



# FORT ORD REUSE AUTHORITY

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

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## REGULAR MEETING FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Friday, January 10, 2014 at 2:00 p.m.

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

### AGENDA

#### 1. CALL TO ORDER

#### 2. PLEDGE OF ALLEGIANCE

#### 3. CLOSED SESSION

- a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – **3 Cases**
  - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961
  - ii. Bogan v. Houlemard, Case Number: M122980
  - iii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856
- b. Public Employee Performance Evaluation – Gov Code 54957  
Executive Officer - Contract Terms and Conditions

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

#### 5. ROLL CALL

#### 6. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

#### 7. CONSENT AGENDA

- a. Approve December 13, 2013 Board Meeting Minutes ([pg. 1-3](#)) ACTION

#### 8. OLD BUSINESS

- a. 2<sup>nd</sup> Vote: Preston Park Management Agreement Extension with Alliance Communities, Inc. ([pg. 4-36](#)) ACTION
- b. Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination ([pg. 37-106](#)) ACTION
- c. Pollution Legal Liability (PLL) Insurance Policy ([pg. 107-108](#))
  - i. Presentation - Barry Steinberg (Kutak Rock LLP)/Kathy Gettys (Marsh) INFORMATION
  - ii. Consider Insurance Coverage Options ACTION
- d. Environmental Services Cooperative Agreement (ESCA) Update ([pg. 109-111](#)) INFORMATION
- e. Multi-modal Transit Corridor - Presentation by Transportation Agency for Monterey County ([pg. 112-115](#)) INFORMATION

#### 9. NEW BUSINESS

- a. Accept Fiscal Year 12-13 FORA Annual Financial Report (Audit Report) ([pg. 116-171](#)) ACTION
- b. Elect 2014 FORA Board Officers ([pg. 172-173](#))
  - i. Receive Nominating Committee Report INFORMATION
  - ii. Conduct Election ACTION

**10. PUBLIC COMMENT PERIOD**

Members of the public wishing to address the FORA Board of Directors on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period for up to three minutes. Public comments on specific agenda items are heard under that item.

**11. EXECUTIVE OFFICER’S REPORT**

- a. Outstanding Receivables (pg. 174)
- b. Habitat Conservation Plan Update (pg. 175)
- c. Administrative Committee (pg. 176-179)
- d. Finance Committee (pg. 180-182)
- e. Post Reassessment Advisory Committee (pg. 183-184)
- f. Veterans Issues Advisory Committee (pg. 185-186)
- g. Water/Wastewater Oversight Committee (pg. 187-188)
- h. Travel Report (pg. 189)
- i. Public Correspondence to the Board (pg. 190)

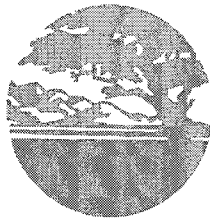
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**12. ITEMS FROM MEMBERS**

**13. ADJOURNMENT**

**NEXT REGULAR BOARD MEETING: FEBRUARY 14, 2014**

Persons seeking disability related accommodations should contact FORA 24 hrs prior to the meeting. This meeting is recorded by Access Monterey Peninsula and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Chanel 25. The video and meeting materials are available online at [www.fora.org](http://www.fora.org).



# FORT ORD REUSE AUTHORITY

## BOARD OF DIRECTORS SPECIAL MEETING MINUTES

4:30 p.m. - Friday, December 13, 2013

University Center at California State University, Monterey Bay  
100 Campus Center (6<sup>th</sup> Avenue), Seaside, CA 93955

### 1. CALL TO ORDER

Chair Edelen called the meeting to order at 4:30 p.m.

#### **Voting Members Present:** (*\*alternates*)

Chair/Mayor Edelen (City of Del Rey Oaks)

Councilmember Beach (City of Carmel-by-the-Sea)

Mayor Gunter (City of Salinas)

Mayor Kampe (City of Pacific Grove)

Councilmember Morton (City of Marina)

Mayor Pro-Tem O'Connell (City of Marina)

Mayor Pro-Tem Oglesby (City of Seaside)

Supervisor Parker (County of Monterey)

Mayor Pendergrass (City of Sand City)

Mayor Rubio (City of Seaside)

**Absent:** Councilmember Selfridge (City of Monterey), Supervisor Potter (County of Monterey), Supervisor Salinas (County of Monterey)

**Ex-officio (Non-Voting) Board Members Present:** Sonja Arndt\* (20<sup>th</sup> Congressional District), Nicole Charles\* (17<sup>th</sup> State Senate District), Erica Parker\* (29<sup>th</sup> State Assembly District), Graham Bice\* (University of California), Debbie Hale (Transportation Agency for Monterey County), Bill Collins (Fort Ord BRAC Office), and Director Moore (Marina Coast Water District).

### 3. PLEDGE OF ALLEGIANCE

Chair Edelen led the Pledge of Allegiance.

### 4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael Houlemard read Board resolution 13-11, recognizing City of Monterey City Manager Fred Meurer, into the record. Chair Edelen stated the resolution would be added to the consent agenda and discussed Mr. Muerer's national leadership in the area of public/private defense community partnerships.

#### **a. Report on Outcomes from the CSUMB/FORA Base Reuse Implementation Colloquium**

Mr. Houlemard provided a report to the Board on the Colloquium, summarizing the main points and comments received for each panel. President Ochoa welcomed the Fort Ord Reuse Authority (FORA) Board to California State University, Monterey Bay (CSUMB) and discussed the need to incorporate the information received over the previous two days into base reuse efforts. Multiple Board members commented on the event and its impact.

### 8. PUBLIC COMMENT PERIOD

Members of the public addressed the Board.

### 5. CONSENT AGENDA

Chair Edelen explained that although the FORA Board had previously approved the transfer of the California Central Coast Veterans Cemetery (CCCVC) property and authorized the Executive Officer to take necessary actions to implement the transfer, the state of California required a formal resolution authorizing the Executive Officer to sign the agreement. Staff had received the

agreement from the state the previous day, not permitting time for the item to be properly agendaized. As the state required immediate execution of the agreement, Chair Edelen requested Board approval to add the item to the consent agenda as an urgency item.

MOTION: Mayor Rubio moved, seconded by Supervisor Parker, to add resolution 13-11, authorizing the Executive Officer to execute an agreement for no cost transfer and acceptance of real property with the state of California, to the consent agenda as an urgency item.

MOTION PASSED: unanimous

- a. **Approval of the October 4, 2013 Board Meeting Minutes**
- b. **Approval of the November 8, 2013 Board Meeting Minutes**
- c. **Approval of 2014 FORA Board Meeting Schedule**
- d. **FORA Policy Amendments: Expense Reimbursement/Cell Phone**
- e. **Legal Services Contract Extension – Alan Waltner**
- f. **Adopt Resolution 13-10, Recognizing Monterey City Manager Fred Meurer**
- g. **Adopt Resolution 13-11, Authorizing the Executive Officer to Execute an Agreement for No Cost Transfer and Acceptance of Real Property with the State of California**

MOTION: Mayor Rubio moved, seconded by Mayor Gunter, to approve the consent agenda.

MOTION PASSED: unanimous

## 6. OLD BUSINESS

### a. **Capital Improvement Program Review - Phase III Study Authorization**

Senior Planner Jonathan Garcia presented the item to the Board.

