and
- f) adaptive management.

### **8.0 AVOIDANCE & MINIMIZATION OF IMPACTS**

#### **8.1 General Framework**

As required by FESA and CESA, the Conservation Strategy includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Avoidance and minimization measures generally include appropriate siting of the development parcels, establishment of the Habitat Management Areas and designation of Borderlands at the urban-wild land interface, and are further detailed in Section 5.7 of the HCP. The Permittees and Third Party Participants shall implement applicable avoidance and minimization measures as required by the HCP. Before approving or carrying out any Covered Activity under its land use jurisdiction, the Permittees shall evaluate the Covered Activity and ensure that avoidance and minimization measures are incorporated into the Covered Activity, as further provided by this Agreement. Throughout this Section 8.0, the phrase "the Permittee or the Cooperative" refers to the Permittee that will implement the project or, in reference to Third Party



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Participants, to the County or City with land use authority over the subject Covered Activity. That phrase refers to the Cooperative only as to Covered Activities that are not: a) implemented by another Permittee and b) subject to the land use authority of the County or any City.

## **8.2 Responsibility for Projects at the Urban-Wild land Interface**

Development projects adjacent to land in the existing or planned Preserve System shall incorporate Conservation Measures        set forth in Section 5.7 of the HCP, which requires design elements and implementation of management actions to minimize the indirect impacts of the development on the Reserve System. The applicable Permittee or the Cooperative shall ensure that such projects incorporate adequate design elements, and must enforce compliance. Design elements required to establish a satisfactory interface shall be within the footprint of the development, and not within the Reserve System, unless the urban-wild land interface is Category 4 Borderlands, described in Section 3.3 as being within HMA's that abut areas of existing development. The implementation and maintenance of the design elements shall be funded by the development project's property owner(s) and/or their successors, as described in Conservation Measure       .

## **8.3 No Take of Extremely Rare Plants or Fully Protected Species**

Neither this Agreement, the HCP nor the Permits allow the Take of extremely rare plant species or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. Permittees and Third Party Participants shall avoid take of these species.

## **9.0 ESTABLISHMENT OF RESERVE SYSTEM**

### **9.1 General Framework**

The Reserve System will be established through the transfer from the U.S. Army to the Habitat Managers of approximately 17,162 acres of habitat reserve lands within the Plan Area. The protections associated with these lands are ensured through recorded covenants that define restrictions and govern operations and maintenance as described in the HCP.

### **9.2 Stay Ahead Provision**

The Cooperative shall ensure that progress towards conservation under the conservation strategy stays ahead of progress towards total impacts allowed under the Permits, as more particularly described in the Stay Ahead Provision in Section 7.5 of the HCP. The Permittees shall not cause Take or extend Take authorization to a Third Party Participant if such Take would result in a failure to comply with the Stay Ahead Provision.

The Cooperative shall report the status of the Stay Ahead Provision in the Annual Report (see Section 11.4). The first Annual Report shall be prepared following the first full calendar year of HCP implementation and shall report on applicable activities and results from the Effective Date to the end of the first full calendar year. Compliance with the Stay Ahead Provision shall be measured based on the Annual Report, beginning with the second Annual Report. Compliance with the Stay Ahead Provision shall not be required until the second Annual Report is due. If, based on any Annual Report (beginning with the second Annual Report), the Stay Ahead Provision is not met for any HCP Species, the Cooperative and the Wildlife Agencies shall meet and confer within thirty (30) days of the Annual Report to develop and implement a mutually agreeable plan of action to remedy the situation and achieve compliance with the Stay Ahead Provision, as further described in HCP Section 7.5.

## **10.0 RESERVE MANAGEMENT**

### **10.1 Responsibility of the Cooperative**

The Cooperative is responsible for implementing this Agreement (including Section 7), and the permits. The Cooperative shall carry out the reserve management responsibilities, described in this Section 10.0 and Sections 5 and 6 of the HCP. The Cooperative is responsible for the implementation of conservation measures summarized in Section 5 of the HCP on behalf of the County, Marina, MPC, and the Park District, and will enter into cooperative agreements with the Habitat Managers and Local Jurisdictions that own and/or manage lands within the HMAs to ensure implementation of the HCP. The Cooperative will also conduct installation-wide biological monitoring for Permittees, as described in Section 7.2.3 of the HCP.

The Cooperative may either conduct the implementation tasks itself, partner with other Habitat Managers, or contract these tasks to qualified third parties. However, the Cooperative shall ensure the management of the preserve lands in perpetuity and the timeliness and quality of requirements of preserve management.

### **10.2 Responsibility of Habitat Managers**

Primary Habitat Managers shall have direct management responsibility for the lands transferred to them by the U.S. Army. State Parks, BLM and UC, as Primary Habitat Managers and/or Permittees, must assure compliance with this Agreement, the Permits, and the HCP. Habitat Managers are responsible for:

- a) day-to-day management activities of their respective HMAs in accordance with the HCP, including but not limited to those activities listed in Section 7.2.4 of the HCP, and
- b) coordinating with the Cooperative's administrative staff on a regular basis.

BLM is responsible for maintaining GIS and other database systems to collect, store, and use spatial and other biological resource-related data for the Natural Resource Management Area ("NRMA"), (HCP Section 7.2.2).

### **10.3 Resource Management Plans**

Resource Management Plans shall be developed under HCP Section 5.5.2 for each HMA. These Plans must identify the management actions to ensure that ecosystem characteristics are maintained. Resource Management Plans shall include the information set forth in HCP Section 5.5.2. Within three (3) years of the transfer of an HMA property from the U.S. Army or issuance of Permits under the HCP, whichever is later, the Cooperative and Primary Habitat Managers shall ensure that draft Resource Management Plans prepared under HCP Section 5.5.2 for the HMAs are submitted for review by the Habitat Managers to USFWS and CDFG. Prior to approval of Resource Management Plans by the Wildlife Agencies, Habitat Managers will implement the procedures and follow the standards set forth in the HCP for HMAs. These standards are described in HCP Section 3.5 through 3.18 and Section 5.6.3. Such interim management activities shall be modified in response to comments from the Wildlife Agencies on the draft Resource Management Plans. Resource Management Plans will be reviewed for effectiveness and revised as appropriate by the Cooperative and Primary Habitat Managers five (5) years after approval by the Wildlife Agencies, or when the adjusted baselines for HCP Species in HMAs becomes available, whichever is later as provided in Section 5.5 of the HCP.

### **10.4 Review and Approval by the Wildlife Agencies**

Wildlife Agencies must review and approve, disapprove or conditionally approve the Resource Management Plans in the manner provided in this section. The Cooperative will also update and

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revise such plans as part of the HCP's adaptive management program. The Cooperative shall submit such plans or revisions in writing with a cover sheet explaining the plan or revisions and the rationale for such plan or revisions. The Wildlife Agencies shall review the submission and provide a joint response in writing within sixty (60) days. The written response shall contain either an approval, which shall not be unreasonably withheld, a description of reasonable modifications needed to reach approval, or an objection accompanied by a written explanation of the objection. During preparation and agency review of such plans and revisions, reserve management shall continue according to the HCP and best scientific practices.

## **11.0 PLAN AREA MONITORING & REPORTING**

### **11.1 Responsibility of the Cooperative**

The Cooperative shall carry out the compliance and effectiveness monitoring and reporting plan, as further described in this Section 11.0 of this Agreement and HCP Section 6.0. The Cooperative may delegate monitoring and reporting tasks to other Parties or qualified third parties, such as universities, scientists and other contractors. The Cooperative is perpetually responsible for its monitoring and timely reporting obligations.

### **11.2 Compliance Monitoring**

The Cooperative shall conduct compliance monitoring to track key implementation elements of the HCP, as specifically described in HCP Sections 7.9 and 7.10 and this section.

#### **11.2.1 Compliance Monitoring Database**

Within twelve (12) months of the effective date of the last local ordinance adopted by the Permittees, the Cooperative shall develop a Geographic Information System-linked data repository under HCP Section 7.9, to organize compliance monitoring data. Such data is more specifically described in HCP Section 7.9. The Cooperative will either use the HabiTrak database developed by CDFG, a Geographic Information System-based data repository that is transferable to HabiTrak, or another system approved by CDFG. The Cooperative shall make the data repository accessible to the Parties including the Wildlife Agencies. The Wildlife Agencies shall safeguard sensitive species information to the extent permitted by the Freedom of Information Act and the California Public Records Act. Subject to the California Public Records Act, the Cooperative shall maintain sole discretion over whether to grant access to any of the data in the database to third parties, including Third Party Participants.

### **11.3 Effectiveness Monitoring**

The Cooperative shall accomplish effectiveness monitoring of the HCP by implementing the integrated monitoring and adaptive management program described in HCP Section 6.0.

### **11.4 Annual Report and Public Workshop**

By March 1 of the first full calendar year following the Effective Date and by March 1 annually thereafter, the Cooperative shall prepare and submit to the Wildlife Agencies and the Permittees an Annual Report that summarizes the previous calendar year's monitoring and research results per Sections 6.1.1 and 6.1.2 of the HCP. To prepare the Annual Report, the Cooperative, BLM and Permittees with any natural lands shall continuously monitor, within the geographic limits of its jurisdiction in the HCP area, the acreage and location of HCP species occurrences and habitats within natural lands remaining undeveloped and the acreage and location of species occurrences and

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habitats within natural lands approved for development or developed (including projects under construction) since the date of land transfer, for as long as the permits pursuant to this HCP remain in effect. Results of such monitoring, which shall include quantification of loss of HCP species and habitats, minimization measures, interim management of natural lands and Borderlands planning and compliance, will be presented in an annual report submitted to the JPA by December 1 of each year. The Annual Report submitted to the Wildlife Agencies shall address the descriptions and analyses in HCP Section 7.10. The Cooperative shall make the latest Annual Report accessible to the public by Internet or other contemporary system, and annual publicly noticed open meetings conducted by the Cooperative, USFWS and CDFG.

### **11.5 Annual Implementation Meeting**

The Cooperative shall meet annually with BLM, USFWS and CDFG to review and coordinate implementation of the HCP. The Parties will review the Annual Report to evaluate implementation of the HCP during the preceding year and the adequacy of the overall progress in carrying out the HCP, using HabiTrak or a Geographic Information System-based system transferable to HabiTrak or its successor(s). The Parties will review reports and recommendations from science advisors, Habitat Managers, and others involved in reserve management and monitoring as described in HCP Section 7.3.6. If, based on this information, USFWS and CDFG determine that adequate progress toward implementation of the HCP is not being achieved, CDFG and USFWS may state their findings and the basis for such findings in writing. USFWS, the CDFG, and the Cooperative will take actions specified in the HCP and this Agreement to resolve any disputes among the parties pertaining to HCP compliance. If USFWS and CDFG determine that adequate progress towards implementation of the HCP is being achieved, but that it is nevertheless not providing sufficient protection to the HCP Species, USFWS and CDFG shall set forth their findings and the basis for such findings in writing. The Parties agree to work cooperatively and take appropriate actions consistent with the HCP and this Agreement (such as altering management activities) to address the situation.

### **11.6 Other Reports**

The Cooperative will provide, within thirty (30) days of being requested by the Wildlife Agencies, additional information related to implementation of the HCP that is requested by the Wildlife Agencies to assess compliance with this Agreement, the HCP and the Permits.

### **11.7 Monitoring by the Wildlife Agencies**

The Wildlife Agencies may conduct inspections and monitoring in connection with the Permits in accordance with applicable law and regulations.

## **12.0 ADAPTIVE MANAGEMENT & CHANGED CIRCUMSTANCES**

### **12.1 General Framework of Adaptive Management**

The Cooperative shall implement an adaptive management program as further described in Section 6.7 of the HCP, to:

- a) gauge the effectiveness of the HCP,
- b) propose and modify conservation measures as the need arises, and
- c) address Changed Circumstances.

The adaptive management program will be based on biological monitoring results. The Cooperative's adaptive management plan responsibilities are defined in HCP Sections 5.5.2 and 6.7.

#### **12.1.1 Adaptive Management Initiated by the Cooperative**

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The Cooperative shall implement the HCP adaptive management program when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information, as described more particularly in Section 7.0 of the HCP. The Cooperative will make such changes without awaiting notice from the Wildlife Agencies, and will report to the Wildlife Agencies on any actions taken under this section.

### **12.1.2 Adaptive Management Initiated by the Wildlife Agencies**

If the Wildlife Agencies determine that one or more of the adaptive management provisions in the HCP has occurred without response by the Cooperative called for in HCP Section 6.0, the Wildlife Agencies shall notify the Cooperative. That notice will direct the Cooperative to make the required changes in adaptive management. Within thirty (30) days of receiving such notice, the Cooperative shall initiate the required changes and report to the Wildlife Agencies on its actions. Such changes are provided for in the HCP. They: a) do not constitute Unforeseen Circumstances or b) require amendment of the Permits or HCP, except as otherwise provided in this section.

## **12.2 Changed Circumstances**

### **12.2.1 Federal Definition**

The term "Changed Circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Wildlife Agencies and the Parties, and that can reasonably be planned for in the HCP. (50 C.F.R. §17.3.)

### **12.2.2 Identification of Changed Circumstances**

Changed Circumstances identified and planned for in the HCP are specifically listed in Section 8.2.1 of the HCP, including new species listing and natural communities lost to catastrophic fire, global climate change, coastal erosion, storm-related erosion and landslides, and invasion by new exotic species or disease. If one of those Changed Circumstances occurs, the Cooperative shall implement the remedial conservation measures identified in Section 8.2.1 for the specific Changed Circumstance. As long as the HCP is being properly implemented, USFWS shall not require any Permittee or Third Party Participant to implement any conservation measures that are not listed in Section 8.2.1 of the HCP to respond to Changed Circumstances. Section 8 of the HCP addresses reasonably foreseeable Changed Circumstances and describes specific responses. Changes not identified as Changed Circumstances are Unforeseen Circumstances.

### **12.2.3 Responses to Changed Circumstances Initiated by the Cooperative**

The Cooperative shall notify the USFWS within thirty (30) days after learning that any of the Changed Circumstances listed in Section 8.2.1 of the HCP has occurred. As soon as practicable thereafter, but no later than thirty (30) days after learning of the Changed Circumstances, the Cooperative will initiate responsive actions in the manner described in Section 8.2.1 of the HCP, to the extent necessary to mitigate the effects of the Changed Circumstances on Federal Covered Species, and will report to USFWS on its actions. The Cooperative will initiate such actions without awaiting notice from USFWS. Such actions are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP.

### **12.2.4 Responses to Changed Circumstances Initiated by USFWS**

If USFWS determines that Changed Circumstances have occurred and that the Permittees have not responded in accordance with HCP Section 8.2.1, USFWS shall notify the Permittees of the specific changes USFWS has determined must be made. That notice will also direct the Permittees to make

the required changes. The Permittees shall make the required changes expeditiously. Within thirty (30) days after receiving USFWS's notice, the Cooperative shall report on the Permittees' action(s). Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP.

### **12.2.5 Listing of Species that are Not Covered Species**

If a non-Covered Species that may be affected by Covered Activities becomes listed under FESA or CESA, the Cooperative will initiate responsive actions or measures to avoid Take of, jeopardy to, or adverse modification of critical habitat. That action will be developed in consultation with the Wildlife Agencies until the respective Permit is amended to include such species, or until the Wildlife Agencies notify the Cooperative that such measures are no longer needed to avoid take of, jeopardy to, or adverse modification of the critical habitat of the non-Covered Species.

### **12.3 No Increases In Take**

This section does not authorize: a) modifications that would result in an increase in the amount and nature of Take, or b) increase the impacts of Take, of Covered Species beyond that analyzed under the HCP. Any such modification must be reviewed as an HCP amendment under Section 17.5 of this Agreement.

## **13.0 IMPLEMENTING MECHANISMS**

This Agreement grants Take authorization to the Permittees. That authority is granted under: a) the HCP, b) the Permits, and b) this Agreement. The Cooperative will supervise and manage HCP implementation. Permittees are, however, collectively responsible for compliance with this Agreement, the HCP and the Permits. They are also jointly and individually responsible for the performance of the Cooperative. That responsibility includes assuring compliance with: a) conservation measures, b) management plans, c) monitoring and reporting requirements, and c) funding those activities.

### **13.1 Role of the Cooperative**

The Cooperative shall be responsible for overseeing and managing the implementation of the HCP. The Cooperative's responsibilities are described in HCP Section 7.3. They include, but not limited to:

- Implementing the conservation measures described in Section 5 of the HCP for lands under the jurisdiction of the County, the City of Marina, the City of Seaside, MPC, and the Park District;
- Implementing monitoring on HMA lands, including those managed by BLM, State Parks, and UC;
- Promoting coordination among Permittees to ensure that the HCP is implemented consistently and effectively;
- Monitoring landowner compliance with Borderland requirements;
- Developing Resource Management Plans for HMAs under the jurisdiction of the County, the City of Marina, the City of Seaside, MPC, and the Park District;
- Developing enforcement procedures (e.g., public and pet access control) that will be incorporated into individual HMA Resource Management Plans;
- Designing and implementing habitat enhancement, restoration, and creation and managing the affective areas in an adaptive management framework within the HMAs under the jurisdictions of the County, the City of Marina, the City of Seaside, MPC, and the Park District;

- Designing and implementing a base-wide scientifically valid monitoring program and monitoring and species;
- Designing and implementing land use status and implementation monitoring as described in Section 6 of the HCP within HMAs under the County, the City of Marina, the City of Seaside, MPC, and the Park District;
- Obtaining additional permits (e.g., wetlands permits and cultural resource compliance) for site-specific projects within HMAs under the jurisdictions of the County, the City of Marina, the City of Seaside, MPC, and the Park District;
- Soliciting participation from landowners, local community groups and agencies, and the general public in the HCP and achieving its goals;
- Developing a volunteer program to provide an opportunity for the public to contribute to the successful implementation of the HCP;
- Periodic areal mapping of the Plan Area to update the land cover map and species distribution calculations identified in Section 6 of the HCP;
- Coordinating and communicating with local land management agencies;
- Monitoring changed circumstances that may potentially arise and following the remedial measures and procedures outlined in Section 8 of the HCP, if necessary;
- Developing partnerships with local academic institutions to help direct research towards management and monitoring needs of the HCP;
- Overseeing land management activities in an adaptive management framework, either independently or in partnership with other organizations;
- Monitoring and tracking conservation measures within and adjacent to the Plan Area performed by others to ensure coordination and compatibility with HCP actions;
- Ensuring involvement of the public, science advisors, interested agencies, and others in HCP implementation;
- Developing and maintaining annual budgets and work plans;
- Obtaining grants and other outside funding sources, including tracking and reporting grant compliance;
- Receiving, managing, tracking, reporting, and expending funds, including fee revenues collected or paid by FOR A or the Permittees;
- Training staff in local jurisdictions to review applications for take authorization in compliance with the HCP;
- Serving as the final arbiter of whether a project or activity is covered by the HCP;
- Creating and maintaining databases to track impacts of covered activities and progress towards the biological goals and objectives;
- Creating and maintaining databases and models to support the evaluation of conservation actions to meet the requirements of the HCP;
- Ensuring that conservation actions are being implemented to comply with the Stay-Ahead provision set forth in Section 7.5 of the HCP; and
- Preparing the Annual Report in compliance with Section 7.9 of the HCP.

### **13.1.1 Projects Implemented by Permittees**

Many Covered Activities are likely to be implemented by Third Party Participants in accordance with Section 13.2, below. However, some rural road projects, infrastructure projects, and operation and maintenance activities, will be implemented directly by the Permittees. Before implementing a Covered Activity, a Permittee must comply with this Agreement, the HCP and the Permits. The Permittees will comply with this Agreement, the HCP and the Permits with regard to any Covered Activity. To document compliance, the Permittees shall: a) complete an application for Take authorization for each Covered Activity they undertake, b) provide a copy of the application to the Cooperative, and c) retain the application in their files for not less than three (3) years.

## **13.2 Extension of Take Authorization to Third Party Participants**

### **13.2.1 General Provisions**

Permittees may extend the Take authorization to Third Party Participants, including developers and other project proponents, who agree to be bound by this Agreement, the HCP and the Permits. The Permittees shall be responsible for determining whether an application from a potential Third Party Participant constitutes a binding commitment to comply with this Agreement, the HCP and Permits. Prior to extending the Take authorization to a Third Party Participant, the legislative body of the Permittee must make evidentiary findings, backed by substantial evidence, supporting its determination. Prior to extending Take authorization to a Third Party Participant, the Permittees must have adopted an HCP implementing ordinance under Section 13.3 of this Agreement, or similar policy.

### **13.2.2 Project Proponents**

Any project that is a Covered Activity is eligible for Take authorization under the HCP and the Permits. To receive Take authorization under the Permits, the project's proponent must enter into an agreement with a Permittee that has approval authority over the project. That agreement must obligate the proponent to comply with this Agreement, the HCP and the Permits. The Permittee must impose such terms and conditions as conditions of project approval. When those commitments have been made, the Permittee may extend the Take authorization to the project proponent. The authorization is effective upon issuance of the first grading or construction permit. Thereafter the project proponent is a Third Party Participant.

Once the Take authorization has been extended to the project, it shall remain in effect for as long as the Third Party Participant fully complies with this Agreement, the HCP, and the Permits. That Take authorization survives Permit suspension or revocation. The USFWS or CDFG may suspend or revoke the extension of Take authorization to the Third Party Participant if: a) either or both of the Permits have been suspended or revoked, and b) the USFWS or CDFG determines that the project would likely jeopardize HCP Species. Before making such a determination, the USFWS and CDFG will meet and confer with the Third Party Participant and the Permittee to discuss the threat of jeopardy and possible ways to avoid it short of suspending or revoking the extension of Take authorization to the project.

## **13.3 HCP Implementing Ordinance**

No later than one hundred twenty (120) days after the Effective Date, the Permittees shall consider the adoption of an HCP implementing ordinance or policy substantively similar to the model ordinance attached to this Agreement as **Exhibit C**. The ordinance or policy shall: a) set forth the process by which the jurisdiction will review applications from potential Third Party Participants who wish to carry out a Covered Activity, b) impose HCP related mitigation fees or designate fees collected through the Fort Ord Community Facilities District, and c) establish the procedure for extending Take authorization to eligible applicants. Permittees may not extend Take authorization to a Third Party Participant prior to adoption of an HCP implementing ordinance or policy.

### **13.3.1 Application Requirements**

The HCP implementing ordinances, adopted by the Cities and County, and implementing policies, adopted by other Permittees, must include, among other things, application requirements in



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accordance with \_\_\_\_\_. Implementing ordinances and policies must require Third Party Participants to submit the following to the Permittees with jurisdiction over the proposed project:

- Definition of project area, including project footprint, extent of construction, and extent of ongoing maintenance activities.
- Written description of project, including maps.
- Results of planning surveys.
- Evidence of compliance with avoidance and minimization measures.
- Quantification of anticipated direct and indirect impacts on HCP Species or habitats.

### **13.3.2 Conditions of Take Authorization**

HCP implementing ordinances and policies must enable the Permittees, as applicable, to include necessary terms and conditions of this Agreement, the HCP and the Permits into a development agreement, permit approval, or other instrument that extends the Take authorization to the Third Party Participant.

### **13.3.3 Application to Covered Activities**

The implementing ordinances or policies will apply only to Covered Activities for which a grading permit, construction permit, or other approval is required from the Permittee that has adopted the ordinance or policy.

## **13.4 Enforcement**

The Wildlife Agencies will ensure compliance with this Agreement, the HCP and the Permits. The Wildlife Agencies shall enforce this Agreement under Section 21, below. If a Wildlife Agency concludes that an action or inaction of a Permittee violates this Agreement, the HCP or the Permits, the Wildlife Agency may begin an enforcement action.

## **14.0 FUNDING**

### **14.1 General Commitment**

The Permittees shall ensure that required mitigation, conservation, monitoring, reporting and adaptive management measures are adequately funded throughout the term of this Agreement, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity. Those funding measures are further addressed in HCP Sections 1.10.2 and 9.3.

#### **14.1.1 HCP Costs**

Section 9 "Cost and Funding" of the HCP describes HCP implementation costs, funding sources and assurances. The HCP cost model (Appendix \_ to the HCP) is a planning-level estimate of total HCP costs. The Permittees developed the cost model to conservatively estimate HCP implementation expenses of the Cooperative, UC, State Parks, and BLM over the permit term. The cost model was designed to demonstrate that all costs were accounted for and reasonably estimated. The Permittees commit to adequately fund the costs associated with the HCP. CFD Funds and annual appropriations from state and federal budgets will be the primary HCP funding sources.

#### **14.1.2 BLM's Funding Commitment**

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BLM will, within the limits of its authority and the availability of federal funds under the Federal Anti-Deficiency Act (Title 31, U.S. Code, Sections 1341 and 1517), include in its annual budget requests sufficient funds to fulfill its obligations under the HCP for the 14,638-acre BLM Fort Ord NRMA.

#### **14.1.3 State Parks' Funding Commitment**

State Parks will include in its annual budget requests sufficient funds to fulfill its obligations under this HCP for the 979-acre Fort Ord Dunes State Park. State Parks will fund the management, monitoring, and other obligations assigned to it under the HCP with available appropriated funds supplemented by grants and other non-appropriated monies as available.

#### **14.1.4 FORA, the Cities and County's Funding Commitment**

FORA will continue to collect CFD Funds through June 30, 2014 and the Cities and County will continue to collect CFD Funds after June 30, 2014 to fund the Endowment, which includes: a) the HCP Endowment Fund, b) the Fort Ord Natural Reserve Endowment and c) Implementation Assurances Fund held by the Endowment Manager. FORA, the Cities and the County will contribute 25% of CFD Funds collected to the Endowment until the \$      million endowment is fully funded.

#### **14.1.5 HCP Funding Consistent with Stay-Ahead Provision**

At the onset of the HCP, habitat management funding will be provided by BLM, State Parks, U.S. Army (consistent with the 1997 Habitat Management Plan ["HMP"]), and FORA, and by separate agreement CSU, MPC, and UC. Section 7.1 "Stay-Ahead Provision" of the HCP states that the proportion of dedicated reserve acreage for each HCP species' habitat transferred from the Army shall be at least 5% higher than the proportion of allowable development-related impacts on each species' habitat. In order to meet the stay-ahead provision, reserve lands in HMA's must also have funding to ensure management according to the conservation strategy (see Section 9.3.4 of the HCP). The Permittees will ensure that habitat and habitat management funding are provided prior to impact on an HCP specie's habitat, consistent with the sections 7.1 and 9.3.4 of the HCP.

#### **14.1.6 Use of the HCP Endowment Fund**

The Cooperative shall use funds from the HCP Endowment Fund to implement HCP habitat management obligations on CSUMB, Monterey County, Monterey Peninsula Regional Park District, Monterey Peninsula College, and the Cities of Marina, Del Rey Oaks, Seaside, and Marina properties. The Cooperative shall also use funds from the HCP Endowment Fund to pay for monitoring on HMAs within the HCP area, regardless of ownership (i.e., including BLM, State Parks, and UC lands).

#### **14.1.7 Use of the Fort Ord Natural Reserve Endowment**

The Cooperative or FONR will use funds from the Fort Ord Natural Reserve Endowment to ensure HCP implementation on HMA lands managed by UC/Natural Reserve System ("UC/NRS") as the 606-acre Fort Ord Natural Reserve ("FONR"). The Cooperative will enter into a cost-sharing and reimbursement agreement with UC/NRS to describe the nature and terms of the funding arrangement after HCP approval. It is noted that UC will manage the FONR Endowment Fund

#### **14.1.8 Use of the Implementation Assurances Fund**

The Cooperative will use funds from the Implementation Assurances Fund to ensure adequate funding of necessary remedial measures to address any of the changed circumstances described in Section 8, Section 8.6. The Cooperative will also use funds from the Implementation Assurances

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Fund to augment annual revenues for the HCP in the event that CFD Funds do not keep pace with HCP funding needs or federal or state appropriations decline unexpectedly (see Section 9.3.2 below). Upon permit issuance, FORA (and the County and Cities after June 30, 2014) will provide an amount not less than \$500,000 a year to the Endowment Manager until an amount of \$5.0 million is reached. The Endowment Manager will reinvest interest from this fund to ensure that it keeps pace with inflation and the rising costs of HCP implementation.

#### **14.2 Long-Term Management Funding**

Since impacts of the covered activities are potentially permanent, BLM, State Parks, UC/NRS, and the Cooperative must implement some conservation action permanently. The Cooperative will ensure that the three endowment funds, established by FORA, the County, and Cities through CFD Funds during the permit term, will continue to fund post-permit management and monitoring (see Sections 9.2.7 and 9.3.4 of the HCP). This will ensure that management actions are effective and HMAs retain their biological values. The three endowment funds are designed to grow by the end of the permit term into endowments that will generate sufficient interest to pay for management on lands owned by local agencies and the UC/NRS (Table 9-5). These funds will also generate enough interest to pay for monitoring costs on HMAs (including State Parks and BLM land). After the permit term, the Cooperative will no longer be required to implement remedial measures in the event of changed circumstances. Therefore, the Cooperative will instruct the Endowment Manager to transfer any remaining funds in the Implementation Assurances Fund into the HCP Endowment Fund to simplify accounting. BLM and State Parks will continue to fund management and operational costs on their property required by the HCP (Table 9-5) through annual appropriations.

#### **14.3 Effect of Inadequate Funding**

USFWS and CDFG will assess the adequacy of program funding. If those Agencies determine that funding is inadequate, they will evaluate the effect of the funding shortfall on the scope and validity of the Permits. Unless the Permittees exercise the authority to withdraw under Section 20.0 of this Agreement or the Wildlife Agencies revoke the Permits under Section 19.0 of this Agreement, the Parties agree that they will meet and confer to cooperatively develop a strategy to address the funding shortfall, and to maintain the level of conservation and Take authorization afforded by the Permits until adequate funding is restored.

### **15.0 RIGHTS, OBLIGATIONS & ASSURANCES**

#### **15.1 Rights & Obligations of the Permittees**

##### **15.1.1 Rights**

As of the Effective Date, the Permittees may Take HCP Species while carrying out Covered Activities in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the HCP, and the Permits. The Covered Activities include those listed in HCP Section 3.

The Take authority given to the Permittees extends to their elected officials, officers, directors, employees, and agents who engage in Covered Activities. The Cooperative shall periodically conduct an educational program to inform such persons and entities of the terms of the Permits. The Cooperative and other Permittees are responsible for supervising their compliance with those terms. Contracts pertaining to Covered Activities between Permittees and such persons and entities shall require their compliance with the Permits.

##### **15.1.2 General Obligations**

The Permittees will fully and faithfully perform obligations assigned to them collectively, and individually, under this Agreement, the HCP, and the Permits, including but not limited to the obligations assigned in the following Sections of the HCP: Section 5.0 (Conservation Strategy), Section 6.0 (Monitoring), Section 7.0 (HCP Implementation), Section 8.0 (Assurances and HCP Modifications) and Section 9.0 (Cost and Funding).

The Permittees shall ensure that their own projects and activities comply with this Agreement, the Permits and the HCP.

### **15.1.3 Obligations In The Event of Suspension or Revocation**

If USFWS and/or CDFG suspend or revoke the Permits under Sections 19.0 and 21.0 of this Agreement, the Permittees will remain obligated to fulfill their mitigation, enforcement, management, and monitoring obligations, and their other HCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for Covered Activities authorized for Take prior to the suspension or revocation.

### **15.1.4 Assurances for Third Party Participants**

Under the "No Surprises" regulations described below at Section 15.2.2, in the event of a finding of Unforeseen Circumstances, the USFWS cannot require the commitment of additional land, water or financial compensation without the consent of the Permittees.

The Permittees will not impose on any Third Party Participants any mitigation, compensation, or other requirement in excess of those required by this Agreement, the HCP and the Permits, for the impacts of Covered Activities on HCP Species without the consent of the Third Party Participant. Nothing in this Agreement shall preclude the Permittees from imposing on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by this Agreement, the HCP and the Permits for impacts other than impacts of Covered Activities on HCP Species.

### **15.1.5 Interim Obligations upon a Finding of Unforeseen Circumstances**

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, the Permittees will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described below at Section 15.2.2, the USFWS shall be responsible for implementing such additional measures or modifications, unless the Permittees consent to do so.

## **15.2 USFWS Obligations and Assurances**

### **15.2.1 General Obligations**

Concurrent with its execution of this Agreement, and satisfaction of other applicable legal requirements, USFWS will issue Permittees a Federal Permit under Section 10(a)(1)(B) of FESA, authorizing incidental Take by the Permittees of Federal Listed Covered Species resulting from Covered Activities in the Permit Area. USFWS shall monitor the Permittees' implementation of the HCP and compliance with the Federal Permit. USFWS will also provide technical assistance and timely review, collaboration and consultation to the Permittees regarding implementation of the HCP, as provided in this Agreement and the HCP, throughout the duration of the Federal Permit.

### **15.2.2 No Surprises Assurances**

As provided in the "No Surprises" regulations, USFWS may not require a Permittee or Third Party Participant who is in compliance with this Agreement to provide additional mitigation beyond that required by the HCP. The terms of 50 Code of Federal Regulations section 17.22(b)(5) and section 17.32(b)(5) are incorporated by this reference into this Agreement and will contractually survive their repeal or amendment.

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Sections 6 and 8 of the HCP, and Permittees shall implement any measures for such circumstances as called for in the HCP, as described in Section 12.2 of this Agreement.

### **15.2.3 Critical Habitat Designations in the Plan Area**

If the Permittees comply with this Agreement, the HCP and the Federal Permit, USFWS agrees not to designate lands within the Permit Area as critical habitat for any HCP Species that is federally listed, including but not limited to California red-legged frog and California tiger salamander. USFWS agrees, unless otherwise required by law after public review and comment, to reassess and revise the boundaries of any existing designated critical habitat of HCP Species to exclude Permit Area, including but not limited to critical habitat designated for Monterey spine flower.

## **15.3 CDFG Obligations**

### **15.3.1 General Obligations**

Concurrent with its execution of this Agreement, and after satisfaction of other legal requirements, CDFG will issue Permittees a State Permit under Section 2081 of the California Fish and Game Code. That Permit will authorize Take by the Permittees of State Covered Species resulting from Covered Activities in the Permit Area. CDFG shall monitor the Permittees' implementation of the HCP and compliance with the State Permit. CDFG shall also provide technical assistance and timely review, collaboration and consultation to the Permittees regarding implementation of the HCP, as provided in this Agreement and the HCP, for the duration of the State Permit.

### **15.3.2 Future Listings**

To the extent permitted by CESA, CDFG shall consider the implemented and/or scheduled implementation of the HCP in any future determinations and recommendations by CDFG with regard to the listing of one or more of the non-State Listed HCP Species as an endangered or threatened species under CESA. Also, to the extent permitted by CESA, CDFG shall consider the implemented and/or scheduled implementation of the HCP in any future determinations and recommendations by CDFG with regard to CEQA compliance for HCP Species and their habitats.

If after the effective Date of the State Permits, one or more of the HCP Species is listed as endangered or threatened or as a candidate endangered or threatened species under CESA, the HCP shall be deemed adequate documentation to support an application for any necessary Section 2081 permits. Upon application under the CESA, and following compliance with statutory or regulatory requirements, including public review, CDFG shall issue the appropriate Section 2081 permit or permits authorizing the incidental Take of the newly listed species.

## **16.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES**

### **16.1 Section 7 Consultations with USFWS**

Nothing in this Agreement alters the obligation of a federal agency to consult USFWS under Section 7 of FESA (16 U.S.C. § 1536(a)). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittees or an existing or prospective Third Party Participant and a proposed public or private development project in the Permit Area that may adversely affect one or more HCP Federal Listed Species, USFWS shall ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP and the Federal Permit, if the proposed project is consistent with the HCP and the Federal Permit. Unless otherwise required by law or regulation, USFWS shall not impose measures on a Permittee or an existing or prospective Third Party Participant in excess of those in this Agreement, the HCP, and the Permits. Before completing a Section 7 consultation for a Covered Activity in which the USFWS proposes to require a measure in excess of the requirements of this Agreement, the HCP, or the Permits, the USFWS shall meet and confer with the Permittee with jurisdiction over the affected project and the Third Party Participant, if any, to discuss alternatives to the imposition of the measures that would meet the applicable legal or regulatory requirements. If the USFWS, Permittee and any Third Party Participant cannot agree on an alternative, the Permittee may refer the matter for resolution in accordance with Section 21.0.