MOTION: Mayor Gunter moved, seconded by Mayor Rubio, to:

- i. Approve FY 13-14 budget augmentation of \$25,000 for the Financial Consultant line item to pay for the supplemental Habitat Conservation Plan analyses (Task 4).
- ii. Authorize the Executive Officer to execute contract amendment #8 with Economic & Planning Systems, Inc. (EPS) to complete the Capital Improvement Program (CIP) – Phase III Study, not to exceed \$75,000.

MOTION PASSED: unanimous

### b. **Preston Park Management Agreement Extension with Alliance Communities, Inc.**

Principal Analyst Robert Norris presented the item to the Board.

MOTION: Mayor Rubio moved, seconded by Supervisor Parker, to authorize the Executive Officer to extend the Alliance/FORA Preston Park Management Agreement for one year.

MOTION PASSED (2<sup>nd</sup> Vote Required): Ayes: Edelen, Beach, Parker, Oglesby, Rubio, Gunter, Kampe. Noes: Morton, O'Connell

### c. **Fort Ord Initiatives (Measures K & M Election)**

- i. **Receive Certification of Election Results from Monterey County Elections Department**
- ii. **Extend Election Legal Services Contract - Steve Churchwell**

Mr. Houlemard presented the item. Authority Counsel Jon Giffen responded to Board questions.

MOTION: Mayor Gunter moved, seconded by Mayor Pro-Tem Oglesby, to receive certification of election results from the Monterey County Elections Department and to extend the Election Legal Services Contract with Steve Churchwell, not to exceed an additional \$11,000.

MOTION PASSED: unanimous

## 7. NEW BUSINESS

### a. Adopt 2014 FORA Legislative Agenda

Mr. Houlemard reviewed the 2014 Legislative Agenda. Supervisor Parker asked that “and active transportation” be added to the last item under “Proposed Position” in Section E. Director Moore requested that the word “permitted” under “Benefits” in Section C be amended to “projected.”

Erica Parker announced the 12:00 p.m. December 18<sup>th</sup> Water Bond Hearing to take place in Seaside.

MOTION: Mayor Rubio moved, seconded by Mayor Kampe, to approve the 2014 Legislative Agenda, as revised.

MOTION PASSED: unanimous

## 8. EXECUTIVE OFFICER’S REPORT

- a. Outstanding Receivables
- b. Habitat Conservation Plan Update
- c. Finance Committee
- d. Post Reassessment Advisory Committee
- e. Travel Report
- f. Appraisal Instructions for Church of Jesus Christ of Latter-Day Saints (LDS) Site in City of Marina
- g. Public Correspondence to the Board

Mr. Houlemard noted that FORA had switched from Union Bank to 1<sup>st</sup> Capital Bank. He stated that all items were informational and did not require discussion.

## 9. ITEMS FROM MEMBERS

None.

## 10. CLOSED SESSION - The Board adjourned into closed session at 5:40 p.m.

- a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – 3 Cases
  - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961
  - ii. Bogan v. Houlemard, Case Number: M122980
  - iii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856
- b. Public Employee Performance Evaluation – Gov Code 54957  
Executive Officer - Contract Terms and Conditions

## 6. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

The Board reconvened into open session at 5:59 p.m. and Authority Counsel Jon Giffen announced no reportable action was taken.

## 10. ADJOURNMENT

Chair Edelen adjourned the meeting at 6:00 p.m.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

<b>Subject:</b>	2 <sup>nd</sup> Vote-Preston Park Management Agreement Extension with Alliance Communities, Inc.	
<b>Meeting Date:</b>	January 10, 2014	<b>ACTION</b>
<b>Agenda Number:</b>	8a	

### RECOMMENDATION:

Authorize the Executive Officer to extend the Alliance/FORA Preston Park Management Agreement for one year. **(Second vote, Public Hearing held on December 13, 2013.)**

### BACKGROUND/DISCUSSION:

The 2013 Preston Park Management Agreement Extension (PPMA) between FORA and Alliance Communities, Inc. (Alliance) received a majority vote for approval at the December 13, 2013 meeting and is being returned for a 2<sup>nd</sup> vote.

Until December 31, 2011, Alliance, FORA and the City of Marina were parties to the PPMA. Thereafter, the FORA Board voted to approve a PPMA with two parties.

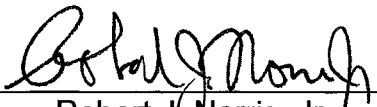
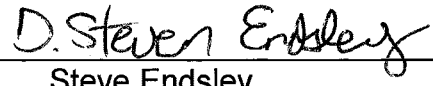
On October 11, 2013, Alliance's annual performance review was presented to the FORA Board. While the overall review of Alliance was rated Satisfactory, the review rated Alliance "Satisfactory with Needs to Improve" its rating in two areas: (1) the development of a Preston Park Tenant Handbook and (2) the modification of contract language to aggregate reporting data in the monthly operations report into a quarterly summary table. The terms of the 2014 PPMA (**Attachment A**) have been modified to address the "Satisfactory with Needs to Improve" items from the Alliance Management performance review. The entire contract is available at this link: (<http://fora.org/Board/2014/Packet/Additional/011014Item8a-AttachA.pdf>). The proposed Preston Park Tenant Handbook is attached to this report (**Attachment B**).

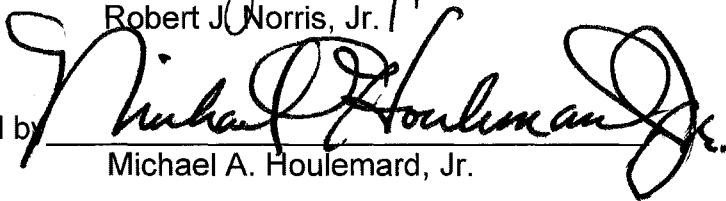
**FISCAL IMPACT:** Reviewed by FORA Controller 

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

### COORDINATION:

FORA Controller, Authority Counsel, FORA Auditor, and Alliance Management Staff.

Prepared by  Reviewed by   
Robert J. Norris, Jr. Steve Endsley

Approved by   
Michael A. Houlemard, Jr.



## PRESTON PARK MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on December 5, 2013. It is made by and between the Fort Ord Reuse Authority, a California public entity, ("Owner") and Alliance Communities, Inc., a Delaware corporation, ("Operator"). This Agreement replaces the preceding Management Agreement dated February 15, 2013.

### RECITALS

1. Owner holds exclusive title to certain improved real property commonly known as Preston Park consisting of 354 units ("Units") at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. Owner requires the services of a professional management company to perform administrative and financial services. Owner has determined that Operator has the requisite skill, training experience and legal authority, including a California real estate brokerage license, needed to manage the Property.
3. The purpose of this Agreement is to articulate the terms under which Owner and Operator will share responsibilities for the Property.

### AGREEMENT

In consideration of the promises in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, Operator and Owner agree as follows:

1. APPOINTMENT OF OPERATOR. Owner appoints Operator and Operator hereby accepts appointment as Owner's exclusive agent to manage, operate, supervise, and lease the Property and to perform those actions necessary to fulfill Operator's obligations to the Owner except as provided herein.

2. TERM

2.1 TERM. This Agreement shall commence on January 1, 2014, and shall continue to midnight, December 31, 2014 or until the Fort Ord Reuse Authority ("FORA") transfers title to the Property except as provided in section 2.2., whichever occurs first.