### **16.2 Consultations by CDFG**

Except as otherwise required by law, CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding impacts of Covered Activities on HCP Species within the Permit Area in excess of those required by this Agreement, the HCP and the Permits.

## **17.0 AMENDMENTS TO THE HCP AND THE FEDERAL AND STATE PERMITS**

### **17.1 Exceptions to the Conservation Strategy**

The amount of Take or the impacts of Take of HCP Species may not be increased beyond that authorized by the Permits under the Adaptive Management or Changed Circumstances provisions of this Agreement, the HCP, or other exception to the Conservation Strategy. A modification that would result in an increase in Take beyond that authorized by the Permits must be approved as a Major Amendment under Section 17.5 of this Agreement.

### **17.2 Amendments of this Agreement**

This Agreement may be amended only with the written consent of the Parties; provided, however, that any amendment or portion thereof pertaining to Third Party Participants, the implementing ordinance, or any other provision of this Agreement pertaining to the land use decisions of the Cities or County shall not require the consent of the Water District or Park District.

### **17.3 Amendments of the HCP**

The HCP may be amended only with the written consent of the Parties. Amendments pertaining to Third Party Participants, implementing ordinances, or any other provision of the HCP pertaining to the County's or Cities' application of conservation measures to private urban development projects do not require the consent of the Water District, California State University Monterey Bay, Regents of the

University of California (Santa Cruz Campus), Monterey Peninsula College, or the Monterey Peninsula Regional Park District.

## **17.4 Minor Modifications**

The HCP divides Minor Modifications into two categories: Administrative changes and Minor Amendments.

### **17.4.1 Administrative Changes**

Administrative changes to the HCP shall be made by the Cooperative on its own initiative or in response to a written request submitted by any Permittee or Wildlife Agency. A proposed change must include documentation supporting the proposed administrative change. Administrative changes shall not require any amendment to this Agreement, the HCP or the Permits. Administrative changes include corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning, modifying the design of existing research or implementing new research, and adopting new monitoring protocols that may be promulgated by USFWS and CDFG in the future. Annual Reports shall include a summary of administrative changes made to the HCP during the preceding calendar year.

### **17.4.2 Minor Amendments**

#### **17.4.2.1 Scope of Minor Amendments**

The Wildlife Agencies may not propose or approve as a Minor Amendment any revision to this Agreement or the HCP if a Wildlife Agency determines that such amendment would result in adverse effects on the environment that are new or significantly different from those analyzed in connection with the HCP, or additional Take not analyzed in the original HCP. Minor Amendments to the Agreement, the HCP, and, the Permits, may include the following:

- (a) Minor changes to survey, monitoring or reporting protocols that are not proposed in response to adaptive management;
- (b) Changes to any measure(s) in the Conservation Strategy to respond to the Adaptive Management Plan or Changed Circumstances identified in Section 12.0 of this Agreement;
- (e) Changes listed in Section 8.3.1 of the HCP as examples of minor modifications; and
- (f) Other changes that do not result in adverse effects to Covered Species beyond that analyzed in the HCP and the associated biological opinion, and do not limit the ability of the Cooperative to achieve the biological goals and objectives of the HCP.

#### **17.4.2.2 Processing Minor Amendments**

##### **17.4.2.2.1 Notice and Response of Approval or Objection**

Any Party may propose a Minor Amendment to this Agreement, the HCP or the Permits by providing written notice to the other Parties. Such notice shall include: a) the proposed Minor Amendment, b) a statement of the reason for the proposed amendment and c) an analysis of its environmental effects, if any, including effects on Covered Activities and on HCP Species under the HCP. Parties shall respond in writing to the proposed amendment within sixty (60) days of receipt of such notice. The response should state whether the responding Party approves or objects to the proposal. Approval may be unreasonably withheld. Only approved proposals become minor amendments.

#### **17.4.2.2.2 Objection by a Wildlife Agency**

A Wildlife Agency may object to a proposed Minor Amendment by providing written notice to the Party proposing the amendment on the grounds that the HCP, after giving effect to such amendment, would not meet the requirements of Section 10(a)(2)(B) of FESA or of CESA.

Before objecting to a proposed Minor Amendment, the Wildlife Agency must consult with the Cooperative and other Permittees and suggest reasonable conditions or alterations to the proposal which, if agreed to by the Cooperative and other Permittees, would permit the Wildlife Agency to approve the proposed Minor Amendment.

#### **17.4.2.2.3 Objection by a Permittee**

Any Permittee may object to a proposed Minor Amendment upon any reasonable basis. Before objecting to a proposed Minor Amendment, the objecting Permittee must consult with the Wildlife Agencies and the other Permittees and suggest reasonable conditions or alterations to the proposal which, if agreed to by the Wildlife Agencies, would permit the Permittee to approve the proposed Minor Amendment.

#### **17.4.2.2.4 Unresolved Objections**

If a Wildlife Agency reasonably objects to a Minor Amendment proposed under this Section 17.4.2, and the objection is not resolved by any conditions or alterations under Section 17.4.2.2.2 or the Plan Implementation and Interpretation resolution process in Section 21.1, the proposed amendment must be processed as a Major Amendment of the permit in accordance with Section 17.5 of this Agreement.

#### **17.4.2.2.5 Date that a Minor Amendment Becomes Effective**

Minor Amendments take effect when the last required written consent has been given. Approval may be in the form of a written amendment signed by necessary Parties.

### **17.5 Major Amendment**

Any change to this Agreement, the HCP or the Permits that does not qualify as a Minor Amendment under Section 17.4.2 of this Agreement may be processed as a Major Amendment in accordance with applicable laws and regulations, including but not limited to FESA, NEPA, and CEQA. The Party proposing the Major Amendment shall provide a statement of the reasons and an analysis of its environmental effects, if any, including its effects on the HCP and HCP Species. The Wildlife Agencies shall process the proposed Major Amendment in an expeditious manner, with the level of environmental review appropriate to the magnitude of the proposed Major Amendment. Any Permittee may, in its sole discretion, reject any Major Amendment proposed by the Wildlife Agencies; however, within thirty (30) days of communicating such rejection to the Wildlife Agencies, the Permittee must explain in writing its rationale for any such rejection.

## **18.0 TERM OF AGREEMENT**

### **18.1 Effective Date**

This Agreement is effective upon its execution by the last signatory Party and issuance of the Permits.

### **18.2 Term of the Agreement**



The term of this Agreement is fifty (50) years from the Effective Date, unless extended under Section 18.4, or unless both Permits are permanently terminated under Section 19.0, in which case this Agreement shall automatically terminate. This Agreement may also be terminated by mutual written agreement of the Parties.

### **18.3 Term of the Permits**

The Permits shall run for a term of fifty (50) years from the Effective Date unless terminated as provided in this Agreement, provided the requirements of Section 19.0 of this Agreement have been met.

### **18.4 Extension of the Permits**

Upon agreement of the Parties and legal compliance, the Wildlife Agencies may extend the Permits under their jurisdiction to a date certain. If the Permittees desire to extend the Permits, they will so notify the Wildlife Agencies at least six (6) months before the expiration date. Extension of the Permits constitutes equal extension of this Agreement and the HCP, subject to modifications agreed to by the Parties at the time of extension.

## **19.0 REVOCATION, SUSPENSION OR TERMINATION BY USFWS OR CDFG**

### **19.1 Federal Permit**

USFWS agrees that it will only revoke or terminate the Federal Permit, in whole or in part, after completing the meet and confer process set forth in Section 21.1.1. This commitment does not pertain to conditions calling for immediate revocation to avoid the likelihood of jeopardy to a listed species under 50 Code of Federal Regulations sections 13.28-13.29 and 50 Code of Federal Regulations sections 17.22(b)(8) and 17.32(b)(8). USFWS agrees not to revoke or terminate the Federal Permit, in whole or in part, to avoid the likelihood of jeopardy to a listed species, without first notifying the Permittees of those measures. USFWS further agrees to give Permittees a reasonable opportunity to implement such measures as may be needed to prevent jeopardy to the listed species. If such measures are successfully undertaken, USFWS agrees not to revoke the Federal Permit.

### **19.2 State Permit**

CDFG may revoke or terminate the State Permit for a material violation of the State Permit or material breach of this Agreement by the Permittees. Prior to such revocation, CDFG must determine in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a State Covered Species and to fulfill a legal obligation of the CDFG under CESA.

CDFG agrees that it will not revoke or terminate the State Permit without first (a) requesting that the Permittees take appropriate remedial action, and (b) providing the Permittees with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than forty-five (45) days) to demonstrate or achieve compliance with CESA, the State Permit, and this Agreement.

### **19.3 Continuing Obligations**

If the Permits are revoked, terminated, or suspended under Section 21.0 of this Agreement, consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and

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17.22(b)(7), the Permittees will remain obligated to perform their obligations under this Agreement, the HCP and the Permits for any Take that occurred prior to such revocation, termination, or suspension. That obligation will continue until the Wildlife Agencies determine that Take of HCP Species that occurred under the Permits has been mitigated to the maximum extent practicable in accordance with the HCP. Regardless of whether the Permits are terminated, suspended, or revoked, the Permittees acknowledge that lands dedicated to the Reserve System must be protected, managed and monitored in perpetuity.

## **20.0 WITHDRAWAL**

Upon ninety (90) days written notice to USFWS, CDFG, the Cooperative and the other Permittees, any Permittee except the Cooperative may unilaterally withdraw from this Agreement. As a condition of withdrawal, the Permittee shall remain obligated to ensure implementation of existing and outstanding minimization and mitigation measures required under this Agreement, the HCP and the Permits for any Take that the Permittee itself caused and any Take by Third Party Participants that the Permittee authorized prior to withdrawal. If a Permittee withdraws before causing or authorizing any Take under the Permits, the Permittee shall have no obligation to ensure implementation of any minimization or mitigation measures. Such withdrawal of a Permittee from this Agreement shall be deemed to constitute a surrender of the Permittee's authorization under the Permits.

Withdrawal by a Permittee will not affect the obligations of the remaining Permittees under this Agreement, the HCP, or the Permits. If, in the opinion of the Wildlife Agencies, a Permittee's withdrawal renders HCP implementation infeasible, they may initiate amendment of the HCP and/or the Permits to address the issues raised by the withdrawal.

Upon ninety (90) days written notice to USFWS and CDFG, Permittees collectively may withdraw from this Agreement. As a condition of such withdrawal, the Permittees shall be obligated to ensure implementation of minimization and mitigation measures required under this Agreement, the HCP and the Permits for any Take that occurred prior to such withdrawal. That obligation will extend until the Wildlife Agencies determine that Take of HCP Species that occurred under the Permits has been mitigated to the maximum extent practicable in accordance with the HCP.

If the Permittees collectively notify the USFWS in writing that they plan to withdraw from this Agreement or to discontinue the Covered Activities, they shall surrender the Federal Permit under 50 Code of Federal Regulations Part 13.26. Regardless of withdrawal and surrender of the Permits, the Permittees acknowledge that lands dedicated to the Reserve System must be protected, managed and monitored in perpetuity.

## **21.0 HCP IMPLEMENTATION AND INTERPRETATION, REMEDIES AND ENFORCEMENT**

### **21.1 HCP Implementation and Interpretation**

The Parties recognize that disputes may arise under this Agreement, the HCP, and the Permits. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this section or such other procedures upon which the Parties may later agree. Any Party may seek any available remedy without regard to this Section 21.1. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

#### **21.1.1 Notice of Dispute; Meet and Confer**

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The USFWS or CDFG shall notify the Permittee and the Cooperative in writing of alleged violations of the HCP, the Permits or this Agreement. That notice must explain the basis of such objection and any supporting evidence. The Permittee or Cooperative shall respond to the notice within thirty (30) days of receiving it. The response must include any proposed action the Permittee or Cooperative proposes to take to resolve the objection, if any. Alternatively, the response may explain why the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting Agency, it shall so notify the Permittee and the Cooperative. In that event, the Permittee or Cooperative shall implement the actions, if any, proposed in its response to the agency. If the response does not resolve the objection to the Agency's satisfaction, the Agency shall notify the Permittee or Cooperative accordingly. The Agency, the Permittee and the Cooperative shall then meet and confer in an attempt to resolve the dispute. The meeting shall occur within 30 (days) after the Permittee or Cooperative receives the objecting agency's response unless the Permittee, the Cooperative and the Agency agree to a later time. A representative of the Cooperative shall take notes at the meeting, summarize the outcome, and distribute meeting notes to attending Parties.

The Cooperative or any other Permittee shall use the same procedure to raise and to resolve objections to any action or inaction of the USFWS or CDFG. USFWS and CDFG shall respond in the same manner to notices delivered by any Permittee.

If a dispute arises among the Permittees regarding their actions or inactions, they shall use the same procedure to raise and resolve objections to the objectionable action or inaction. For such internal disputes, no notice need be given to the USFWS or CDFG. The USFWS and CDFG shall not be required to meet and confer with the Permittees as a disputant.

#### **21.1.1.1 Disputes Regarding Specific Projects**

If the dispute among the Parties pertains to a specific project, the proponent of the project may: a) offer written evidence in the dispute resolution process, b) receive and respond to the notice of objection, and c) participate in the meeting referenced in Section 21.1.1. For purposes of this provision, a dispute pertains to a specific project if the USFWS or CDFG objects to an action or inaction by a Permittee with regard to a specific project, such as the Permittee's determination of appropriate mitigation requirements for the project, or a Permittee objects to an action or inaction by the USFWS or CDFG with regard to a specific project.

#### **21.1.1.2 Elevation of Dispute**

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 21.1.1, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, "chief executive" means the city manager of a city, the county administrator of the County, the executive director of the Cooperative, the Executive Officer of FORA, the Field Manager of BLM, the General Manager of the Park District, the District Superintendent of State Parks, the President of the University of California), the President of CSUMB, the Superintendent/President of MPC, the General Manager of the Water District, the CDFG Regional Manager, and the USFWS Field Supervisor. Each Party shall be represented in person by its chief executive at the meeting. The meeting shall occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

### **21.2 Remedies in General**

Except as set forth below, the Parties shall have the remedies available at law and in equity to enforce this Agreement, the HCP and the Permits, and to seek redress and compensation for any breach or violation thereof. The Parties acknowledge that the HCP Species are unique and that their loss as

species would be irreparable. This Agreement does not limit the authority of the Federal and State governments to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under FESA, CESA or other law.

### **21.3 Federal Permit**

#### **21.3.1 Permit Suspension**

USFWS may suspend the Federal Permit, in whole or in part, for cause in accordance with 50 Code of Federal Regulations section 13.27 and other laws. Except where USFWS determines that emergency action is necessary to avoid irreparable harm to a HCP Species, it will not suspend the Federal Permit without first (1) requesting the Permittees to take appropriate remedial actions, and (2) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted.

#### **21.3.2 Reinstatement of Suspended Permit**

If USFWS suspends the Federal Permit, in whole or in part, USFWS shall meet and confer with the Permittees concerning Permit reinstatement. That meeting must be conducted as soon as possible but no later than ten (10) days after the suspension. At the conclusion of any such conference, USFWS shall identify reasonable, specific actions, if any, necessary to reinstate the Permit. In making this determination, USFWS shall consider: a) the requirements of FESA and its regulations, b) the conservation needs of the HCP Species, c) the terms of the Federal Permit and of this Agreement and d) any comments or recommendations received during the meet and confer process.

As soon as possible, but not later than thirty (30) days after the conference, USFWS shall send the Permittees written notice of any available, reasonable actions, necessary to reinstate the Permit. Upon performance or completion, as appropriate, of such actions, USFWS shall immediately reinstate the Federal Permit. It is the intent of the Parties that in the event of a total or partial suspension of the Federal Permit, the Parties shall act expeditiously and cooperatively to reinstate the Federal Permit.

### **21.4 The State Permit**

#### **21.4.1 Permit Suspension**

If a Permittee violates the State Permit or this Agreement, CDFG may suspend the State Permit in whole or in part. CDFG agrees not to suspend the State Permit without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the HCP or this Agreement in accordance with Section 21.1, (2) requesting the Permittees to take appropriate remedial actions, and (3) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

#### **21.4.2 Reinstatement of Suspended Permit**

If the CDFG suspends the State Permit it shall confer with the Permittees concerning how to cure the violation or breach. The meeting shall be convened as soon as possible but no later than ten (10) days after such suspension. At the conclusion of any such conference, CDFG shall identify reasonable specific actions necessary to reinstate the Permit. In making this determination, CDFG shall consider: a) the requirements of NCCPA, b) the conservation needs of the Covered Species, c) the terms of the State Permit and this Agreement and d) evidence or recommendations received

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during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, CDFG shall send the Permittees written notice of the reasonable actions necessary to reinstate the Permit. Upon performance of such actions, CDFG shall immediately reinstate the State Permit. It is the intent of the Parties that in the event of any suspension of the State Permit, the Parties shall act expeditiously and cooperatively to reinstate the State Permit.

## **21.5 Circumstances Likely to Constitute Jeopardy to Species**

When the Wildlife Agencies find circumstances which appreciably reduce the likelihood of survival and recovery of a species in the wild, they may suspend the Permits on an emergency basis, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than ninety (90) days. Prior to extending the suspension beyond ninety (90) days, the USFWS and CDFG shall comply with Section 21.3 and Section 21.4 of this Agreement. During such 90-day period, USFWS shall comply with 50 Code of Federal Regulations section 13.27.

## **22.0 FORCE MAJEURE**

In the event that the Permittees are wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittees ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Permittees shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize any Party to violate FESA or CESA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within fifteen (15) days after the occurrence of the Force Majeure, affected Permittees shall give the Wildlife Agencies written notice describing the particulars of the occurrence;
- Permittees shall use their best efforts to remedy their inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest); and
- When Permittees are able to resume performance of their obligations, the affected Permittees shall give the Wildlife Agencies written notice to that effect.

## **23.0 LEGAL AUTHORITY OF THE WILDLIFE AGENCIES**

### **23.1 Legal Authority of USFWS**

USFWS enters into this Agreement under FESA, FWCA, and the Fish and Wildlife Act of 1956. Section 10(a)(2)(B) of FESA expressly authorizes USFWS to issue a Section 10(a) Permit to allow the incidental Take of animal species listed as threatened or endangered under FESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that USFWS would approve a habitat conservation plan that protects non-listed species as if they were listed under FESA, and that in doing so, USFWS would provide assurances for such non-listed species.

### **23.2 Legal Authority of CDFG**

CDFG enters into this Agreement under its separate and independent authority under CESA. CDFG may authorize the Take of Covered Species under California Fish and Game Code Section 2081.

## **24.0 MISCELLANEOUS PROVISIONS**

### **24.1 Calendar Days**

Throughout this Agreement and the HCP, the use of the term "day" or "days" means calendar days, unless otherwise specified.

### **24.2 Response Times**

Except as stated herein or required by law, the Wildlife Agencies and the Permittees shall use reasonable efforts to respond to written requests from a Party within forty-five (45) days. The Parties acknowledge, however, that the Cities, the County, and the Water District are subject to the Permit Streamlining Act and that nothing in this Agreement shall be construed to require them to violate that Act. In addition, the Wildlife Agencies will provide timely review of proposals for Covered Activities to be implemented directly by the Permittees, where such review is required by this Agreement, the HCP, or the Permits.

#### **24.2.1 Review of Third Party Participant Applications**

Various conservation measures in the HCP require Third Party Participants to submit applications, plans or reports for approval by a Permittee or the Wildlife Agencies prior to carrying out a Covered Activity. In such circumstances, no later than sixty (60) days after receiving the application, the point of contact for the relevant Party as identified in Section 24.4 of this Agreement will provide either of the following in writing: (1) an approval of the application, plan or report; (2) a conditional approval of the application, plan or report subject to specifically identified additional information; or (3) a denial of the application, plan or report with a written explanation of what changes can be made to receive approval if the application, plan or report is resubmitted. For situations where approval is required from two or more Parties to this Agreement, those Parties shall use reasonable efforts to provide a joint and/or consistent response within the same time period.

### **24.3 Changes in Boundaries of the Counties and Cities**

The Parties acknowledge that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances or adopted plans, and the granting of land use entitlements by the County, Cities or other land use jurisdictions are matters within the sole discretion of the County, Cities or other land use jurisdictions and shall not require amendments to this Agreement or the approval of other Parties to this Agreement. However, no such action by the County or Cities shall alter or diminish their obligations under this Agreement, the HCP or the Permits.

### **24.4 Notices**

The Cooperative shall maintain a list of individuals responsible for ensuring HCP compliance for each of the Parties, along with addresses at which those individuals may be notified ("Notice List"). The Notice List as of the Effective Date is provided below. The Parties shall report any changes of names or addresses to the Cooperative and the other Parties in writing.

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested.

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Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as stated on the most current Notice List. Notices shall be transmitted so that they are received within deadlines specified in this Agreement. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered via non-certified mail shall be deemed received seven (7) days after deposit in the United States mail. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

The following Notice List contains the names and notification addresses for the individuals currently responsible for overseeing and coordinating HCP compliance:

ATTN: Executive Director  
Fort Ord Regional Habitat  
Cooperative  
100 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933

ATTN: Executive Officer  
Fort Ord Reuse Authority  
100 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933

ATTN: Administrator  
County of Monterey  
168 W. Alisal St., 3<sup>rd</sup> Floor  
Salinas, CA 93901

ATTN: City Manager  
City of Marina  
211 Hillcrest Ave.  
Marina, CA 93933

ATTN: City Manager  
City of Seaside  
440 Harcourt Ave.  
Seaside, CA 93955

ATTN: City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey  
Del Rey Oaks, CA 93940

ATTN: City Manager  
City of Monterey  
580 Pacific Street  
Marina, CA 93940

ATTN: City Manager  
City of Marina  
211 Hillcrest Ave.  
Marina, CA 93933

ATTN: Field Supervisor  
U.S. Fish and Wildlife  
Service, Ventura Fish and  
Wildlife Office  
Ventura, CA 93003

ATTN: Regional Manager  
California Department of  
Fish and Game, Central  
Region Headquarters Office  
1234 E. Shaw Avenue  
Fresno, CA 93710

ATTN: District  
Superintendent  
California Department of  
Parks and Recreation  
Monterey District  
2211 Garden Road  
Monterey, CA 93940

ATTN: Secretary of the  
Regents  
University of California  
1111 Franklin Street, 12<sup>th</sup>  
Floor  
Oakland, CA 94607-5200

ATTN: President  
California State University  
Monterey Bay  
100 Campus Center  
Seaside, CA 93955

ATTN:  
Superintendent/President  
Monterey Peninsula College  
980 Fremont Street  
Monterey, CA 93940

ATTN: General Manager  
Monterey Peninsula  
Regional Park District  
60 Garden Court, Suite 325  
Monterey, CA 93940

ATTN: General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

## 24.5 Entire Agreement

This Agreement, together with the HCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof. It contains the covenants and agreements among the

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parties with respect to habitat conservation. The Parties acknowledge that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

#### **24.6 Defense**

Upon request, CDFG shall, to the extent authorized by California law, cooperate with the Permittees in defending, consistent with the terms of the HCP, lawsuits arising out of the Permittees' adoption of this Agreement and the HCP.

#### **24.7 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Parties to the litigation shall bear their own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable federal law.

#### **24.8 Availability of Funds**

Implementation of this Agreement and the HCP by USFWS is subject to the requirements of the Federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties agree that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency commits to such expenditures in writing.

Implementation of this Agreement and the HCP by CDFG is subject to the availability of State Legislature appropriated funds. Nothing in this Agreement shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties agree that CDFG shall not be required under this Agreement to expend any state appropriated funds unless and until an authorized official of that agency commits such expenditure in writing.

#### **24.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

#### **24.10 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of the Parties hereto.

#### **24.11 Relationship to the FESA, CESA, and Other Authorities**

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, and other applicable state and federal laws. In particular, nothing in this Agreement limits the authority of the USFWS and CDFG to seek penalties or otherwise fulfill its responsibilities under FESA and CESA. Moreover, nothing in this Agreement limits the responsibilities of the USFWS as an agency of the federal government or CDFG as an agency of the State of California.

#### **24.12 No Third Party Beneficiaries**



Without limiting the applicability of rights granted to the public by FESA, CESA, or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor does it authorize non-Parties to maintain a suit for personal injuries or property damages under the this Agreement. The rights of third party beneficiaries are unaffected by this Agreement.

#### **24.13 References to Regulations**

Reference in this Agreement, the HCP, or the Permits to Wildlife Agency regulations is to such regulations in effect when the referenced action is taken.

#### **24.14 Applicable Laws**

Activities undertaken under this Agreement, the HCP, or the Permits must be in compliance with applicable local, state and federal laws and regulations.

#### **24.15 Severability**

In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one does not automatically cause revocation of the other.

#### **24.16 Due Authorization**

The Parties represent and warrant that (1) the execution and delivery of this Agreement has been duly authorized and approved by requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable the Parties to enter into and comply with the terms of this Agreement, and (3) the persons executing this Agreement on behalf of the Parties have the authority to bind the Parties.

#### **24.17 Assignment**

Assignment of rights or obligations established in this Agreement, the Permits, or the HCP may be made only with the unanimous written agreement of the Parties. The Cooperative may, however, assign its rights and obligations to a joint exercise of powers agency with powers sufficient to carry out the Cooperative's obligations under this Agreement, the Permits and the HCP. Thereafter, such assignee shall be the Cooperative.

#### **24.18 Headings**

Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Implementing Agreement to be in effect as of the date last signed below.

**ORDINANCE NO. 2009-XX (uncodified)**

(Adoption of the Former Fort Ord Installation-Wide Multispecies Habitat Conservation Plan  
Development Fee Collection and Implementation Procedures)

The Monterey County Board of Supervisors ordains as follows:

**SECTION I. SUMMARY.**

This ordinance provides for the collection of fees to be used for the conservation of habitat for HCP species in mitigation of the impacts of development in Monterey County and procedures to implement the Former Fort Ord Installation-Wide Multispecies Habitat Conservation Plan ("HCP").

**SECTION II. AUTHORITY.**

This ordinance is enacted under the Mitigation Fee Act (Gov. Code, §66000 et seq.) and Article II, section 7 of the California Constitution.

**SECTION III. NOTICE AND HEARING.**

This ordinance complies with Government Code sections 54986 and 66017-66018. Required notices have been given and public hearing held.

**SECTION IV. DEFINITIONS.**

As used in this ordinance:

- A. "Affected Development Projects" means the development projects to which this ordinance applies.
- B. "Cooperative" means the Fort Ord Regional Habitat Cooperative, a joint powers authority formed by the Fort Ord Reuse Authority ("FORA"), County of Monterey ("County"), City of Marina ("Marina"), City of Seaside ("Seaside"), City of Del Rey Oaks ("Del Rey Oaks"), City of Monterey ("Monterey"), California Department of Parks and Recreation ("State Parks"), Regents of the University of California ("UC"), California State University ("CSU"), Monterey Peninsula College ("MPC"), Monterey Peninsula Regional Park District ("Park District"), and Marina Coast Water District ("MCWD") to oversee the implementation of the HCP.
- C. "Development Fee" means the FORA Basewide Community Facilities District Fee described in Section 9.3.1 of the HCP.
- D. "Development Project" means flat or vertical construction, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

- E. "Endowment Manager(s)" means the entity(ies), which will be selected from the California Department of Fish and Game's list of preapproved endowment managers, that will hold the collected Development Fee funds or other capital resources to pay to the Cooperative to implement the HCP.
- F. "FORA Basewide Community Facilities District Fee" means the fee imposed on development projects under the FORA Basewide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002. This fee will finance all or a portion of the costs of the following types of facilities or programs: Roadway Improvements, Transit Improvements and Vehicles, Water and Storm Drain Improvements, Habitat Management, and Other Public Facilities.
- G. "HCP" means the Former Fort Ord Installation-Wide Multispecies Habitat Conservation Plan, approved by the Board of Supervisors on \_\_\_\_\_, as may be revised from time to time.
- H. "HCP Species" means those species of plants and animals whose conservation and management are provided for by the HCP for which limited take is authorized by state and federal permits
- I. "Implementing Agreement" means the \_\_\_\_\_, Implementing Agreement for the HCP by and among Fort Ord Regional Habitat Cooperative ("JPA" or "Cooperative"), FORA, County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, UC, CSU, MPC, Park District, MCWD, Bureau of Land Management, United States Fish and Wildlife Service ("USFWS"), and California Department of Fish and Game ("CDFG").
- J. "Project applicant" means a property owner, or designated agent of the property owner, who has submitted to the County a request for approval of a Development Project on the property.
- K. "Public facilities" includes public improvements, public services and community amenities.
- L. "State and federal permits" means the permit issued by the California Department of Fish and Game to the County and other local agencies on \_\_\_\_\_, authorizing take of state listed species under the HCP (permit number \_\_\_\_\_) and the permit issued by the United States Fish and Wildlife Service to the County and other local agencies on \_\_\_\_\_, authorizing incidental take of federal listed species under the HCP and the federal Endangered Species Act (permit number \_\_\_\_\_), as those documents may be amended from time to time.
- M. "Take" has the same meaning provided by the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.) ("FESA") and its implementing regulations with regard to activities subject to that Act. It has the same meaning provided in the California Fish and Game Code with regard to activities subject to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and the Natural Community

Conservation Planning Act (Fish & G. Code, § 2800 et seq.). Take is defined in FESA to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. § 1532(18)) and in California Fish and Game Code section 86 as "to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, capture, or kill."

- N. "Urban Development Area" means the areas designated for urban development that are depicted on the map attached hereto as Exhibit B, incorporated herein by reference.

#### **SECTION V. APPLICATION OF ORDINANCE.**

- A. This ordinance applies to all development projects in unincorporated Monterey County that are within the Urban Development Area except legally exempt development projects.
- B. The Development projects to which this ordinance applies, may be referred to as "Affected Development Projects."

#### **SECTION VI. PURPOSE OF FEE/USE OF FEE REVENUE.**

Five purposes of the Development Fee are to finance all or a portion of:

- A. Roadway Improvements – identified in FORA's current Capital Improvement Plan ("CIP").
- B. Transit Improvements and Vehicles – identified in FORA's current CIP.
- C. Water and Storm Drain Improvements – including but not limited to potable water augmentation facilities and storm drainage system.
- D. Habitat Management –
- a. mitigate impacts to open space, habitat and species covered by the HCP, and
  - b. fund management of habitat lands for HCP species and administrative actions necessary to implement the HCP.
- E. Other Public Facilities – facilities incident to the provision of public safety.

#### **SECTION VII. FINDINGS.**

The Board of Supervisors finds and determines:

- A. There is a need to establish a comprehensive framework to protect and conserve species, wetlands, natural communities and ecosystems in Monterey County, while improving the environmental permitting process for impacts of future development on rare, threatened and endangered species.

- B. To meet the purposes identified in Section VI. D., the County joined the Cooperative, a joint exercise of powers authority, to develop the HCP and the Implementing Agreement. The Board finds that the HCP, implemented in accordance with the Implementing Agreement, will a) provide comprehensive species and ecosystem conservation; b) help preserve endangered species; c) balance open space, habitat, and urban development; d) reduce the cost and increase the clarity and consistency of federal and state permits; e) consolidate these processes into a single plan; f) encourage multiple uses of protected areas; g) share the costs and benefits of the HCP as widely and equitably as possible; and h) protect private property rights.
- C. This Ordinance will enable the County to: a) promote the public health, safety and by helping achieve the conservation goals in the HCP, b) implement the associated Implementing Agreement and c) preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act, the California Environmental Quality Act, the Federal Endangered Species Act, the California Endangered Species Act and other applicable laws.
- D. There is a reasonable relationship between the use of the Development Fee and Development Projects.
- E. There is a reasonable relationship between the need for the public facilities to be funded by the Development Fee and the type of development projects on which the fee is imposed because the need for these facilities, which includes the management of habitat, arises from the very Development Projects to which the Development Fee will apply, i.e., Development Projects that disturb open space, habitat, and HCP species.
- F. There is a reasonable relationship between the amount of the Development Fee and the cost of the public facilities or portion of the public facilities attributable to the Development Projects.

### **SECTION VIII. DEVELOPMENT FEE.**

The Development Fee will fund the public facilities or programs identified in Section VI of this ordinance, as follows:

#### **A. Development Fee**

1. FORA will charge a Development Fee against Affected Development Projects described in the Fort Ord Reuse Authority Basewide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002.
2. The County of Monterey will assist FORA in collecting its Development Fee, according to the terms and conditions of the FORA-County Implementation Agreement.

- 3. After the expiration of FORA on June 30, 2014, the County of Monterey will assume FORA's responsibilities of ensuring the collection of the Development Fee in the unincorporated area of former Fort Ord.

B. Condition of Approval

- 1. Compliance with this ordinance, including payment of Development Fee is a condition of approval of Affected Development Projects.

C. Fee Transmittal

- 1. Developers of Affected Development Projects will transmit the Development Fee to the FORA Controller until June 30, 2014 and FORA shall disburse no less than 25% of the collected Development Fee to the Endowment Manager(s) until the complete HCP Endowment is funded consistent with the HCP. After June 30, 2014, Developers of Affected Development Projects will transmit the Development Fee to the County Auditor-Controller and the County of Monterey shall disburse no less than 25% of the collected Development Fee to the Endowment Manager(s) until the complete HCP Endowment is funded consistent with the HCP.

**SECTION IX. ADJUSTMENTS TO DEVELOPMENT FEE.**

On July 1 of each year, FORA will automatically adjust the Development Fee as described in the Fort Ord Reuse Authority Basewide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002. On July 1 of each year, beginning July 1, 2014, the County of Monterey will automatically adjust the Development Fee as described in the Fort Ord Reuse Authority Basewide Community Facilities District Notice of Special Tax Lien, recorded May 22, 2002.

**SECTION X. CERTIFICATE OF INCLUSION APPLICATION AND REVIEW PROCEDURES.**

- A. Applicants for approval of Affected Development Projects must simultaneously apply to the Community Development Director for a certificate of inclusion as part of the land use entitlement application. The application for a certificate of inclusion must include the following information:
  - 1. Description of the Affected Development Project, including maps, detailed information on the project site, extent of construction and extent of any ongoing maintenance activities subject to the HCP.
  - 2. One or more reports documenting the methods and results of planning surveys and the methods of applicable preconstruction surveys, avoidance and minimization measures and construction monitoring, in accordance with Section \_\_\_ of the HCP. The Community Development Director or their designee may

allow specific components of the required surveys, including some or all of the results of planning surveys and the methods of applicable preconstruction surveys and Ordinance No. \_\_\_\_\_ construction monitoring, to be provided subsequent to the submittal of the initial application and prior to approval of the development project; however, the application for take authorization is not complete until all items in this Section have been submitted.

3. Evidence of compliance, or planned compliance, with avoidance and minimization measures, in accordance with Section \_\_ of the HCP.
  4. Quantification of the anticipated acreage of land permanently disturbed, consistent with the HCP.
  5. Estimated Development Fee. Applicants would estimate the Development Fee by:
    - a. Determining the number of new residential dwelling units, existing residential dwelling units, hotel rooms, and acres of office, industrial, and retail anticipated by the Affected Development Project,
    - b. Multiplying each of these numbers by its corresponding current Development Fee special tax rate (the 2008-2009 Development Fee special tax rates are attached as **Exhibit 1** for reference), and
    - c. Adding each product to generate a total estimated Development Fee.
  6. Other information as directed by the Community Development Director under the HCP.
- B. The County may extend a portion of its Take authorization under permit number (TEXXXXX) if it finds, on substantial evidence, that:
1. The application for a certificate of inclusion is complete.
  2. The conditions of approval require the Project applicant to comply with the Implementing Agreement, the HCP, and the state and federal permits. Such terms and conditions include but are not necessarily limited to the following:
    - a. Payment of the Development Fee.
    - b. Compliance with surveys, monitoring, avoidance, minimization and conservation measures applicable to the project, under the HCP.
    - c. Extension of take authorization is consistent with the HCP, Implementing Agreement, the state and federal permits and federal, state and local laws and regulations.