2.2 EARLY TERMINATION. This Agreement is terminable on the occurrence of any of the following:

(a) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority. In that event, Operator may terminate this Agreement upon thirty (30) days written notice to Owner unless Owner is in good faith contesting same, under Section 4.2(g).

(b) If either party defaults in the performance of a material obligation and such default continues for thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying such

default. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30-day period then the party not in default shall not affect the termination.

(c) Owner or Operator may terminate this Agreement with cause upon sixty (60) days written notice to the other party. It is understood that the respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon the effective date of termination of this Agreement for any reason:

(a) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(b) Operator will immediately deliver to Owner all Books, Records, and Documents (as herein defined) maintained under this Agreement and do all that is reasonably necessary to facilitate the orderly transition of Property management;

(c) Operator shall render to Owner an accounting of all funds (i. e. bank accounts) of Owner held by Operator relating to property and shall immediately cause such funds to be paid to Owner; and

(d) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

### 3. COMPENSATION

3.1 Management Fee. In addition to other reimbursements to Operator provided for in this Agreement, Owner shall pay Operator a monthly management fee equal to 2.5% of the Gross Revenue, as defined in Section 3.2. Owner shall pay Management Fees in monthly installments at the beginning of each month. These fees shall be paid from the Trust Account as part of the operating expenses of the Property.

3.2 Gross Revenue. For purposes of computing the Management Fee, the term "Gross Revenue" means all revenue derived from the Property, determined on a cash basis, from (a) tenant rentals for each month during the Term of this Agreement; excluding tenant security deposits (except as provided below); (b) forfeited cleaning, security and damage deposits; (c) laundry and vending machines receipts; (d) other revenue from the operation of the Property received during the Term of this Agreement; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) charges collected in connection with termination of the tenant's right of occupancy. Gross Revenue does not include the proceeds of (i) sale, exchange, refinancing, condemnation, or other disposition of all or any part of the Property, (ii) any loans to Owner whether or not secured by all or any part of the Property, (iii) any capital expenditures or funds deposited to cover costs of operations made by Owner, and (iv) any insurance policy (other than rental interruption insurance or proceeds from third-party damage claims).

3.3 Distribution of net profits to City of Marina and FORA. As provided in Government Code section 67678(b) (2), Operator shall distribute net profit from operation of the Property as follows: Fifty percent (50%) to the City of Marina, and Fifty percent (50%) to FORA.

3.4 Capital Improvement Management Fee. **On or before March 31, 2014** Operator shall submit to Owner an annual Capital Improvement Program ("CIP"). The CIP shall describe recommended capital improvements. The Owner shall approve in writing the Capital improvement projects to be undertaken each year. Owner will pay to Operator a construction management fee for Capital Improvements managed by Operator. That fee shall be equal to six percent (6%) of the total project cost as set forth in an executed written proposal or agreement. Each project must be approved in writing by Owner. Operator's fee will be



increased or decreased by all change orders approved by Owner. Operator's CIP management fee shall be computed and paid based on monthly construction invoices. Such fees and capital projects will be paid from Reserve Account.

### 3.5 Definitions for Section 3:

3.5.1 Capital Improvements and Maintenance. For purposes of this Section 3.4, a capital item is distinguished from maintenance in that a capital improvement is intended to extend the useful life of a fixed asset, whereas repairs and maintenance keep the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not capital improvements. Replacement of structural elements, even costing more than Five Thousand Dollars (\$5,000), caused by normal wear and tear, are maintenance and not a capital improvement. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately.

3.5.2 Routine maintenance: Simple, small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear. Examples: Those items listed in the budget classified as general Repairs and Maintenance.

3.5.3 Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system. Examples: Slurry seal, carpet and flooring replacements, appliance replacements, minor roof and gutter repairs, dryer vent cleaning.

3.5.4 Capital items/construction: Complex or larger scale activity associated with buildings, structures, or other improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc. Examples: Replacement of windows, exterior building repaint, interior unit remodeling or remediation, re-plumbing projects, signage development, roof replacement.

## 4. DUTIES AND RESPONSIBILITIES

4.1 OPERATOR'S RESPONSIBILITIES. Operator is responsible for management of the Property in accordance with the standards of practice of professional managers of similar properties in the Monterey Peninsula area. Operator will provide other customary management services related to the ordinary business affairs of the Property consistent with the standards of management, operation, leasing, and maintenance of similar property in the area. Those services shall include but not be limited to the Scope of Services described in Exhibit "A.". Operator shall also establish and implement a mutually agreeable business plan and shall operate within the annual budget as approved by Owner. Operator acknowledges and shall continue, unless given new instructions, the commingling of staff, space for maintenance and administrative staff, and equipment and supplies for property management of the Preston Park (FORA-owned property) and Abrams B (City of Marina-owned property) on a 60/40 basis.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to undertake the functions described in this section.

4.2.1 Collections Practice. Operator shall use commercially reasonable efforts and means to collect rents and other charges due from tenants. When deemed a sound business practice, Operator will institute legal proceedings on behalf of Owner to collect unpaid debts. Owner hereby authorizes Operator to request, demand, collect, and receive funds for collection thereof in accordance with all applicable laws, regulations,

ordinances or administrative grievance procedures and for the lawful dispossession of tenants, guests, and other persons from Property. Owner agrees to reimburse Operator's expenses of collection, provided such expenditures have been approved in writing by Owner.

#### 4.2.2 Books, Records, and Documentation.

4.2.2.1 Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation contracts, leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors, job descriptions, business correspondence, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documentation"). Operator shall maintain all financial books and records in conformance with generally accepted accounting principles at Operator's sole expense. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office with two day's written advance notice to Operator.

4.2.2.2 Upon request, Operator shall make financial books and records available for examination, audit, inspection and copying by public officials with regulatory authority over the Operator or Property to the extent required by law. Since the City of Marina obtains 50% of the proceeds, the City of Marina will have the same inspection rights as FORA.

4.2.2.3 On or before fifteen (15) days following the end of each calendar month, Operator shall deliver or cause to be delivered to Owner a standard Financial Reporting Package. The Financial Reporting Package shall include an unaudited financial statements and various reports as follows: Summary of Management Activities including summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question, Variance Analysis, Market Survey, Income statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date, and comparison of actual income and expenses with the income and expenses projected in the Budget, Balance Sheet, Trial Balance, General Ledger detail report of all transactions in all accounts, summary of Account Receivable and Account Payable, Bank Reconciliation and Bank Statements for all three bank accounts, Capital Expenditures Statement, and Request for Reserves Withdrawal. All reporting will use Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.

4.2.3 Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Owner shall arrange and coordinate with Operator on an audit of the books and records of the Property made by a firm of certified public accountants as approved by Owner. Operator shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is a cost of the Property that shall be reflected in the annual budget approved by Owner. To the extent feasible, FORA shall coordinate with City of Marina to conduct an audit of Preston Park in conjunction with City of Marina's audit of Abrams B.

4.2.4 Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and FORA ordinances and policies on local hire, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contract over \$20,000

per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Furthermore, approval shall be required to incur any Property expense pertaining to operations that exceeds the budgeted annual amount for that line item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval. Any expense which does require approval shall be either put out to bid by Operator or Operator shall have obtained at least three quotes for the cost of such item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator.

**4.2.5 Rental of Housing Units.** Operator's renting of the Units shall conform to this Agreement and the following policies:

4.2.5.1 The Units shall be rented on a six-month lease term or month-to-month.

4.2.5.2 Rents established Exhibit "B" will be applied until changed by Owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

4.2.5.3 Applicants for the Units must qualify based upon the applicant's ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") of which thirty two (32) of the Units shall be considered low and nineteen (19) of the units shall be considered very low, as defined in the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner and in accordance with the terms of the Regulatory Agreement. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California.

4.2.5.4 Operator shall select tenants for available units as follows:

(A) Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

(B) **FIRST PREFERENCE:** People who work at least twenty five (25) hours per week in a business or agency with a physical location within the City of Marina. Sales people or consultants who do business in Marina, but who do not have a physical location in Marina will not be considered as working in Marina.

(C) **SECOND PREFERENCE:** Employees of public safety departments, including police, fire, and public works employees of government jurisdictions in Monterey County.

(D) **THIRD PREFERENCE:** Employees of public or private education facilities, including colleges and universities located in Marina, on the former Fort Ord, and employees of the Monterey Peninsula Unified School District.

(E) **FOURTH PREFERENCE:** Employees of entities located on property known as "the former Fort Ord." A letter from the employer stating that the physical location where the applicant works is in this area must be provided."

(F) **Affordable Units.** Notwithstanding the foregoing, preferences (B), (C), (D) and (E) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to the requirement that, on average, twenty percent (20%) of the housing units at the Property will be affordable units."

(G) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner's comments and approval of the terms and conditions thereof. Owner's approval of the proposed rental agreements shall not be unreasonably withheld.

#### 4.2.6 Insurance.

4.2.6.1 Fire Coverage. Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.2 Comprehensive General Liability Coverage. Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy to cover Owner and Operator, in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with 30-day prior written notice of cancellations or material change in coverage. Operator shall be named as an additional insured on such CGL policy.

4.2.6.3 E and O Coverage. Operator shall obtain and keep in force Error and Omission insurance in amount of at least \$1,000,000 per wrongful act and \$1,000,000 in the aggregate. Operator shall obtain such insurance within 30 days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iii) shall be at the expense of Operator.

4.2.6.4 Automobile Coverage. Operator shall obtain and keep in force commercial automobile liability insurance (where applicable) in an amount not less than \$1,000,000 (combined single limit), coverage shall include leased, hired and non-owned vehicles, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.5 Minimizing Insurance Cost. Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss there under uncollectible.

4.2.6.6 Workers' Comp. Operator shall cause to be placed and kept in force workers' compensation insurance up to the statutory limit, including broad form, all-states coverage and employer's liability of at least \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with

employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

4.2.6.7 Selection of Carrier. All of the insurance policies required by this Agreement shall (a) be written by insurance companies which are licensed to do business in California, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of California, with a rating of not less than the third (3rd) highest rating category by anyone of the Rating Agencies or with an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than VI; (b) specifically identify the Owner and Operator as insureds and Lender as an additional insured; mortgagee; loss payee and additional insured with the Owner as the named insured; and (c) include a provision requiring the insurance company to notify the Lender and the Owner in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Operator shall provide the Owner and Lender with certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

#### 4.2.7 Taxes and Assessments.

4.2.7.1 Operator shall process payments of all taxes, impositions, or assessments relating to the ownership or operation of the Property, including, without limitation, improvement assessments, possessory interest and real estate taxes, personal property taxes, taxes on income or rents, or any charges similar to or in lieu of any of the foregoing. Prior to payment, Operator shall verify bills for possessory interest and real estate, personal property or other taxes, improvement assessments, and other similar charges which are due or may become due against the Property on the basis of ownership or operation of the Property. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

4.2.7.2 Operator shall annually review, and submit to Owner a report on, real estate, personal property and other taxes and all assessments affecting the Property.

4.2.8 Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with any laws, orders, public housing agency plans or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency of authority, including but not limited to compliance with and participation in administrative grievance procedures, provided that if the cost of compliance in any instance exceeds \$10,000.00, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices, plans or requirements requiring expenditure of non-budgeted amounts. Operator, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order, plan or requirement. Operator shall prepare, execute, and, after obtaining the written approval of Owner, thereby file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement and shall be an additional cost to Owner. Operator covenants and agrees to obtain and maintain all licenses and permits necessary for the conduct of its business as Operator of the Property. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner provided that such amounts are approved in writing by Owner prior to Operator incurring such expenses. Operator shall comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator

based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

4.2.9 Energy and Water Conservation. Operator shall use prudent and customary means to use and control utilities and water use at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

4.2.10 Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the annual budget approved or Owner's prior written approval.

4.2.11 Employment of Personnel.

4.2.11.1 Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. All costs associated with the employment of personnel necessary for the on-site operation of the Property, including, but not limited to, salaries, wages, the costs of hiring, termination, training, uniforms, educational and motivational programs, other compensation and fringe benefits will be included in the approved budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of employment taxes, worker's compensation, group life and accident and health insurance premiums, 401K contributions, performance bonuses, and disability and other similar benefits paid or payable by Operator to its employees in other apartment properties operated by Operator subject to the annual budget approved by the Owner. The expenses of the Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Any litigation costs or expenses, including reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

4.2.11.2 Operator may treat Property-related expenses of on-site, field, or maintenance as compensable business expenses. These expenses include worker's compensation insurance, travel and training. Such management expenses must be included in the approved budget for the Property. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, employee compensation of workers performing services for Operator at properties other than the Property, shall be reimbursed to Operator *pro rata* based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to use the services of a roving maintenance supervisor prior to services being rendered.

4.2.11.3 Non-compensable Salaries. The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses of Operator's executive personnel charged with general administration of this Agreement and off-site record-keeping personnel are non-reimbursable expenses of Operator.

4.2.11.4 Leasing. Operator shall make diligent efforts to secure and/or retain tenants for the Property consistent with the character and status of the Property as outlined in the established Resident Selection Criteria. Operator shall make diligent efforts to assure that all leases and leasing practices conform to all laws, ordinances, regulations, public housing agency plans or annual contributions contracts applicable

to the Property. Prior to the execution of a new lease by a tenant, Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of the prospective tenant as are ordinarily and customarily performed by the managers of similar properties in the location of the Property.

4.2.11.5 Management Structure. Operator has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

4.2.11.6 Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said procedure is attached as Exhibit "D."

## 5. OWNER'S EXPENSES

5.1 Except as otherwise provided in this Agreement, all reasonable expenses incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner such expenses and reimbursables shall be paid with funds drawn from the Trust Account. Owner's responsibility for such expenses and reimbursables, including future attorneys' fees and costs relating to issues which arose during the term of this Agreement survive termination of this Agreement. Owner's expenses shall be limited to the amount included in the annual budget as approved by the Owner.

5.2 Operator may pay the following expenses directly from the Trust Account subject to other conditions in this Agreement: Reasonable Administrative expenses of the Owner devoted to oversight of the Agreement limited to the amount included in the approved annual budget.

## 6. OPERATOR'S EXPENSES

6.1 Operator agrees to pay all salaries, wages and other compensation and benefits of personnel described in Section 4.2.11 of this Agreement as an Operator's expense without reimbursement by Owner, except as otherwise provided therein. Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing corporate office facilities and supplies for such off-site corporate personnel and other expenses incurred by Operator which are not incurred in the performance of duties and obligations required by this Agreement.