**SECTION XI. JUDICIAL REVIEW.**

An action to void the Development Fee shall be commenced within one hundred twenty (120) days after this ordinance is adopted. Any action to attack an increase adopted under Section IX shall be commenced within one hundred twenty (120) days after the effective date of the increase.

**SECTION XII. SEVERABILITY.**

If any part of the Development Fee or any provision of this ordinance is held invalid, that holding will not affect the validity of the remaining fee components and/or ordinance provisions. The Board declares it would have adopted each part of this ordinance irrespective of the validity of any other part.

**SECTION XIII. EFFECTIVE DATE.**

This ordinance becomes effective \_\_\_\_\_, or sixty (60) days after passage, whichever is later, and within fifteen (15) days after passage shall be published once with the names of the Supervisors voting for and against it in the Monterey County Herald, a newspaper of general circulation published in this County.

PASSED AND ADOPTED on \_\_\_\_\_, by the following vote:

- NOES: -
- ABSENT:
- ABSTAIN: ----
- ATTEST:



**FORT ORD REUSE AUTHORITY BOARD REPORT**

**OLD BUSINESS**

<b>Subject:</b> Imjin Office Park: Update	
<b>Meeting Date:</b> February 13, 2009	<b>INFORMATION</b>
<b>Agenda Number:</b> 7b	

**RECOMMENDATION:**

Receive a report regarding the sale of the Fort Ord Reuse Authority ("FORA") property located at Imjin Office Park to the Marina Coast Water District ("MCWD").

**BACKGROUND:**

On January 11, 2008, the FORA Board directed staff to identify a developer to buy-out FORA's interest in the IOP project and to issue a Request for Proposals ("RFP"). MCWD responded to FORA's RFP expressing interest in constructing FORA's IOP building and leasing 8,809 square feet of office space to FORA at a fair market rate in exchange for the land value of the property. On December 12, 2008, the FORA Board authorized the Executive Officer to execute an agreement with MCWD regarding the sale of FORA property and joint building consistent with a term sheet developed by the parties. This is a follow up to that action.

**DISCUSSION:**

The Association of Monterey Bay Area Governments ("AMBAG") also owns property on the Imjin Office Park site and found itself in need of securing a developer to purchase its interest in the project. MCWD proposed in similar terms to that of its FORA offer, to acquire AMBAG's property in exchange for leasing the remaining 6,192 square feet of the FORA office building to AMBAG. FORA and AMBAG would become co-tenants of the site and MCWD would develop the former AMBAG site at some point in the future. As noted, the parties obtained appraisals for the AMBAG and FORA parcels to establish land value to be credited as rent. The appraisal determined a fair market value of \$18 per square foot of land or \$988,000 for the FORA property and rental rates of \$1.75/sq. ft. FORA staff estimate that this will cover rental (and possibly some utility costs) coinciding with FORA's sunset on June 30, 2014. AMBAG will be likely able to conclude a similar deal with MCWD and retire its obligations to FORA.

**FISCAL IMPACT:**

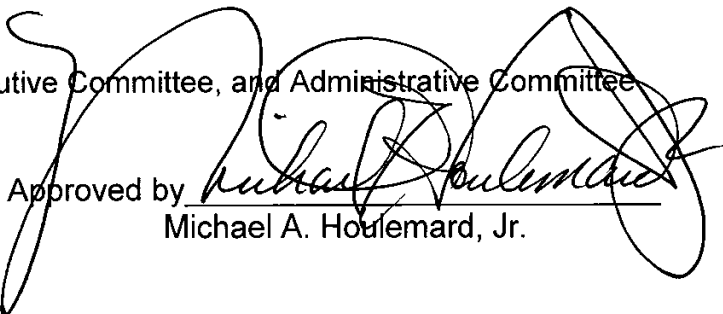
Reviewed by FORA Controller 

The FORA-MCWD agreement provides for an exchange of fair market land value for rental value at Imjin Office Park, as determined by third-party consultants. The agreement provides for a new office facility for FORA's remaining years of operation. Payoff of AMBAG's purchase should net FORA up to \$195,000 and \$15,133 to reimburse project costs.

**COORDINATION:**

MCWD, AMBAG, Authority Counsel, Executive Committee, and Administrative Committee

Prepared by   
D. Steven Endsley

Approved by   
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

<b>Subject:</b>	Water for Monterey County project and Regional Water Augmentation Program - Updates	
<b>Meeting Date:</b>	February 13, 2009	<b>INFORMATION</b>
<b>Agenda Number:</b>	7c	

### RECOMMENDATION:

Receive a status report regarding the Water for Monterey County project.

### BACKGROUND:

The Water for Monterey County Coalition ("WFMCC"), formerly referred to as the Regional Plenary Oversight Group ("REPOG"), was formed during a process begun by the Division of Ratepayer Advocates ("DRA") of the California Public Utilities Commission ("CPUC"), with the assistance of the University of California Santa Cruz ("UCSC"). DRA and UCSC engaged in developing a comprehensive water resource plan for the Monterey Region. To accomplish this goal, DRA facilitated a series of meetings, or dialogues, with all interested parties for almost two years. The objective of the dialogues was to achieve consensus through collaboration, for supplying the water needs of the Monterey Region in a cost-effective and sustainable way.

Lyndel Melton from RMC Water & Environment, presented the Water for Monterey County project proposal to the Fort Ord Reuse Authority ("FORA") Administrative Committee on January 30, 2008 and to the FORA Board on February 8, 2008. The project's approach depends on regional cooperation among the various water management entities and land use jurisdictions to develop a sustainable, pragmatic, publicly and politically acceptable, and cost effective Regional Water Supply Plan.

The Water for Monterey County project is distinct from, but compatible with FORA and Marina Coast Water District ("MCWD") Boards of Directors' "Hybrid Alternative" (June 10, 2005) to augment Fort Ord water resources. MCWD and FORA have proceeded with the Hybrid program, which includes both recycled water and desalinated water, and MCWD has completed California Environmental Quality Act ("CEQA") documentation for this augmented water program. The Water for Monterey County project would reduce some infrastructure requirements of the hybrid project and may offer substantial savings to FORA, MCWD, jurisdictional developers, and other users.

### DISCUSSION:

WFMCC's initial planning goal was to identify a regional solution to Monterey's water supply and environmental problems that satisfied a set of planning criteria. The identification timeline for the regional project corresponded to the Coastal Water Project Environmental Impact Project process, with a due date for submission to the CPUC, Energy Division, Environmental Impact Report ("EIR") Project Manager by June 1, 2008. The EIR work on the Water for Monterey County project was completed and submitted on time, with funding from MCWD, California American Water, and the Monterey Regional Water Pollution Control Agency. The project uses 100% of the

region's recycled water, meets proposed State Water Resources Control Board ("SWRCB") Ocean Plan regulations, meets urban water needs, meets agricultural water constraints, protects the National Marine Sanctuary, and provides a carbon neutral energy source.

WFMCC's process is now focused on drafting a Strategic Implementation Plan that will include a series of tasks that both describe a "fast-track" solution to the Monterey Peninsula's regulatory issues as well as the more extensive regional agricultural and north county supply components. On November 14, 2008 the FORA Board endorsed the Water for Monterey County project.

On January 30, 2009, the State CPUC released its Draft EIR for the Coastal Water Project, comparing the three main alternatives in addition to undertaking additional environmental analysis required under CEQA. The Water for Monterey County project alternative was deemed the preferred alternative as it induces more inter agency cooperation and provides for reduced costs to the region. It was also deemed more regionally compact than the Moss Landing Project alternative, preferable to the North Marina project alternative because the latter relies on the untested technology of slant wells and also preferred because it better alleviates potential for salt water intrusion.

The North Marina project alternative was preferred by the CPUC staff to the Moss Landing project alternative because the latter relies on a "once-thru-cooling system which endangers marine life and may be prohibited in the near future. In addition, CPUC staff indicated that if the North Marina project alternative eliminated the use of sea water vertical wells and used slant wells similar to that proposed for the Water for Monterey County project it would be designated the "environmentally superior alternative" under CEQA. It is unclear whether such a redesign of the North Marina project is technically or financially feasible; therefore, it is likely that the EIR findings will focus new attention and potential for implementation on the Water for Monterey County project.

It is appropriate that FORA, its member jurisdictions, and other interested parties provide the CPUC with letters of support for the Water for Monterey County project alternative stressing its emphasis on regional cooperation and other strengths.

**FISCAL IMPACT:**

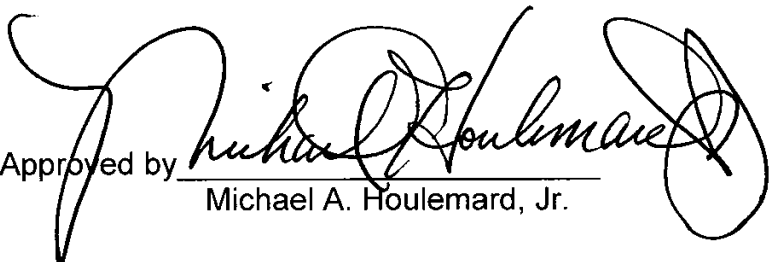
Reviewed by FORA Controller 

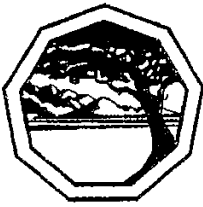
Significant savings could be realized by FORA, jurisdictional developers, and other users should the Water for Monterey County project move ahead.

**COORDINATION:**

WFMCC, MCWD, MRWPCA, Executive Committee, and Administrative Committee

Prepared by   
Steve Endsley

Approved by   
Michael A. Houlemard, Jr.



## FORT ORD REUSE AUTHORITY

100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933

PHONE: (831) 883-3672 - FAX: (831) 883-3675

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

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February 9, 2009

Mr. Jim Heitzman  
General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

Subject: Letter of Support for Regional Urban Water Augmentation Project

Dear Mr. Heitzman:

As you may be aware, the Regional Urban Water Augmentation Project ("RUWAP") was approved several years ago by the Fort Ord Reuse Authority Board of Directors. The RUWAP will provide essential water resources that will enable the reuse of significant portions of the former Fort Ord. This letter is in support of the RUWAP.

We feel the expansion of recycled water use in the Monterey region for urban irrigation is an important component in the regional solution to the current Monterey Bay water crisis. In addition, the RUWAP reflects the State of California's plans for ensuring adequate future water supplies through expansion of recycled water use. An essential element in the Water for Monterey County Program, we are in support of both RUWAP components: the Water Augmentation Pumping Plant (designed and constructed jointly by Marina Coast Water District (MCWD) and Monterey Regional Water Pollution Control Agency) and the corresponding MCWD recycled water transmission system.

The RUWAP represents yet another fine example of how Monterey-area agencies are working together to preserve the natural resources of our unique region while developing and implementing solutions locally through cooperation and collaboration. To this end, we appreciate your role in developing a regional solution to Monterey County's water crisis and are pleased to support the RUWAP, which will benefit everyone in the region.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Rubio".

Ralph Rubio, Chair  
Fort Ord Reuse Authority

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** Central Coast Veterans Cemetery

**Meeting Date:** February 13, 2009

**Agenda Number:** 7d

### ACTION/ INFORMATION

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

1. Receive an update regarding Central Coast Veterans Cemetery ("CCVC") planning efforts.
2. Approve use of \$15,000 for soliciting/selecting endowment parcel purchaser
3. Invest a portion of FORA's share of land sales revenue to help in creating the state enacted endowment fund.

#### **BACKGROUND:**

The Fort Ord Reuse Authority ("FORA") has long supported establishment of the CCVC on former Fort Ord. FORA supported adoption of AB 3035, authored by Assemblymember John Laird, which allows creation of an endowment fund into which donations would be deposited to fund cemetery operations and maintenance costs. At the May 11, 2007 FORA Board meeting, it was announced that Seaside Councilmember Tom Mancini would be FORA's representative to the Monterey County Cemetery Citizen's Advisory Committee ("CAC") and Mayor (at that time) Ila Mettee-McCutcheon would serve as an alternate.

At its November 9, 2007 meeting, the FORA Board authorized the Executive Officer to execute a reimbursement agreement with the County of Monterey for a loan of up to \$191,000 for the preparation of a CCVC Master Development Plan on the former Fort Ord, and authorized the Executive Officer to coordinate with the County of Monterey Military and Veterans Affairs Office to obtain financial participation from jurisdictions and other interested parties to reimburse FORA for its costs.

#### **DISCUSSION:**

The reimbursement agreement was executed by the County of Monterey, the Monterey County Redevelopment Agency, and FORA in January 2008. FORA asked jurisdictions to consider sharing a portion of the FORA advance. To date, FORA received a total of \$60,500 in pledges and secured a \$138,000 loan for the balance and expenses from local jurisdictions.

Pledges include: City of Marina - \$25,000, City of Monterey - \$25,000, City of Del Rey Oaks - \$500, City of Sand City - \$2,500, and City of Carmel-By-The-Sea - \$7,500. Marina Coast Water District offered FORA a loan of up to \$138,000 (loaned at 1% interest rate, full repayment due July 1, 2009). It is noted that the County of Monterey is providing financial support by donating its portion of the cemetery land and Monterey County staff time to manage the planning consultant contract. The City of Seaside is

donating its portion of cemetery land and has committed staff time to help coordinate planning.

After a competitive process, RHAA was selected to prepare the CCVC Master Development Plan. On May 14, 2008, Monterey County staff presented an update on the Veterans Cemetery planning effort to the Administrative Committee. On June 13, 2008, Monterey County staff and RHAA provided a similar update to the FORA Board.

Planning is nearly complete. County, Seaside and FORA staff have agreed that the remaining funds (est. \$15k) should be applied to soliciting and selecting an endowment parcel purchaser. When the money has been raised and a purchaser is selected for the endowment parcel, staff expects the \$191,000 contribution to be reimbursed from endowment parcel sales or lease proceeds. Portions of this advance may also be eligible for reimbursement from the expected federal grant for CVCC construction.

In addition, land sales revenues are split 50/50 between FORA and the underlying jurisdictions. Local veteran's organizations have asked FORA, the County, and Seaside to forgo these revenues in this one case. This would be consistent with past Board support for the cemetery project. Staff believes this investment would have a positive impact on Fort Ord reuse. Further, these monies have not been anticipated for CIP or other purposes in the FORA program. Staff will continue to provide periodic updates as the planning process moves into its initial implementation phase.

**FISCAL IMPACT:**

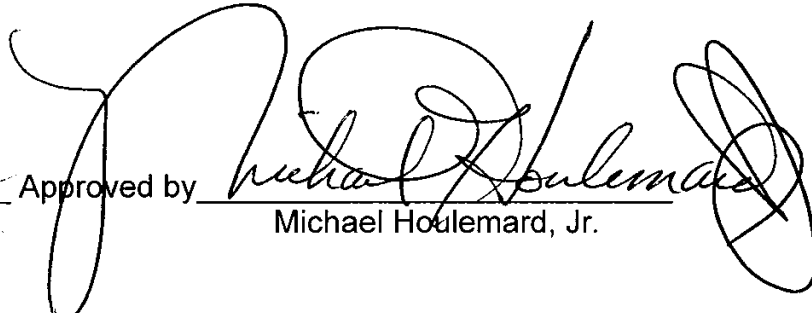
Reviewed by FORA Controller 

FORA has reimbursed the County of Monterey for about \$175,000 to date. If there are any remaining funds Seaside and the County has requested that they be applied to the solicitation and selection of a buyer/developer for the 28-30 acre endowment parcel. When the money has been raised and a purchaser is selected for the endowment parcel, FORA's \$191,000 contribution could be reimbursed from endowment parcel sales or lease proceeds. There is potential for recovery of all or a portion of FORA's monies advanced should the solicitation process prove successful.

**COORDINATION:**

Monterey County Redevelopment Agency and City of Seaside staff, RHAA, Executive Committee, Administrative Committee

Prepared by   
Steve Endsley

Approved by   
Michael Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

<b>Subject:</b>	Confirmation of 2009 Fort Ord Reuse Authority committee appointments	
<b>Meeting Date:</b>	February 13, 2009	<b>ACTION</b>
<b>Agenda Number:</b>	8a	

### RECOMMENDATION:

Confirm Chair Rubio's 2009 appointments to the Finance Advisory Committee (aka the Finance Committee) and the Legislative Advisory Committee (aka the Legislative Committee).

### BACKGROUND/DISCUSSION:

At the February board meeting each year, the FORA Chair presents his/her recommendations of board members to serve on FORA's Finance and Legislative Committees. These appointments are for one-year, and each committee will have a chair, a certain number of members and, sometimes, alternates. Chair Rubio has recommended the following to serve through the February 2010 board meeting:

#### Finance Committee:

Members: Mayor Sue McCloud (Carmel) (to serve as Chair)  
Councilmember Tom Mancini (Seaside)  
Councilmember Ken Gray (Marina)  
Councilmember Janet Barnes (Salinas)  
Graham Bice (UC Santa Cruz)

Alternate: Hunter Harvath

#### Legislative Committee:

Members: Mayor Ralph Rubio (Seaside) (to serve as Chair)  
Mayor Joe Russell (Del Rey Oaks)  
Supervisor Dave Potter (Monterey County)  
Supervisor Simon Salinas (Monterey County)  
Councilmember Dave McCall (Marina)

Alternates: Mayor David Pendergrass (Sand City)  
Supervisor Lou Calcagno (Monterey County)

**FISCAL IMPACT:** None

**COORDINATION:** FORA Chair and Executive Committee

Prepared by Linda L. Stiehl  
Linda L. Stiehl

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

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

<b>Subject:</b>	Fort Ord Reuse Authority Mid-Year Budget	
<b>Meeting Date:</b>	February 13, 2009	<b>ACTION</b>
<b>Agenda Number:</b>	8b	

### RECOMMENDATIONS:

- a) Accept the FY 08-09 Fort Ord Reuse Authority (FORA) Operating Budget mid-year status report.
- b) Authorize the Executive Officer to reallocate \$300,000 from Imjin Office Park to pay other obligations.