## 7. BANK ACCOUNTS

### 7.1 ESTABLISHMENT OF ACCOUNTS.

7.1.1 Trust Account. Operator shall establish a separate bank account for the Property in such Name as Owner shall designate and at a bank selected by Operator (the "Trust Account"). Operator shall promptly deposit all rents and other funds collected by Operator at least monthly in respect of the Property, including, without limitation, any and all advance rents, into the Trust Account and shall not deposit funds attributable to any other property into the Trust Account. Operator shall inform such bank in writing that the funds deposited in the Trust Account are held in trust for Owner. Operator shall use funds in the account to pay the operating expenses of the Property and any other payments relative to the Property as allowed by the terms of this Agreement. Operator shall establish a working capital reserve equal to \$20,000 to be retained within the Trust Account to make up for operating shortfalls.

7.1.2 Security Deposit Trust Account. Operator shall establish a separate bank account for tenant security deposits at a bank designated by Operator (the "Security Deposit Trust Account") into which such security deposits shall be deposited. The Security Deposit Trust Account will be (a) maintained in accordance

with applicable law and (b) used only for maintaining tenant security deposits for the Property. Operator shall inform the bank in writing that the funds are held in trust for Owner. Operator shall maintain detailed records of all security deposits deposited in the Security Deposit Trust Account, and such records will be open for inspection by Owner's employees or appointees.

7.1.3 Reserve Account. Operator shall establish a separate bank account ("Reserve Account") at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5, Division 2, Part 1, Chapter 4, Article 2, Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

7.1.4 Cash. Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business.

7.1.5 Distributions from Trust Account. Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing. On the 15<sup>th</sup> of the month, Operator will also wire disbursement of Marina's 50% share to the City of Marina, as a continuation of current practice of simultaneous distribution.

7.1.6 Broker / Insurance. The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. The name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator's obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts only upon the signature of at least two (2) individuals who have been granted that authority by Operator. Authorized signatories or persons who handle funds for the Property, whether on or off site, shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date."

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay authorized expenses incurred in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall release reserve funds sufficient to pay same to the Operator.

## 8. ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by March 31 for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated



capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The proposed budgets will be maintained under accrual accounting procedures or such basis as prescribed, in writing, by Owner. Operator will provide an explanation for the numbers used in such budgets. Operator shall make available executive personnel to discuss the proposed budget at a minimum of one meeting of FORA Board of Directors and other meetings as requested.

8.2 SUBMISSION OF OTHER REPORTS. When submitting such proposed budgets, Operator shall also include: rental rate recommendations with analysis if appropriate; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period; a payroll analysis including a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. If Operator submits a timely budget recommendation, and Owner does not disapprove it in writing before July 1, Operator's proposed budget is deemed approved. If an annual budget has not been approved by that date, Operator shall continue to operate the Property under the approved budget for the previous year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Approved budgets shall be used by Operator as a guide for the actual operation of the Property. Written approval from Owner's Representative shall be required to exceed any expense which exceeds the budgeted annual amount for that line item. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval.

8.5 SUBJECT TO IMPLEMENTATION AGREEMENT. Owner and Operator acknowledge that lease revenues from the Property are subject to the Implementation Agreement dated May 1, 2001 ("Implementation Agreement") by and between FORA and the City of Marina. Operator acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall notify Owner of changed financial conditions to allow Owner to determine compliance with the Implementation Agreement. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of the Implementation Agreement as set forth in this Section 8.5.

## 9. GENERAL PROVISIONS

9.1 RELATIONSHIP. Contracts entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner. Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims arising from such contracts. Operator agrees that to the extent Operator deems it necessary or prudent to have separate counsel from that of Owner, Operator shall bear all fees, costs, and expenses associated therewith. Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that the relationship with Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Notwithstanding the foregoing, Operator acknowledges and understands that it is acting as agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

9.2 ASSIGNMENT. This agreement shall not be assigned by Operator without the prior written approval

of Owner which approval may be withheld in Owner's sole and absolute discretion.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 INDEMNIFICATION.

9.4.1 Operator shall indemnify, hold harmless and defend Owner, its officers, and employees, with counsel reasonably satisfactory to Owner, for, from and against any and all liabilities, claims, causes of action, losses, demands and expenses whatsoever including, but not limited to attorneys' fees, court costs and other litigation expenses and costs arising out of or in connection with the maintenance or operation of the Property or this Agreement (collectively the "Claims"), except to the extent arising directly from the gross negligence or willful misconduct of Owner and the loss of use of property following and resulting from damage or destruction. The indemnification by Operator contained in this Section 9.4 is in addition to any other indemnification obligations of Operator contained in this Agreement. Owner shall approve the liability insurance coverage procured by Operator, and, once approved, Owner shall not be entitled to assert the inadequacy, in any respect, of the coverage. Operator's defense and indemnity obligation set forth in this Section 9.4.1 shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2.6.2 of this Agreement unless Operator has engaged in gross negligence or willful misconduct.

9.4.2 Owner shall indemnify Operator (and Operator's affiliates, partners, directors, shareholders, officers, employees and agents) with counsel for, from and against any and all Claims which arise out of the gross negligence or willful misconduct of Owner.

9.4.3 The indemnification and hold harmless obligations of the parties in this Section 9.4 shall survive the expiration or earlier termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: FORT ORD REUSE AUTHORITY  
Attention: Executive Officer  
920 2<sup>nd</sup> Ave., Suite A  
Marina, California 93933

TO OPERATOR: ALLIANCE Communities, Inc.  
Attn: James M. Krohn  
2415 East Camelback Road, Suite 600  
Phoenix, Arizona 85016

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 DISPUTE RESOLUTION. Disputes arising under this agreement shall be resolved as follows:

*9.8.1 Prevention of Claims: Meet and confer (10 days)*

The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within ten calendar days of the initial written request. If the parties are unable to amicably resolve such disagreements or misunderstandings, they agree to enlist the informal assistance of a third party (who is mutually acceptable to both parties) to help them reach an accord. The cost of engaging any third party for the informal assistance described in the preceding sentence shall be shared equally by the parties. If any disagreement remains unresolved for ten days after delivery of the written request to engage in face-to-face discussions, the parties agree to submit it to mediation in accordance with the provisions set forth in Section 9.8.2.

*9.8.2 Mediation (60 days)*

Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection (a). Mediation shall commence not more than thirty (30) days after the initial mediation demand and must be concluded not more than sixty (60) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration.

Mediation shall be submitted first to a mediator with at least ten years experience in real estate management or related field. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. The cost of the mediator shall be shared equally by the parties. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

*9.8.3. Arbitration (90 days)*

If mediation fails to resolve the dispute, the mediator shall become the arbitrator, and shall proceed to dispose of the case under such rules or procedures as he or she shall select. If the mediator is unable or unwilling to serve as arbitrator, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation. The cost of the arbitrator shall be shared equally by the parties.

Arbitration shall be commenced within sixty (60) days of the arbitration demand and concluded within ninety (90) days of arbitration demand.

With respect to monetary disputes only, arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

**NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.**

**BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.**

ALLIANCE'S' INITIALS \_\_\_\_\_

FORA'S: INITIALS \_\_\_\_\_

*9.8.4. Attorney's Fees.*

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

If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

**9.9 APPLICABLE LAW.** This agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall take place in the County of Monterey, State of California.

**9.10 OPERATOR.** The term "Operator" as used in this Agreement shall include any corporate subsidiaries

or affiliates of Operator who perform service, in, on or about the Property in connection with this Agreement.

9.11 NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

9.12 HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.13 INTERPRETATION. This Agreement has been negotiated by and between representatives of the parties hereto and their staffs, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed by the respective legal counsel of each party. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

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

FORT ORD REUSE AUTHORITY

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Michael A. Houlemard Jr., Executive Officer

ALLIANCE COMMUNITIES, INC.

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James M. Krohn, Chief Operating Officer

**EXHIBIT A**  
**Preston Park Management Agreement**

**SCOPE OF SERVICES**

Manage, direct and supervise using commercially reasonable efforts, all aspects of property management for Preston Park which includes, but is not limited to:

- 1 Placement of residents in residential apartment homes with appropriate leases and addendums as prudent or required by law.
- 2 Collect all monthly rents and fees. Institute legal action for the collection of monies owed. Administer rent increases in close cooperation with FORA.
- 3 Maintain community standards of physical and social environment, while keeping within budget guidelines. Respond to requests for maintenance by tenants and FORA promptly. Schedule and conduct annual unit inspections and follow-up annual inspections with corrective work where required.
- 4 Hire, train and supervise all staff needed to effectively manage the community and provide a description of the staffing plan to Owner. Maintain access to multilingual resources to assist with applicants and tenants of Limited English Proficiency, said access may be accomplished through a "language hotline" or similar service so long as it's responsive to the needs of Owner, applicants and tenants.
- 5 Develop and maintain a list of qualified prospective renters. Develop and maintain a list of backup renters. Accept applications for apartment homes and maintain eligibility standards. Maintain preference lists as specified. Seek to maintain full occupancy with a minimum of vacancies.
- 6 Prepare an affirmative fair housing marketing plan. Prepare and circulate marketing materials; e.g. advertisements, brochures, displays, disclosure documents, contracts and program web site. Participate in community meetings as requested.
- 7 Analyze and review financial requirements for operations with Owner; prepare annual budget recommendations for Owner. Work within the approved budget; obtain Owner authorization for variances from the budget. Analyze and prepare multi-year capital improvements plan and make recommendations to Owner about financing and implementation of the plan.
- 8 Develop and implement written office procedures; train and supervise office and leasing personnel.
- 9 Maintain financial records including, but not limited to, the tracking of receipts and deposits, journal entries, bank deposits, accounts payable and accounts receivable. Generate monthly financial reports. Prepare required periodic reports to Owner.
- 10 Report periodically to Owner to ensure that Owner is properly informed (through regular contact and periodic formal meetings) as to the current status of all operations so that the Owner may make proper and timely decisions on all strategic matters.
- 11 Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
- 12 Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the Owner. Participate in meetings and events with tenants as requested.
- 13 Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.

14 Other duties as needed.

**EXHIBIT B**  
Preston Park Management Agreement

**AFFORDABLE RENTAL RATES**

Rates may be established each year.



## EXHIBIT C

### Preston Park Management Agreement

#### MANAGEMENT STRUCTURE

Every year on June 1, Alliance will provide the names of the people associated with the management positions as described on the organization chart.

**The Senior Management Team for Preston Park:**

**Jill Hammond, Regional Manager**

**Steve Keller, Regional Maintenance Supervisor**

**Amy Corcoran, Regional Training Manager**

**Jennifer Barrett, Regional Marketing Manager**

**Annette Thurman, Vice President of Operations**

**Jill Hammond**, Regional Manager, has an office in Walnut Creek, California. She will be at the communities at least two days a week or to the extent mutually agreed upon by Owner and Operator. Corinne will be responsible for all compliance training related to the approved below market rate rental program.

**Steve Keller**, Regional Maintenance Supervisor, will perform monthly site inspections in addition to overseeing any capital projects that require completion. Steve will spend no less than one day per month at the community and possibly more depending on the capital project requirements.

**Amy Corcoran and Jennifer Barrett**, Regional Training Manager and Regional Marketing Manager, shall provide leasing and customer service training and marketing resources. Amy and Jennifer are also available on an as needed basis for one-on-one training.

**Annette Thurman**, Vice President of Operations, will be at the site no less than once per month.

The team above is available to meet with FORA as needed. Owner is to provide operator with an annual calendar of expected meetings during transition period.

**EXHIBIT D**  
**Preston Park Management Agreement**

**TENANT GRIEVANCE PROCEDURE**

Note: All resident issues will be resolved within the guidelines set by FORA, Alliance Communities Inc., and State and Federal Fair Housing Laws.

**12-15-10**

**PRESTON**

**PARK**

**GRIEVANCE PROCEDURE**

***I. Definitions applicable to the grievance procedure***

- A. **Grievance:** Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. **Elements of due process:** An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:
  - 1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
  - 2. Right of the Tenant to be represented by counsel;
  - 3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  - 4. A decision on the merits of the case.
- C. **Hearing Officer:** A neutral party selected by FORA to hear grievances and render a decision. FORA has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Preston Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, FORA shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Preston Park and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.
- D. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit at Preston Park and who executed the lease with Alliance Residential or its predecessor(s).
- E. **Management:** The property management company for Preston Parks is Alliance Residential.
- F. **Management Policies:** Rules and/or regulations contained within the Tenant's valid and most recent lease and any subsequent amendments thereto.
- G. **Working days:** For the purpose of these procedures, working days means the scheduled working days of FORA.
- H. **Tenant's designated representative:** A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

## ***II. Applicability of this grievance procedure***

The purpose of this Grievance Procedure is to set forth the requirements, standards and criteria to assure that Tenants of Preston Parks have a procedure to dispute an act or failure to act by Management (see above for definition of grievance). The Grievance Procedure only applies to grievances lodged by Tenants who lived at Preston Park at the time the alleged dispute occurred.

This grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between a Tenant and Management. The right to a grievance shall apply to disputes over the application of Management's policies to the detriment of a Tenant but shall not apply to the Management policies, class action lawsuits or evictions. Management policies may be discussed with the designated FORA staff representative. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

The grievance procedure may not be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and FORA. Such requests may be made to the designated FORA staff representative.

## ***III. Filing a Grievance and Informal Meeting***

Any grievance must be made in writing at the Alliance Residential Management Office, located at 682 Wahl Court, Marina, CA 93933, **within twenty (20) working calendar days after the grievable event.**

As soon as the grievance is received it will be reviewed by Management to be certain that neither of the exclusions in Paragraph II applies to the grievance. Should one of the exclusions apply, the Tenant or designated representative will be notified in writing that the matter raised is not subject to this grievance procedure, with the reason(s), that the grievance is dismissed and appropriate venue for the Tenant or designated representative to contact.

If neither of the exclusions cited above apply, the Tenant or designated representative will be contacted **within ten (10) working days** to arrange a mutually convenient time to meet so the grievance may be discussed informally and resolved. Management will assign a Staff Representative (usually the Business Manager) to meet with Tenant or designated representative to discuss the grievance informally and attempt to resolve the matter without a further hearing. At this informal meeting the Tenant or designated representative will present the grievance and the Staff Representative will attempt to resolve the grievance to the satisfaction of both parties.