### BACKGROUND:

The mid-year budget update is typically provided to the Board by the February meeting. This report covers the operations budget status for the budget approved at the June 2008 meeting. The Finance Committee reviewed the mid-year budget at its January 12, 2009 meeting.

### DISCUSSION:

Due to recessionary economic conditions and the halt in several major projects, the FY 08-09 mid-year budget update reports a decrease in Capital Improvement Program (CIP) expenditures from \$10 million to \$2.1 million. All other programs and activities, including the environmental cleanup, proceed as budgeted. FORA General Fund reports a decrease in investment earnings and tax increment revenues; reserve account remains as budgeted at \$400,000.

### 08-09 REVENUES

*Mid-Year Budget projects a decrease of \$7.5 million*

Major reductions:

- \$4,880,000 in Development Fees and \$1,271,752 in Land Sale Proceeds: The approved budget estimated 50% of the jurisdictional projections would be realized as staff/auditor anticipated the economic downturn and housing market conditions. The revised budget decreases expectations further.
- \$277,407 in Tax Increment payments: Reflects 20% property valuation downward adjustment.
- \$161,023 PLL in Loan payments from Del Rey Oaks (DRO): In August 2008, the FORA Board approved a payment plan enabling DRO developer, who is responsible for the insurance cost, to make prescribed monthly payments until the project receives entitlement from DRO. Monthly payments cover interest payments and only partially the annual principal payment. About \$160,000 is covered by FORA resources.
- \$238,249 in Interest Reimbursements: East Garrison Partners stopped monthly interest payments on the \$4.1 million loan since September 2008 (*see item 8c*).
- \$670,000 in Investment Income: A loss of investment earnings as result of the stock market slowdown and drop in investment rate; FORA investment policy is being revised to regain stability at the direction of the Finance Committee (*see item 9b-ii*).



**08-09 EXPENDITURES**

*Mid-Year Budget reflects an overall decrease of \$9.6 million*

Major deletions/reductions:

- \$300,000 IOP Project: The preliminary budget included \$300,000 to complete building plans and site grading; FORA secured a developer who will purchase FORA's building site and construct the office building. The FORA Board approved this transaction at its December 08 meeting.
- \$7,995,729 in Capital Projects: All CFD and land sale funded capital projects are deferred excepting the roadway improvements of General Jim Moore Boulevard and Eucalyptus Road and the continued habitat management program.

**OTHER BUDGETARY ITEMS**

- Loan Proceeds and Loan Repayments. Delays in land transfers/sales influenced FORA's ability to pay down the outstanding principal in the revolving line of credit (obtained in 2006 to provide interim financing for building removal/capital projects) as anticipated; advances to process construction/road design invoices and provide funds for PLL insurance/EGP interest payments are projected at \$4.06 million. The outstanding principal at year end is estimated at \$11.5 million. Interest payments are estimated at \$570,000 for the fiscal year.
- Reallocation of Funds to pay FORA obligations: The revised budget proposes reallocation of the \$300,000 IOP budget saving to pay FORA long term obligations:
  - a) \$150,000 to EDC consultants/Kutak Rock: The contract with Kutak Rock stipulates budgeted annual payments and any excess cost to be paid by available land sale proceeds in the future. The outstanding balance is about \$150,000 and a portion has been owed to the consultant since 2007.
  - b) \$150,000 to partially cover interest payments from East Garrison obligation.

**ENDING FUND BALANCES**

*Mid-Year Budget reflects an overall decrease of \$657,032*

As a result of the budget adjustments, the total fund ending balance is estimated at \$668,372. Ending balance in the FORA Reserve account stays as budgeted at \$400,000.

Attachment 8b-1 illustrates the updated budget as compared to the approved budget; corresponding notes offer brief narrative descriptions of budget variances.

Attachment 8b-2 provides expenditure changes in detail.

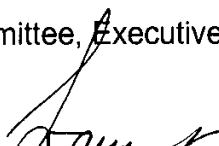
**FISCAL IMPACT:**

Decreased fund balances, reduction or deferral of capital projects except environmental cleanup. The Finance Committee reviewed the mid-year budget at its January 12, 2009 meeting and recommends Board acceptance and also recommends reallocating \$300,000 from Imjin Office Park to other obligations.

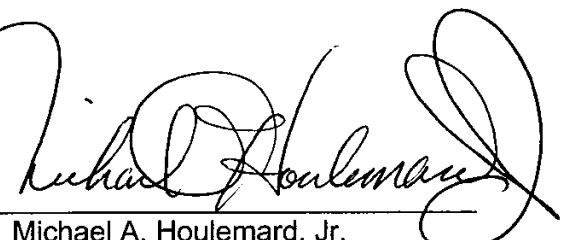
**COORDINATION:**

Finance Committee, Executive Committee.

Prepared by

  
Ivana Bednarik

Approved by

  
Michael A. Houlemard, Jr.

**FORT ORD REUSE AUTHORITY - FY 08-09 REVISED BUDGET - ALL FUNDS COMBINED**

<b>CATEGORIES</b>	<b>FY 08-09 APPROVED</b>	<b>FY 08-09 REVISED</b>	<b>BUDGET VARIANCES</b>	<b>NOTES</b>
<b>REVENUES</b>				
Carryover Revenue				
Beginning Fund Balance	2,675,287	1,385,972	(1,289,315)	Revised balance adjusted to show funding available for current year expenditures. (Restricted and prior year expenditure designated funds not included)
<b>New Revenue</b>				
Membership Dues	259,000	259,000	-	
Franchise Fees - MCWD	195,000	195,000	-	
Federal Grants	22,250,000	22,250,000	-	
PLL Loan Payments	983,657	822,634	(161,023)	FORA Board approved payment plan pending DRO project entitlement.
Development Fees	5,000,000	120,000	(4,880,000)	* Revenues deferred, fee payments collected from several small projects.
Land Sale Proceeds	1,288,000	16,248	(1,271,752)	* Revenues deferred, fee payments collected from one small project.
Rental/Lease Revenues	1,294,578	1,294,578	-	
Tax Increment Payments	1,387,034	1,109,627	(277,407)	Tax increment 20% downward fluctuation due to valuation adjustments.
Loan Reimbursements	287,000	48,751	(238,249)	** East Garrison Partners stopped payments in September 08.
Investment Income	181,990	(485,000)	(666,990)	Investment and Treasury fluctuations reported in December 08.
Total New Revenue	33,126,259	25,630,838	(7,495,421)	
<b>Other Financing Sources</b>				
Loan Proceeds	5,500,000	4,060,000	(1,440,000)	Advances from line of credit to finance CIP and PLL loan financing reflect actual cost.
Total Revenues	41,301,546	31,076,810	(10,224,736)	
<b>EXPENDITURES</b>				
Salaries & Benefits	1,792,062	1,792,062	-	
Supplies & Services	190,440	190,440	-	
Contractual Services	678,000	528,000	150,000	FORA/IOP site expense removed (-\$300K); payment to EDC consultant added(\$150K).
Contractual Services/ESCA	23,606,624	23,606,624	-	
Capital Projects (CP)	10,070,729	2,075,000	7,995,729	CIP projects reduced to GJM/Eucalyptus construction and habitat management.
CP-Building Removal	-	-	-	No building removal activities planned for FY 08-09.
Debt Service (P+I)	3,638,288	2,216,312	1,421,976	Budgeted \$1.3M principal reduction from anticipated land sale revenue deferred.
Total Expenditures	39,976,143	30,408,438	9,567,705	
<b>NET REVENUES (Ending Fund Balance)</b>	1,325,403	668,372	657,032	Ending Fund balance includes FORA Reserve Account of \$400,000 as budgeted.

\* As recommended by FORA Auditor and Finance Committee, the preliminary budget included 50% of jurisdictional redevelopment revenue projections.

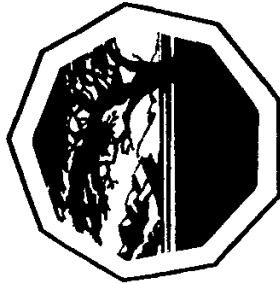
The revised budget reflects actual and/or reasonably anticipated collections.

\*\* FORA did not collect contractually obligated payments from East Garrison Partners of \$238,249 (interest payments on a \$4.1M loan per April 06 MOA).

## EXPENDITURES - ITEMIZED

FORT ORD REUSE AUTHORITY  
FY 08-09 REVISED BUDGET

EXPENDITURE CATEGORIES	APPROVED	ADJUSTMENTS	REVISED	NOTES
<b>SALARIES &amp; BENEFITS</b>	1,792,062	-	1,792,062	
<b>SUPPLIES &amp; SERVICES</b>	190,440	-	190,440	Budget reduced compared to FY 07-08 budget, cost savings measures implemented.
<b>CONTRACTUAL SERVICES</b>				
LEGAL FEES	60,000	-	60,000	
AUTHORITY COUNSEL	120,000	-	120,000	
AUDITOR	25,000	-	25,000	
EDC COUNSEL (EDC-ESCA)	85,000	150,000	235,000	Reallocate saving from IOP to pay off outstanding balance/long-term payable.
FINANCIAL CONSULTANT	25,000	-	25,000	
LEGISLATIVE SERVICES CONSULTANT	30,000	-	30,000	
PUBLIC INFORMATION	30,000	-	30,000	
IOP BUILDING	300,000	(300,000)	-	Cost assumed by FORA/IOP site developer (MCWD).
OTHER (BOND TRUSTEE)	3,000	-	3,000	
ARCHITECT & ENGINEERS (CIP)				
WATER RESOURCE POLICY/HYBRID PROGRAM				
NEPA/CEQA CONSULTING FIRM				
HABITAT MITIGATION				
<b>TOTAL NON-ESCA CONTRACTS</b>	<b>678,000</b>	<b>(150,000)</b>	<b>528,000</b>	
REGULATORY RESPONSE (ESCA)	800,000	-	800,000	
MEC REMEDIATION (ESCA)	22,806,624	-	22,806,624	
<b>TOTAL ESCA CONTRACTS</b>	<b>23,606,624</b>	-	<b>23,606,624</b>	ESCA project as budgeted.
<b>CAPITAL PROJECTS</b>				
CIP - ROADWAY IMPROVEMENTS	8,014,884	(6,014,884)	2,000,000	All roadway projects deferred except GJM and Eucalyptus.
CIP - WATER AUGMENTATION	730,845	(730,845)	-	Deferred, CFD fee collection dependent.
CIP - HABITAT MANAGEMENT	1,325,000	(1,250,000)	75,000	Deferred; F.O. Natural Reserve annual cost approved and paid.
CIP - BUILDING REMOVAL	-	-	-	
<b>TOTAL CAPITAL PROJECTS</b>	<b>10,070,729</b>	<b>(7,995,729)</b>	<b>2,075,000</b>	
<b>DEBT SERVICE (Principal and Interest)</b>				
LINE OF CREDIT	1,924,870	(1,354,976)	569,894	Budgeted principal reduction deferred - land sale proceeds dependent.
PLL INSURANCE FINANCING	1,049,143	(67,000)	982,143	Revised to reflect actual cost.
FIRE TRUCK LEASE	116,000	-	116,000	
REVENUE BOND	548,275	-	548,275	
<b>TOTAL DEBT SERVICE</b>	<b>3,638,288</b>	<b>(1,421,976)</b>	<b>2,216,312</b>	
<b>TOTAL FY 08-09 EXPENDITURES</b>	<b>39,976,143</b>	<b>(9,567,705)</b>	<b>30,408,438</b>	



**FORT ORD REUSE AUTHORITY**

**FY 2008-09**

**MID-YEAR BUDGET**

**FORT ORD REUSE AUTHORITY - FY 08-09 MID-YEAR BUDGET - SUMMARY**

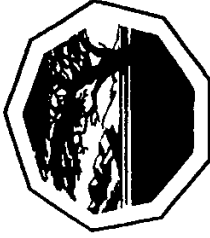
	<b>APPROVED 08-09 BUDGET</b>	<b>MID-YEAR 08-09 BUDGET</b>	<b>VARIANCES</b>
<b>REVENUES</b> (Includes carryover and borrowing)	41,301,546	31,076,810	(10,224,736)
<b>EXPENDITURES</b>	39,976,143	30,408,438	9,567,704
<b>FUND BALANCE - ENDING (6-09)</b>	<u>1,325,403</u>	<u>668,372</u>	(657,032)

**FORT ORD REUSE AUTHORITY - FY 08-09 MID-YEAR BUDGET - REVENUES**

	<b>APPROVED 08-09 BUDGET</b>	<b>MID-YEAR 08-09 BUDGET</b>	<b>VARIANCES</b>
<b>REVENUES</b>			
Beginning Fund Balance	2,675,287	1,385,972	(1,289,315)
<b>New Revenue</b>			
Membership Dues	259,000	259,000	-
Franchise Fees - MCWD	195,000	195,000	-
Federal Grants	22,250,000	22,250,000	-
PLL Loan Payments	983,657	822,634	(161,023)
Development Fees	5,000,000	120,000	(4,880,000)
Land Sale Proceeds	1,288,000	16,248	(1,271,752)
Rental/Lease Revenues	1,294,578	1,294,578	-
Tax Increment Payments	1,387,034	1,109,627	(277,407)
Loan Reimbursements	287,000	48,751	(238,249)
Investment Income	181,990	(485,000)	(666,990)
<b>Total New Revenue</b>	<b>33,126,259</b>	<b>25,630,838</b>	<b>(7,495,421)</b>
Loan Proceeds	5,500,000	4,060,000	(1,440,000)
<b>TOTALS</b>	<b>41,301,546</b>	<b>31,076,810</b>	<b>(10,224,736)</b>

**FORT ORD REUSE AUTHORITY - FY 08-09 MID-YEAR BUDGET - EXPENDITURES**

	<b>APPROVED 08-09 BUDGET</b>	<b>MID-YEAR 08-09 BUDGET</b>	<b>VARIANCES</b>
<b>EXPENDITURES</b>			
Salaries & Benefits	1,792,062	1,792,062	-
Supplies & Services	190,440	190,440	-
Contractual Services	678,000	528,000	150,000
ET/ESCA	23,606,624	23,606,624	-
Capital Projects	10,070,729	2,075,000	7,995,729
Debt Service	3,638,288	2,216,312	1,421,976
	<hr/>	<hr/>	
	39,976,143	30,408,438	9,567,705



**FORT ORD REUSE AUTHORITY**

**FY 2008-2009 MID-YEAR BUDGET**

**RECOMMENDATIONS**

- 1. ACCEPT THE FY 08-09 MID-YEAR BUDGET REPORT**
- 2. APPROVE REALLOCATING \$300,000 TO OBLIGATIONS**

**AS RECOMMENDED BY THE FINANCE AND EXECUTIVE COMMITTEES**



# FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

<b>Subject:</b> East Garrison loan payments	
<b>Meeting Date:</b> February 13, 2009	<b>ACTION/INFORMATION</b>
<b>Agenda Number:</b> 8c	

## RECOMMENDATIONS:

Provide direction to the Executive Officer regarding collection of East Garrison loan payments.

## BACKGROUND:

When Monterey County (County) approved the East Garrison Partners (EGP) project in 2005, County postponed land sale revenues, a portion of which was due to FORA under the terms of the FORA/County Implementation Agreement. As a consequence, FORA did not collect \$4.1M in land sale revenue. In 2006, EGP, County and FORA entered into a Memorandum of Understanding (MOU), which requires EGP to: a) pay FORA monthly interest payments on the \$4.1M loan that FORA acquired in lieu of the land sale proceeds and b) repay the \$4.1M principal due in 2011 or upon termination of the MOU. The project is currently suspended. In September 2008, EGP defaulted on its interest payments breaching the MOU terms.

## DISCUSSION:

The monthly interest payments are about \$24K. As of end of January 2009, EGP owed FORA interest payments for five months (from September 08 to January 09) now totaling in excess of \$120,000. Under the terms of the MOU, the \$4.1M debt is secured by a 58 acre parcel known as the "Shoe", to which the County holds title.

Remedies:

- File suit against EGP and the County;
- Foreclose on County's interest in the "Shoe" parcel;
- Work w/County to induce EGP to pay;
- File a recordable interest in the "Shoe" parcel;
- Obtain payment from the County.

It is conceivable that more than one of the above steps is recommended. Staff will work with County staff prior to making formal recommendation at the February 13 meeting.

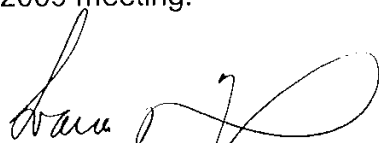
## FISCAL IMPACT:

A negative impact on FORA's net revenues of \$238,249 for the fiscal year; FORA spends its own resources including debt to cover these uncollected interest payments as reported in the mid-year budget (*see item 8b*).

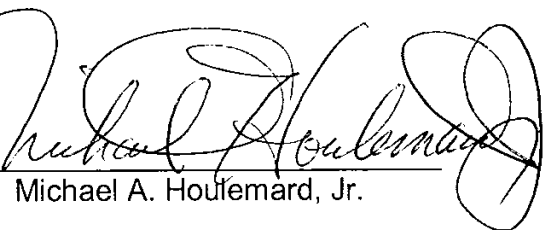
## COORDINATION:

Executive Committee, Authority Counsel. The Finance Committee was informed of this matter at its January 2009 meeting.

Prepared by

  
Ivana Bednarik

Approved by

  
Michael A. Houfemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Administrative Committee report

**Meeting Date:** February 13, 2009

**Agenda Number:** 9a

**INFORMATION**

### RECOMMENDATION:

Receive a report from the Administrative Committee.

### BACKGROUND/DISCUSSION:

The Administrative Committee met on December 30, 2008, and February 4, 2009. The approved minutes from the former meeting and the draft minutes from the latter meeting are attached for your review. The January 14<sup>th</sup> meeting was canceled.