Within **five (5) working days following the informal meeting**, Management shall prepare and either hand deliver or mail to the Tenant or designated representative a summary of the discussion that must specify: the names of the Tenant(s) and all participants at the meeting, the date(s) of meetings, the nature of the grievance, the proposed disposition of the grievance and the specific reasons, and the Tenant's rights to a Grievance Hearing, and, if not satisfied with the disposition of the grievance, the procedure to either respond and have comments placed in the Tenants file or request a Grievance Hearing. A copy of this summary shall also be placed in the Tenant's file. A receipt signed by the Tenant or designated representative or return receipt for delivery of certified mail, whether signed or unsigned, will be sufficient proof of time of delivery for the summary of the informal discussion.

## ***IV. Grievance Hearing***

If the Tenant is dissatisfied with the proposed disposition of the grievance arrived in the informal meeting, the Tenant or designated representative may submit a written request for a Grievance Hearing **no later than ten (10) working days after the summary of the informal meeting is received.**

A Tenant's request for a Grievance Hearing shall be addressed to the Regional Manager c/o Alliance

Residential, 682 Wahl Court, Marina, CA 93933. The written request shall specify:

- The factual basis for the grievance, including any sections of the Tenant's lease or written Management policies allegedly violated;
- The action of relief sought from Management; and
- Several dates and times **in the following fifteen (15) working days** when the Tenant or designated representative can attend a grievance hearing.

If the Tenant or designated representative requests a Grievance Hearing in a timely manner, Management shall schedule a hearing on the grievance at the earliest time possible for the Tenant or designated representative, Management and the Hearing Officer. A written notice specifying the time, place and procedures governing the hearing will be either hand delivered or mailed to the Tenant or designated representative.

If the Tenant or designated representative fails to request a Grievance Hearing **within ten (10) working days** after receiving the proposed disposition of the grievance, Management's decision rendered at the informal meeting becomes final and Management is not obligated to offer the Tenant or designated representative a Grievance Hearing unless the Tenant or designated representative can show good cause why s/he failed to proceed in accordance with the procedure. Failure to request a Grievance Hearing does not affect the Tenant's right to contest the Management's decision in court.

#### ***V. Scheduled hearing***

When a or designated representative submits a timely request for a grievance hearing, Management will, **within three (3) working days**, contact the Hearing Officer to schedule the hearing on one of the dates and times indicated by the Tenant or designated representative. If the Hearing Officer is not available for one or more of the times provided by the Tenant or designated representative during those ten working days, Management will schedule a convenient time for the Grievance Hearing for all parties as soon as possible.

#### ***VI. Procedures governing the Grievance Hearing***

The Tenant shall be afforded a fair hearing, which shall include:

A. The opportunity to examine before the hearing any Management documents, including records and regulations, that are directly relevant to the hearing.

B. The Tenant or designated representative shall be allowed to copy any such documents. If Management does not make the document available for examination, Management cannot rely on such document at the grievance hearing.

C. The Tenant may be represented by counsel or other person chosen as the Tenant's representative, at the Tenant's expense. Management may be represented by counsel. The Tenant, or the designated representative, must be present at the scheduled hearing.

D. The right to present evidence and arguments in support of the Tenant's complaint and to controvert evidence relied on by Management and to confront and cross examine all witnesses upon whose testimony or information Management relies; and

E. A decision based solely and exclusively upon the facts presented at the hearing.

The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings provided that such information is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The Hearing Officer shall require Management, the Tenant or designated representative, counsel and other participants to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to maintain order may result in exclusion from the proceedings.

The Hearing Officer will hear evidence provided by both the Tenant or designated representative and Management and will review appropriate policies, regulations, lease, etc.

***VII. Failure to appear at the hearing***

If either the Tenant or designated representative or Management fails to appear at the scheduled hearing, the Hearing Officer may postpone the hearing **for another date not to exceed five (5) working days**. In the event that Management fails to appear at the re-scheduled hearing, the Hearing Officer shall make his/her decision based on the record including anything submitted by the Tenant or designated representative. In the event that the Tenant or designated representative fails to appear at the re-scheduled hearing, the Tenant is deemed to have waived his/her right to a hearing.

Both the Tenant or the designated representative and Management shall be notified of the determination by the Hearing Officer; provided, that a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest Management's disposition of the grievance in court.

***VIII. Decision of the Hearing Officer***

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within fifteen (15) working days after the hearing**. Any delay on the part of the Hearing Officer in submitting the written decision will not invalidate this process. A copy of the decision shall be sent to the Tenant or designated representative, Management and FORA. Management shall retain a copy of the decision in the Tenant's folder.

The decision of the Hearing Officer shall be binding on Management, which shall take all actions, or refrain from actions, necessary to carry out the decision unless FORA determines **within ten (10) working days** after receiving the written decision, and promptly notifies the Tenant or the designated representative of its determination that:

A. The grievance does not involve Management's action or failure to act in accordance with the Tenant's lease or the property's policies, which adversely affect the Tenant's rights, duties, welfare or status.

B. The decision of the Hearing Officer is contrary to applicable Federal, State or local law or FORA policy or regulation.

A decision by the Hearing Officer or FORA which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the Tenant to judicial review in any court proceedings which may be brought in the matter later.

This Grievance Procedure does not preclude the Tenant from exercising his/her rights, including those rights pertaining to alleged discrimination on the basis of race, color, creed, religion, sex, age, disability, sexual orientation, familial or marital status, ancestry or national origin.

I acknowledge that I have received a copy of this Grievance Procedure.

Signed by \_\_\_\_\_

Date \_\_\_\_\_

Print Name Address  
\_\_\_\_\_

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# PRESTON PARK



## RESIDENT HANDBOOK

2013-2014

# WELCOME

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Welcome to Preston Park, professionally managed by Alliance Residential Company!

## Emergencies

Call 911 for Life Threatening Emergencies

Call (831) 384-0119 to reach the 24-Hour Answering Service

## Contact Us

Address: 682 Wahl Court

Marina, CA 93933

Phone/Fax: (831)384-0119 / (831)384-0213

Email: [prestonpark@allresco.com](mailto:prestonpark@allresco.com)

Webpage: [www.liveatprestonpark.com](http://www.liveatprestonpark.com)

Hours of Operation: M – F 8AM – 6PM

Sat 8AM – 5PM

Sun Closed

## Rent Payments

Rent is due on the first (1<sup>st</sup>) of each month and is considered late after 6 pm on the fifth (5<sup>th</sup>) of each month. If the monthly payment is not paid by the fifth (5<sup>th</sup>), a late fee of **\$50.00** will apply. In addition to a **\$25.00** handling fee, an accrued late charge will be collected on any bank returned check. After receipt of two (2) checks that are returned for non-payment during the term of the Lease, future rent payments shall only be made by cashier's check.

Payments can be made by personal check, cashier's check, bank draft, or credit card. Payments will be accepted in the leasing office, or via our online service at [MyAllianceAdvantage.com](http://MyAllianceAdvantage.com). An after-hours drop box is available for your convenience.



### **Maintenance Services**

In order to submit a service request for any maintenance related issue (broken appliances, plumbing, electrical, pest control, etc.) please contact the leasing office or submit your request online through our resident portal at [MyAllianceAdvantage.com](http://MyAllianceAdvantage.com). It is extremely helpful to provide specific details about the issue (exact location, frequency, etc.) when you report it to our staff. Please be prepared to grant permission for us to enter your home if you planning to not be present while repairs are made. If you have any questions/concerns regarding the status of a service request please feel free to contact the office at (831) 384-0119.