### FISCAL IMPACT:

None

### COORDINATION:

Administrative Committee

Prepared by Linda L. Stiehl  
Linda L. Stiehl

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

**FORT ORD REUSE AUTHORITY**

100 12<sup>th</sup> Street, Building 2880

Marina, CA 93933

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**MINUTES OF THE  
ADMINISTRATIVE COMMITTEE MEETING  
Wednesday, December 30, 2008**

**APPROVED**

**1. Call to Order**

Chair/ Executive Officer Michael Houlemard called the meeting to order at 8:17 a.m. The following representatives from the land recipient jurisdictions, representing a quorum, were present:

- \*Jim Cook – County of Monterey
- \*Les Turnbeaugh – City of Monterey
- \*Dick Goblirsch - City of Del Rey Oaks
- \*Tony Altfeld – City of Marina
- \*Tim O’Halloran – City of Seaside

Also present, as indicated by the roll sheet signatures, were:

- Stan Cook – FORA
- Jim Arnold – FORA
- \*Jim Dowless – MCWD
- Brian True – MCWD
- Jonathan Garcia – FORA
- \*Don Bachman – TAMC
- \*Kathleen Ventimiglia – CSUMB
- Scott Hilk – Marina Community Partners
- Tom Tuttle – Army – RCI
- \*Mike Gallant – Monterey-Salinas Transit
- Bob Holden – MRWPCA
- (\*)Rich Guillen – City of Carmel

\* indicates a committee member and (\*) indicates a FORA voting member but not a land recipient jurisdiction.

Voting board member jurisdictions not represented at this meeting were Salinas, Pacific Grove, and Sand City.

**2. Pledge of Allegiance**

Chair Houlemard asked Jim Cook, who agreed, to lead the Pledge of Allegiance.

**3. Acknowledgements, announcements and correspondence**

Monterey representative Les Turnbeaugh announced that this meeting was his last and also his last day of work, because his retirement would begin tomorrow. Chair Houlemard thanked him for his service to FORA and wished him well in future endeavors, including his golf game.

**4. Public comment period - none**

**5. Approval of December 3, 2008 meeting minutes**

**Motion to approve the December 3, 2008 meeting minutes was made by Les Turnbeaugh, seconded by Tony Altfeld, and carried.**

6. **Review of the draft January 9, 2009 FORA board meeting agenda and draft board reports**

Chair/Executive Officer Houlemard summarized the items on the draft January 9<sup>th</sup> board agenda.

7. **Old Business**

Item 7a – Habitat Conservation Plan (“HCP”) - Status report and schedule: Chair/Executive Officer Houlemard reported that Jeff Single had been appointed to succeed the retiring Bill Loudermilk as the Region 4 Central Regional Manager of the CA Department of Fish & Game. Mr. Houlemard said that since Mr. Single’s appointment earlier this month, he has been a positive figure in moving the Fort Ord HCP to final agreement. Mr. Single weighed in on the recent meeting between his staff members and FORA representatives, which resulted in considerable agreement on the remaining issues. A follow-up conference call was set for January 12<sup>th</sup> and another all-hands meeting will be held on February 4<sup>th</sup>. Mr. Houlemard said he has been open to attending meetings in Sacramento, if necessary. If all continues to track as it has, he said the HCP and the environmental document could go out this spring. Remaining “sticky” issues are how the existing deed covenants will be used regarding the Bureau of Land Management parcels and the regulators’ insistence on FORA committing to pay for habitat regulatory oversight of parcels already transferred to the state and federal agencies/ departments, even though the deed covenants say otherwise. He asked that anyone with comments on the remaining issues to contact either him or Jonathan Garcia of the FORA staff.

Item 7b – Marina Coast Water District (“MCWD”) capacity charges: review draft resolution: Chair Houlemard summarized the current draft of the resolution. Scott Hilk, Marina Community Partners developer, shared his appreciation for all the hard work behind resolving the capacity charges. Members agreed that the resolution carries out the intent of the board motion at the December board meeting. **Motion to recommend board approval of the draft resolution was made by Les Turnbeaugh, seconded by Tony Altfeld, and carried unanimously.**

Item 7c - California State University, Monterey Bay 2007 Master Plan: Recirculated Draft Environmental Impact Report (RDEIR) dated July 2008 – approve draft of technical response letter: Chair Houlemard remarked that the draft policy statement in the form of a letter to CSUMB President Dianne Harrison would get a final review by the Executive Committee this afternoon. There were no revisions or additions from the Administrative Committee members to pass along. The technical issues, particularly those involving transportation, were outlined in the draft letter to Jim Main, CSUMB Vice President for Administration and Finance. **A motion to approve the draft letter to Jim Main was made by Les Turnbeaugh and seconded by Tony Altfeld.** Discussion followed, which included questions about the next steps and the Multi-Modal Transit Corridor (“MMTC”). Concerns were expressed about whether the rights-of-way parcels were considered “reserved” or “dedicated,” which could present problems with the future designs and implementation of the MMTC. Chair Houlemard said that the MMTC agreement still needs to be approved by the agencies and jurisdictions. Jim Cook reminded all that the County is keeping their option open regarding compensation for parcels transferred to Monterey-Salinas Transit prior to construction of the Corridor, as long as other principals maintain that position. Tony Altfeld offered to meet and discuss these issues with Mr. Cook and others. Chair Houlemard said it was important for FORA to tackle the hard issues before FORA sunsets in 2014. **A call for the vote on the motion was made, and the**

**motion passed.** Kathleen Ventimiglia, the CSUMB representative, requested a copy of the signed letter to President Harrison when it is available.

Item 7d – Environmental Services Cooperative Agreement (“ESCA”) – update: FORA ESCA Program Manager Stan Cook reported that “things are going well.” He said the field crews are working on vegetation removal and the RQA (Residential Quality Assurance) pilot study is currently active in parcels south of Gigling Road, which he pointed out on the map he distributed. Mr. Cook announced that FORA received the final ESCA payment from the Army on December 17<sup>th</sup>. Chair Houlemard commented that ESCA funds provide some revenue for the HCP, which might give FORA a “leg up” for any economic recovery funds. Mr. Cook called attention to the monthly program report to the U.S. Environmental Protection Agency per the Administrative Order on Consent, which was new to the committee. He said this report is more detailed than the previous reports distributed to the committee, but it also includes a summary of the public participation activities for the month of November. Mr. Cook reported that the FOSET 5 and FOST 10 property transfers were imminent. He said Special Counsel George Schlossberg had recommended amending the land recipients’ Implementation Agreements with language outlining the handling of the Public Benefit Conveyances (PBC’s) that had been converted to Economic Development Conveyances (EDC’s). He distributed the implementation agreements with the amendments to the four jurisdictions and encouraged them to review and sign them as soon as possible. Dick Goblirsch requested that the two missing exhibits be provided before he could recommend approval by Del Rey Oaks, which Mr. Cook agreed to provide.

## **8. New Business**

Item 8a – Distribution of final 2009 meeting date calendar: The 2009 meeting date calendars were included in the packet and the members were encouraged to note the dates on their own calendars.

## **9. Adjournment**

Chair Houlemard adjourned the meeting at 9:17 a.m.

Minutes prepared by Linda Stiehl, Executive Assistant

**FORT ORD REUSE AUTHORITY**

100 12<sup>th</sup> Street, Building 2880

Marina, CA 93933

(831) 883-3672 (TEL) · (831) 883-3675 (FAX) · www.fora.org

**MINUTES OF THE  
ADMINISTRATIVE COMMITTEE MEETING  
Wednesday, February 4, 2009**

**DRAFT**

**1. Call to Order**

Chair Doug Yount called the meeting to order at 8:17 a.m. The following representatives from the land recipient jurisdictions, representing a quorum, were present:

\*Nick Nichols -- County of Monterey

\*Dick Goblirsch - City of Del Rey Oaks

\*Doug Yount -- City of Marina

\*Ray Corpuz -- City of Seaside

Also present, as indicated by the roll sheet signatures, were:

\*Todd Muck -- TAMC

\*Rob Robinson -- BRAC

Jim Arnold -- FORA

Crissy Maras -- FORA

Diana Ingersoll -- City of Seaside

Bob Schaffer -- Marina Community Partners

Bob Holden -- MRWPCA

Steve Endsley -- FORA

John Tiernan -- MRWPCA

\*Kathleen Ventimiglia -- CSUMB

\*Michael Gallant -- Monterey-Salinas Transit

Scott Hilk -- Marina Community Partners

Tom Tuttle - RCI

\*Vicki Nakamura -- Monterey Peninsula College

\*Jim Heitzman -- MCWD

Pat Ward -- Bestor Engineers

Michael Houlemard - FORA

\* indicates a committee member and (\*) indicates a FORA voting member but not a land recipient jurisdiction.

Voting board member jurisdictions not represented at this meeting were Salinas, Pacific Grove, Sand City, Monterey, and Carmel.

**2. Pledge of Allegiance**

Chair Houlemard asked Dick Goblirsch, who agreed, to lead the Pledge of Allegiance.

**3. Acknowledgements, announcements and correspondence**

Executive Officer Houlemard reported that he had responded to requests to send letters to Senators Feinstein and Boxer indicating FORA's support of No-Cost Economic Conveyances. He also reported that \$300M for base clean-up costs had been inserted recently in the federal budget. He asked Rob Robinson to pass the word up the line about the importance of completing base clean-up projects, because it adds value to the properties.

4. **Public comment period - none**
5. **Approval of December 30, 2008 meeting minutes**

**Motion to approve the December 30, 2008 meeting minutes was made by Dick Goblirsch, seconded by Ray Corpuz, and carried.**

6. **Review of the draft February 13, 2009 FORA board meeting agenda and draft board reports**

Executive Officer Houlemard summarized the items on the draft February board agenda.

Re Item 7a [Habitat Conservation Plan (“HCP”) approval process]: Mr. Houlemard said the HCP meeting today was scheduled from 10:00 – 4:00. Discussion would focus on the JPA (Joint Powers Authority), the Implementing Agreement, and an ordinance that all parties must approve. He said these documents are critical and he encouraged all parties to send comments/concerns regarding the draft text of each. The item is on the FORA Board agenda for Action in order to seek the board’s direction.

Re Item 7c [Water for Monterey County Project and Regional Urban Water Augmentation Program (RUWAP)]: Mr. Houlemard emphasized three points: (1) all need to be kept informed about these water projects; (2) coordinated support for the project was essential if this region is to be competitive for funding; and (3) Marina Coast Water District (“MCWD”) and Monterey Regional Water Pollution Control Agency (“MRWPCA”) must finalize their joint agreement before loan funding can be granted. John Tiernan from MRWPCA reported that approval of the agreement would be taken up at a special board meeting on February 19<sup>th</sup>, and Jim Heitzman from MCWD said his board would consider approval on February 10<sup>th</sup>. Discussion followed about current developments. Mr. Houlemard announced that Congressman Sam Farr, who is an important advocate of water projects, is expected to attend the February board meeting. He encouraged all involved to resolve any remaining differences before the two agency board meetings.

7. **Old Business**

Item 7a – Habitat Conservation Plan (HCP) - status report and schedule: Executive Officer Houlemard reported that staff had been working closely with the regulators. He said that the expected response from CA Department of Fish & Game (“F&G”) had not yet been received, but that more information might be forthcoming at today’s meeting. Director of Planning and Finance Steve Endsley said much internal work had been accomplished during the last two months and “many are on the same page,” which is encouraging. He said FORA’s consultants have indicated that the HCP could be issued (presented to the attorneys for review) in March. He remarked that attention at today’s meeting would focus on the drafts of the Implementing Agreement, JPA, and ordinance, all of which determine how the funding will flow.

Item 7b – California State University, Monterey Bay (“CSUMB”) 2007 Master Plan Recirculated Draft EIR – update: Executive Officer Houlemard reported that the draft EIR had been pulled from the CSU trustees’ January meeting agenda and their next meeting would be in March. He said discussions have been occurring regarding a proposal to prorate or phase CSUMB’s mitigation obligations, but the stumbling block continues to be CSU’s position that if the Legislature does not

fund the mitigations, the university's projects will still move ahead. Mr. Houlemard said he would continue to work through this issue and also the recent Caltrans issue.

Item 7c – American Recovery and Reinvestment Act (“ARRA”): (i) Status report and (ii) Potential FORA projects that could benefit from ARRA: Executive Officer Houlemard reported that he had had an opportunity to attend several meetings, including having a personal conversation with Senator Feinstein, while in Washington, DC, recently. He said that there are “dollars in different pots” in the still evolving ARRA that FORA and its members can tap into. He mentioned funding categories for building demolition and transportation, noting that the General Jim Moore Blvd. and Eastside Road projects are ready to go, lacking only the funding. He said he would give an update on the stimulus/recovery funding at the FORA board meeting on February 13<sup>th</sup>. He remarked that President Obama's deadline to have the ARRA on his desk for signing is February 13<sup>th</sup>. Todd Muck from TAMC said he expects between \$8-20M to be earmarked for Monterey County. He said additions to the TAMC application list are due February 9<sup>th</sup> and the rake list will be finalized by February 25<sup>th</sup>. Mr. Houlemard advised all to be “clear and on point” in leaning forward to obtain whatever dollars become available. He said job creation and infrastructure are key areas to prioritize.

Item 7d – County/Seaside/FORA agreement regarding veterans cemetery: Executive Officer Houlemard mentioned Assemblymember Laird's legislation that created the endowment fund to operate and maintain the cemetery. To fund this endowment about 30 acres of the cemetery land would be sold, generating at least the necessary endowment figure of \$3.4M, if not more. To maximize the endowment funds, a one-time investment by the landowners' (Monterey County and the City of Seaside) and FORA of a portion of their respective rights to the land sale proceeds would be necessary. He said the FORA Board is being asked to weigh in on this decision at their February meeting. Although the formal agreement has not yet been crafted and it is not a good time to forgo revenues, the board policy has been unwaiveringly in support of this cemetery. Ray Corpuz said progress has been made in pursuing this course of action but he added that the current economic situation might present a struggle to find a suitable buyer.

**8. New Business - none**

**9. Adjournment**

Chair Yount adjourned the meeting at 9:12 a.m.

Minutes prepared by Linda Stiehl, Executive Assistant



# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Finance Committee Report

**Meeting Date:** February 13, 2009

**Agenda Number:** 9b

**INFORMATION/ACTION**

### RECOMMENDATION:

- i) Receive minutes from the Finance Committee (FC) meeting of January 12, 2009.
- ii) Approve modifications to the Fort Ord Reuse Authority's (FORA) investment policy.

### BACKGROUND/DISCUSSION:

The FC met on January 12, 2009 to discuss several items including: 1) the FY 2008-2009 mid-year budget (item 8b on this Agenda) and 2) the revisions in FORA's investment policy (*attachment 9b-ii*). Also attached for your information are the Procedures for Operation of Investment Policy and PrimeVest investment account 12-31-08 statement detailing current investments.

Please refer to the attached minutes for details and FC recommendations (*attachment 9b-i*).

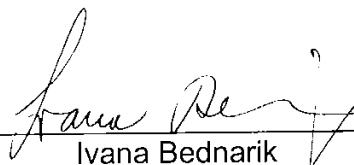
### FISCAL IMPACT:

The significant drop in the stock market in 2008 caused the biggest earning loss since opening the investment account in 2003. To preserve FORA investments during the economic downturn, the FC is recommending revisions in the investment policy and moving funds to more safe fixed income securities as market opportunities arise.

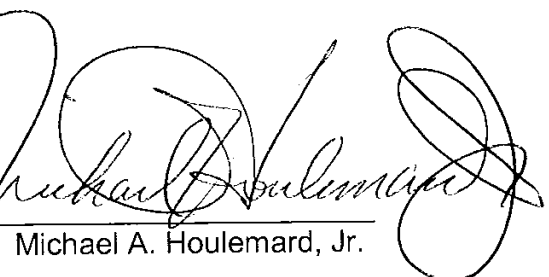
### COORDINATION:

Finance Committee, First National Bank, Marcello & company, CPA.

Prepared by

  
Ivana Bednarik

Approved by

  
Michael A. Houlemard, Jr.



## Fort Ord Reuse Authority

Attachment 9b-i

100 12<sup>th</sup> Street, Building 2880, Marina, CA 93933  
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

### Finance Committee Meeting Monday, January 12, 2009 at 3:30 pm Action Minutes

DRAFT

Present: Chair Sue McCloud, Members: Tom Mancini, Janet Barnes, Graham Bice  
Staff: Michael Houlemard, Ivana Bednarik, Marcela Fridrich

#### AGENDA

The Finance Committee (FC) discussed the following agenda items:

1. Roll Call:

Quorum was achieved at 3:30 PM.

2. October 20, 2008 Minutes:

Approved. (Motion Mancini, Second Barnes. Passed 4 – 0).

3. FY 08-09 Mid-Year Budget Update:

This item was introduced by Michael Houlemard, describing how current recessionary economic conditions impact FORA's ability to collect CFD and Land sale revenues to meet Capital Improvement Program obligations. FC members received the FY 08-09 mid-year budget report prepared by Ivana Bednarik prior to the meeting. FC members commented on major budget variances; a decrease of \$7.6 million in revenues and a decrease of \$9.6 million in expenses. Michael Houlemard reported that all projects funded by CFD funds, except the General Jim Moore Phase IV and Habitat management project, are deferred and activities funded by ET/ESCA funds are moving ahead as planned. Ivana Bednarik explained FC members how the \$300,000 savings in the IOP project could be relocated to pay off EDC consultant obligations and cover for East Garrison Partners (EGP) interest payments and reported that the revised budget will have the ending balance of \$578,372 (or higher pending collection of PLL loan payments from DRO/Federal) which includes FORA reserve account of \$400,000. FC members unanimously voted to recommend that the FORA Board accept the mid-year budget report and approve relocation of the \$300,000 savings at its February 13, 2009 meeting. Approved. (Motion Bice, Second Mancini. Passed 4 – 0).

Michael Houlemard reported on the contract breach by EGP. He suggested FORA filing an action against the EGP property or pursuing joint collection of payments with County of Monterey. Member Barnes suggested bringing this item to the attention of FORA Board. FC members directed staff to report at February 13, 2009 meeting. Approved. (Motion Barnes, Second Bice. Passed 4 – 0).

4. Investment Policy: Review and modification/s:

Michael Houlemard noted that the current economic downturn also negatively impacted FORA's investments with First National Bank. Ralph Marcello, FORA Auditor, suggested FC members to evaluate and change FORA investment policy as it was out of balance after some significant decline. FC members received the revised FORA investment policy prepared by Ivana Bednarik with Auditor's comments prior to the meeting. The Auditor also recommended writing procedures for the operation of the investment program including delegation of authority. Member Barnes suggested that Executive Officer will consult with FC Chair for any investment transaction exceeding 5% of FORA total portfolio and the Executive Committee if further required. FC recommend to the FORA Board accepting the updated/modified Investment Policy at its February 13, 2008 meeting. Approved. (Motion McCloud, Second Mancini. Passed 4 – 0).

5. 2009 Meeting Calendar:

FC members received the draft 2009 meeting calendar prior to the meeting. They reviewed designated dates. Approved. (Motion Barnes, Second Mancini. Passed 4 – 0).

6. Adjournment:

The meeting adjourned at 5:45 PM.

Minutes prepared by Marcela Fridrich, Accounting Officer.



**FORT ORD REUSE AUTHORITY  
OPERATING CASH RESERVES  
REVISED INVESTMENT POLICY**

Adopted: 10-10-2003

Revised: 12-08-2006

Revised: 02-14-2009

**I. PURPOSE/GOALS**

- A. This policy establishes Fort Ord Reuse Authority ("FORA") operating cash reserves investment guidelines.
- B. The goals of this investment policy, in order of priority, are as follows:
  - 1. Preserve Principal; safety of principal is the foremost objective. FORA's investments shall avoid capital losses.
  - 2. Liquidity; the investment portfolio will remain sufficiently liquid to meet FORA's operating requirements.
  - 3. Return on Investment; deliver competitive returns subject to prevailing market conditions.

**II. DELEGATION OF AUTHORITY**

- A: The FORA Executive Officer has the responsibility for managing the investment program. The Executive Officer shall establish written procedures for the operation of the investment program consistent with this investment policy. Procedures shall include delegation of authority to persons responsible for investment transactions and who must be bonded. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Executive Officer.
- B. The Executive Officer shall consult with the Finance Committee Chair any investment transaction exceeding 5% of FORA's total portfolio; the Executive Committee will be routinely informed of these transactions.
- C. The Executive Officer may retain the services of a professional investment advisor approved by the FORA Board.

**III. PRUDENCE**

The FORA Executive Officer when investing or depositing public funds, shall exercise the care, prudence and diligence that a person acting in a like capacity and familiar with such matters would use to attain the investment objectives.

#### IV. INVESTMENT GUIDELINES

##### A. MATURITY

Unless matched to a specific cash flow, FORA should not invest in securities maturing more than 12 months from the date of purchase.

##### B. ELIGIBLE INVESTMENTS

The following investments are authorized for inclusion in the portfolios:

1. Obligations of the U.S. Treasury;
2. Obligations guaranteed by the U.S. Government other than U.S. Treasuries;
3. Obligations of U.S. Federal Agencies and Government Sponsored Enterprises;
4. Bank obligations including: Certificates of Deposit, Deposit Notes, Repurchase Agreements for up to 30 days, and Bankers Acceptances that are registered with the Securities and Exchange Commission and that are consistent with FDIC insurance;
5. Savings and Money Market Accounts;
6. Money market funds and other funds whose portfolios consist of any allowed instrument as specified in this section; and
7. State of California's Local Agency Investment Fund ("LAIF").

##### C. CREDIT QUALITY

1. Emphasis will be placed on securities of high credit quality.
2. Collateral is required for investments noted in B.4. above; the collateral level will be at least 110% .

##### D. DIVERSIFICATION PARAMETERS

The investments will be diversified to eliminate the risk of loss resulting from overconcentration of assets in a specific maturity, a specific issuer or a specific class of investments. Investments shall always be selected that provide for stability of income and reasonable liquidity. Diversification strategies shall be determined and revised periodically by the finance committee/Executive Officer.

The investments shall be diversified by:

- limiting investment overconcentration in a specific issuer or business sector (excluding LAIF, U.S. Treasury and U.S. Government securities),
- investing in securities with varying maturities and limiting investment in securities that have higher credit risks; and
- continuously investing a portion of the portfolio in readily available funds such as LAIF, money market funds or overnight repurchase agreements to ensure that appropriate liquidity is maintained in order to meet ongoing obligations.

**E. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS**

FORA shall only invest with banks, savings and loans, credit unions, and securities dealers approved by the Authority Board.

**V. AUDITS**

FORA external independent auditors shall review FORA's compliance with the investment policy in connection with the annual financial audit.

**VI. REPORTING**

The Controller shall provide quarterly investment reports to the FORA Board. The report shall include a listing of all securities held in the portfolio. Such listing shall include at least the following information: investment description, maturity date, amount of deposit, current market value, rate of interest, and percent distribution of each type of investment

**VII. REVIEW AND AMENDMENTS**

This Investment Policy shall be reviewed annually and may be amended as needed. Any amendments shall be reviewed by the Finance Committee and adopted by the FORA Board.

Authorized by:

\_\_\_\_\_  
Michael A. Houlemard  
Executive Officer

\_\_\_\_\_  
Date



## FORT ORD REUSE AUTHORITY PROCEDURES FOR OPERATION OF INVESTMENT POLICY

Adopted: 02-14-09

**PURPOSE/GOALS:** Set forth a system of controls for the operation of the investment program

### **A. Executive Officer**

The Executive Officer is authorized to manage the investment program and is responsible for approving and signing all investment transactions.

The Executive Officer will consult with: a) the Finance Committee (FC) Chair for any investment transaction exceeding 5% of FORA's total portfolio; and b) the Executive Committee for any transaction or issue recommended by the Executive Officer and FC Chair.

### **DELEGATION OF AUTHORITY**

#### **B. Controller**

The Executive Officer delegates investment program management to the Controller. Under the direction of the Executive Officer, the Controller shall act in accordance with investment policy procedures and internal controls for the operation of the investment program.

#### Controller's authority/responsibility:

1. Make short-term transfers from the general checking account to money market/LAIF account to maximize interest, keeping an appropriate general checking account balance to meet daily cash requirements.
2. Make long-term investments after review and approval by the Executive Officer and FC Chair.
3. Prepare quarterly investment reports to the FORA Board.

#### **C: Accounting Officer**

The Controller delegates certain investment support responsibilities to the Accounting Officer. Under the direction of the Controller, the Accounting Officer shall act in accordance with investment policy procedures and internal controls for the operation of the investment program.

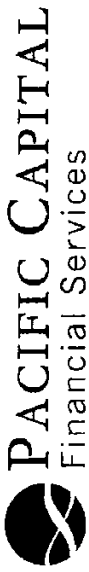
#### **D: Limitation**

No person may engage in an investment transaction except as provided under the terms of the investment policy and these procedures.

Authorized by:

\_\_\_\_\_  
Michael A. Houlemard  
Executive Officer

\_\_\_\_\_  
Date



# DECEMBER 2008 STATEMENT OF ACCOUNT

P o Box 283  
St. Cloud, MN 56302-0283

Report Period: November 28, 2008 to December 31, 2008

Securities provided by **PRIMEVEST Financial Services, Inc.**

Customer Account Number: 33191991

**Statement for the Account of:**  
FORT ORD REUSE AUTHORITY  
ATTN MICHAEL A HOULEMARD JR  
100 12TH ST BLDG 2880  
MARINA CA 93933

**Last Statement**  
11/28/08

**Taxpayer ID**  
On File

**Financial Professional**  
JOHN PIRA JR  
PACIFIC CAPITAL BANK  
307 MAIN STREET  
SALINAS, CA 93901

FORT ORD REUSE AUTHORITY  
ATTN MICHAEL A HOULEMARD JR  
100 12TH ST BLDG 2880  
MARINA CA 93933

**Office #** BCW  
**I.E. #** Y427

## TOTAL PORTFOLIO VALUE

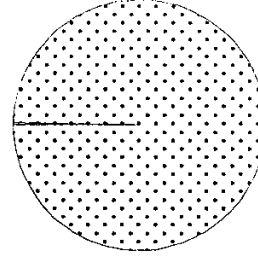
**As of 11/28/08** **\$3,159,709.19**  
**As of 12/31/08** **\$3,263,996.07**  
**Net Change in Account Value** **\$104,286.88**

## CUSTOMER NOTICE

Resolve to take control of your financial future in 2009. Contact your financial professional today for personalized solutions and keen attention.  
Special Note regarding Postage and Handling Fees: PrimeVest now offers eDelivery of client documents. You can eliminate all postage and handling fees when you register for eDelivery. Sign up today!

Securities and insurance products offered by PrimeVest Financial Services, Inc. Member FINRA/SIPC. Not FDIC/NCUSIF insured. May go down in value. Not financial institution guaranteed. Not a deposit. PrimeVest is an independent, registered broker-dealer. PrimeVest is NOT affiliated with the financial institution or any financial institution subsidiary. Certain brokered CDs may be FDIC insured.

## PORTFOLIO ALLOCATION



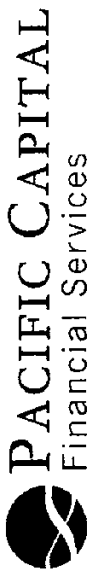
0.21% Cash & MMFs  
99.79% Mutual Funds

## MARKET INDICES

Index	As of 11/28/08	As of 12/31/08	% Change
Dow Jones	8,829.04	8,776.39	(0.60)%
NASDAQ	1,535.57	1,577.03	2.70%
S&P 500	896.24	903.25	0.78%
AMEX	1,364.01	1,397.53	2.46%
30 Year Treasury	3.48%	2.69%	(22.70)%
10 Year Treasury	2.95%	2.24%	(24.07)%

\* Assets representing less than 1% of holding, margin or short positions are not reflected in this chart.

Not financial institution guaranteed. Not a deposit. PrimeVest is an independent, registered broker-dealer. PrimeVest is NOT affiliated with the financial institution or any financial institution subsidiary. Certain brokered CDs may be FDIC insured.



# DECEMBER 2008 STATEMENT OF ACCOUNT

Report Period: November 28, 2008 to December 31, 2008

Customer Account Number: 33191991

Customer: Fort Ord

## PORTFOLIO VALUE SUMMARY

	As of 11/28/08	As of 12/31/08
Mutual Funds	3,152,555.83	3,256,826.20
Money Market Funds	7,153.36	7,169.87
<b>Sub Total</b>	<b>\$3,159,709.19</b>	<b>\$3,263,996.07</b>
<b>Total</b>	<b>\$3,159,709.19</b>	<b>\$3,263,996.07</b>

For account details, refer to the investment section of the statement.

## INCOME AND TAX ACTIVITY SUMMARY

	This Statement	Year to Date
Money Market Income	\$16.51	\$169.12
Dividends - Non-Qualified	63,427.49	126,661.28
Short Term Capital Gains	136.58	2,058.65
Long Term Capital Gains	5,743.97	35,531.92
<b>Total Income</b>	<b>\$69,324.55</b>	<b>\$164,420.97</b>

## MARKET VALUE OF YOUR PORTFOLIO

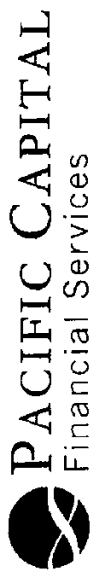
Mutual Funds		Current Market Value	\$3,256,826.20
Cash & Equivalent		Last Statement's Market Value	\$3,152,555.83

## PORTFOLIO VALUE SECTION

### MUTUAL FUNDS

Description	Symbol/ Cusip	Account Type	Quantity	Market Price	Market Value	% of Portfolio	Estimated Annual Income
AMERICAN CAP INC BUILDER A	CAIBX	CASH	2,762.799	41.5300	114,739.04	3.51	5,829.50
AMERICAN CAPITAL WORLD BOND C	CWBCX	CASH	8,169.914	18.6300	152,205.49	4.66	4,648.68
AMERICAN CAP WORLD GR & INC A	CWGIX	CASH	4,783.113	26.5700	127,087.31	3.89	4,926.60
FRANKLIN INCOME C	FCISX	CASH	115,503.820	1.6800	194,046.41	5.94	16,055.03
ING SENIOR INCOME C	XSICX	CASH	24,918.427	7.9800	198,849.04	6.09	0.00
AMERICAN INCOME FUND OF AMER C	IFACX	CASH	8,978.838	12.9800	116,545.31	3.57	5,782.37
AMERICAN INVEST CO OF AMER C	AICCX	CASH	3,356.231	20.8200	69,876.72	2.14	1,527.08
MFS UTILITIES C	MMUCX	CASH	14,610.378	11.6500	170,210.90	5.21	4,149.34





# DECEMBER 2008 STATEMENT OF ACCOUNT

Report Period: November 28, 2008 to December 31, 2008

Customer Account Number: 33191991

Customer: Fort Ord

## MUTUAL FUNDS (Continued)

Description	Symbol/ Cusip	Account Type	Quantity	Market Price	Market Value	% of Portfolio	Estimated Annual Income
FRANKLIN MUTUAL SHARES C	TEMTX	CASH	11,772.387	15.1000	177,763.04	5.44	529.75
OPPENHEIMER CAPITAL INCOME A	OPPEX	CASH	25,646.996	6.7800	173,886.63	5.32	12,284.91
OPPENHEIMER BALANCED A	OPASX	CASH	13,726.164	7.6400	104,867.89	3.21	2,484.43
OPPENHEIMER RISING DIVIDENDS A	OARDX	CASH	11,099.477	12.0200	133,415.71	4.08	2,752.67
PACIFIC PL OPTIM MODERATE A	POCAX	CASH	181,349.133	8.4000	1,523,332.71	46.73	63,472.19
<b>TOTAL - MUTUAL FUNDS</b>			<b>426,677.677</b>		<b>\$3,256,826.20</b>	<b>99.79</b>	<b>\$124,442.55</b>

## CASH, FLEXINSURED ACCOUNT and MONEY MARKET FUNDS

Description	Rate	Balance	% of Portfolio	Days in Cycle
CASH ACCOUNT		0.00	0.00	
PRIME CASH SERIES	2.03	7,169.87	0.21	
<b>TOTAL - CASH, FLEXINSURED ACCOUNT and MONEY MARKET FUNDS</b>		<b>\$7,169.87</b>	<b>0.21</b>	

## TOTAL ACCOUNT VALUE

**\$3,263,996.07**      **100.00%**

Unlisted Securities are not included in the Market Value column of your account balance information. Valuation of Security Positions are obtained from an independent source. While our source is considered reliable, prices are approximations and may not reflect prevailing market quotes. THIS IS ESPECIALLY TRUE FOR BOND PRICES. The valuations on your statements are provided only as a general guideline to portfolio value.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b>	Executive Officer's trip to Washington, DC/ American Recovery and Reinvestment Act	
<b>Meeting Date:</b>	February 13, 2009	<b>INFORMATION</b>
<b>Agenda Number:</b>	9c	

### RECOMMENDATION:

Receive an oral report from the Executive Officer regarding his trip to Washington, DC, from January 13–22, 2009.

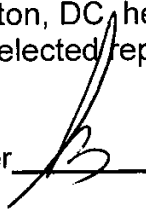
### BACKGROUND/DISCUSSION:

At the January board meeting, Executive Officer Houlemard requested that the Board consider a five-day extension to his previously approved trip to Washington, DC. This extension would allow him to respond to a request to speak at a Senate Armed Services Committee hearing on January 14<sup>th</sup> on property conveyances and language for the economic stimulus bill. The board concurred with this request.

Mr. Houlemard said his travel expenses would be partially reimbursed by the Association of Defense Communities ("ADC") and he asked for flexibility to adjust the costs between ADC and FORA. Pursuant to a suggestion by Mayor McCloud, the Board agreed to reimburse Mr. Houlemard's lodging and air travel expenses, since he would be able to make contacts with members of the administration, Congress and others to obtain information about the economic recovery/ stimulus program now known as the American Recovery and Reinvestment Act ("ARRA"). Mr. Houlemard forwarded a report to the Board and regional executives regarding ARRA last week.

During his stay in Washington, DC, he had several meetings with legislative and government officials and FORA's elected representatives. He was there from January 13–22.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Funds requested are covered by the approved FORA budget.

### COORDINATION:

FORA Board of Directors and the Executive Committee

Prepared by 

Linda L. Stiehl

Approved by 

Michael A. Houlemard, Jr.



## FORT ORD REUSE AUTHORITY

100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933

PHONE: (831) 883-3672 - FAX: (831) 883-3675

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

February 9, 2009

President Dianne F. Harrison  
CSU Monterey Bay  
100 Campus Center, Building 1  
Seaside, CA 93955-8001

**Re: California State University, Monterey Bay Master Plan implementation**

Dear Dr. Harrison:

Thank you for providing a briefing and update to the Fort Ord Reuse Authority ("FORA") Executive Committee on February 4<sup>th</sup>, regarding your recent discussions with California State University ("CSU") Chancellor Charles Reed, concerning the CSU Monterey Bay ("MB") Master Plan implementation. The FORA Board officers are very appreciative of your efforts to keep the dialogue open and ongoing. We continue to believe that collaborative engagement of the issues will produce results that will be fair and equitable to all parties.

The Executive Committee expressed its belief that final resolution of our differences is attainable. There was general agreement that we need to devise a creative model for our unique relationship. This letter outlines some of FORA's important points to present to the CSU leadership.

During the meeting Executive Officer Michael Houlemard listed four points: (1) the CSU Board of Trustees must recognize that the deficit mitigation obligation should be paid in the near future; (2) FORA is open to phasing CSUMB's payments for future obligations, which should be formalized in an agreement that provides a degree of flexibility; (3) the CSU Trustees need to be open to a flexible solution that will satisfy all parties, that may include increasing transit participation and shuttle systems that can defer impacts; and (4) joint, cooperative efforts to seek state and federal grants to supply infrastructure needs, which will reduce both FORA's and CSU's obligations.

We exist in difficult economic times, where the old solutions and procedures are proving inadequate to the challenges we face. FORA recognizes that the 23 CSU campuses now have a legal obligation to be a partner in mitigating its impacts on the surrounding communities. We are aware that all public universities and colleges are competing for new enrollment, new programs and growth, and FORA welcomes CSUMB enrollment growth that is imperative for CSUMB to remain a vital asset to the region and the entire CSU system.

Thank you again for bringing your concerns to the FORA Executive Committee. I have directed the FORA staff to prioritize resolution of the issues that remain between us and remain optimistic we will open many new opportunities for us both.

Sincerely,

Ralph Rubio  
Chair, Board of Directors