### **Emergency Maintenance Issues**

It is important that you are aware of the differences between an emergency and non-emergency service request. While our staff members understand something may appear a crisis for you, your roommates, and/or family members, only the following issues constitute an emergency in terms of mobilizing maintenance staff after business hours:

- Fire
- Flood (in a room and/or house)/ Excessive Moisture Intrusion
- Gas Smell
- No Water or no Hot Water
- No Electricity or Electrical Shortage
- Sewer Back-Up
- Smoke Detector/Carbon Monoxide Detector Malfunctioning
- Broken or non-working doors, locks, windows, or other security-related problems due to burglary, vandalism, or personal assault
- No heat (when outside temperatures are below 55°)
- Non functioning toilet
- Refrigerator not working
- Exterior lighting malfunctions
- Improperly functioning fire or life safety devices

For all life threatening emergencies please call 911 first and take appropriate safety precautions. Our answering service personnel are reachable 24-hours a day by calling (831) 384-0119, and will inform our on call maintenance technician of the emergency situation in your home. Please be sure to provide your address, a good contact number to reach you at and a detailed description of your emergency.

### **Landscaping**

Proper landscaping makes our community a more enjoyable place to live. The community maintains a contract for Landscaping Services that includes mowing of grass, trimming of bushes, and leaf removal, however residents are encouraged to take an active role in shaping their immediate surroundings. While residents are responsible for payment of the water usage for irrigation of the landscaping, the irrigation system will be controlled by maintenance staff. Please contact the Leasing Office if you experience a spike in your water bill that might be attributed to an irrigation malfunction.

### **Pets**

We are proud to allow pets within our community, however they require proper care and responsibility on the part of residents. Please note that pets are not allowed without the prior consent of the Leasing Office which must be obtained by providing a \$250 Pet Deposit, veterinary documents, and by completing a Pet Information Packet.

*Please see the following restrictions regarding pets:*

1. Households are limited to 2 pets per home and all animals must have all required vaccinations and/or licenses.
2. Dogs must be on a leash at all times when outside of a gated back yard. Residents must control their animal while out in the community and within their homes. Noise disturbances caused by pets will be addressed by the Leasing Office and may result in removal of the animal from the property.
3. Residents are responsible to remove pet waste cause by their animals within their yards and throughout the community. Pet waste stations are located at each park/playground and at various other locations to assist residents.
4. Residents must comply with all applicable ordinances, regulations and laws governing pets.

Including but, not limited to the following listed below:

- a. All pets must be Spayed/Neutered.
- b. Birds shall not be let out of cages.

- c. Dangerous, illegal, exotic or poisonous animals are not permitted on the premises. Residents are not allowed to keep endangered species.
- d. Resident shall remove from the property any animal that has exhibited any sign of aggressive behavior or aggressive tendencies towards any person or animal.
- e. Pure bred and/or any mixed form of the following breeds are restricted: Alaskan Malamute, Boxer, Chow Chow, Dalmatian, Doberman Pinscher, German Sheppard, Husky breeds, Pitbull breeds, Presa Canarios, and Rottweilers.

### **Vehicles/Parking**

Please limit your speed within the community to 10-20 m.p.h. Please use your garage and driveway to park your vehicles and use any available street parking. Unsightly cars (such as cars with flats, broken windows, etc.), any recreational vehicles, boats, vehicles without a current displayed registration and commercial purpose vehicles will not be permitted in or around the premises and will be towed at owner's expense. Residents may wash their vehicles in their designated driveway only. Parking on the grass is not permitted at any time.

### **Courtesy/Quiet Hours**

Quiet hours are considered to be between 10 p.m. and 7 a.m. It is our expectation that residents honor the requests of the community concerning noise levels, even when it is not scheduled quiet hours. If you experience a problem with noise, you are encouraged to contact the office in writing.

### **Littering**

Litter is prohibited. As a resident in this community, it is your responsibility to dispose of personal trash by using receptacles provided by Waste Management. Leaving or distributing trash in common areas or locations not designated for waste disposal is subject to violation notices and applicable removal/cleaning charges; this includes large items such as furniture or electronics, and small items such as cigarette butts and garbage.

### **Trash Cans**

No garbage or recycling receptacles may be stored in front or alongside of any Resident's unit. Residents may not put garbage cans and/or recycling receptacles out at the curb before 5 pm the evening before scheduled pick-up. All receptacles must be returned by residents to their garage no later than 5 pm on the day following pick up. Friday is the scheduled pick up day (outside of regulated holidays). Residents are

encouraged to set up alternate arrangements to set or remove their trash cans from curbside should they be out of town.

### **Annual Inspections**

Annual Inspections take place once per year are designed to address the following:

- Change batteries located within thermostats, smoke detectors, and carbon monoxide detectors.
- Change heater filters and range hood filters
- Lubricate garage door wheels/springs and door locks
- Inspection of wearable items within each home (flooring, appliances, windows/doors, etc.)

### **Community/Business Center**

Preston Park offers a Community Center and Business Center available to all residents for use.

The Community Center hours are 5:30PM – 10:00PM Monday through Friday, and 8:00AM – 10:00PM Saturdays. No use is permitted on Sundays. Reservations for the Community Center must be made with the Leasing office in writing by signing the Community Center Lease Agreement.

The Business Center is available for use during Leasing Office hours only (Monday – Friday 8:00AM – 6:00PM, Sat 8:00AM – 5:00PM). The Business Center will not be available for use if a previously scheduled function is taking place in the Community Center.

### **Bulletin Boards/Social Media**

Preston Park offers bulletin boards at each cul-de-sac in order to allow residents and Management to post informational items for all residents to view. Please contact the Leasing Office if you would like to post your items within the Bulletin Boards.

Preston Park also offers virtual Social Media Bulletin Boards that serve a similar function within the [MyAllianceAdvantage.com](http://MyAllianceAdvantage.com) portal. Once registered for this service, you may post informational text for other registered residents to view and respond to.

Preston Park is on Facebook! “Like” our page in order to receive electronic updates on community developments, announcements, functions, and other informational items.

### **Tenants Association**

The Preston Park and Abrams Park Tenants Association (PPAPTA) holds meetings within the Community Center to discuss items of concerns to residents and works in conjunction with Management on the properties' budgets. Please visit the Leasing Office or the community Bulletin Boards to obtain contact information for the Tenants Association.

### **Grievance Policy**

A Grievance Policy is in place should your household experience a grievance while residing within the community. Please refer to your Lease Agreement for more information.

### **BMR Program**

Preston Park offers a Below Market Rental program to households that qualify within certain income and household size restrictions. For more information on program limitations or to obtain a waitlist application, please contact the Leasing Office.

#### *Annual Verification of Income for Affordable Units*

Households that qualify for the Below Market Rental program are subject to an Annual Verification of Income. You will be contacted up to 60 days in advance of your Recertification Date to confirm your continued eligibility for this program.

#### *Reporting Changes between Regularly Scheduled Eligibility Verifications for Affordable Units*

If any of the following changes occurs, please contact the Leasing Office immediately:

- A. Any increase or decrease in household size;
- B. An adult member of the household who was reported as unemployed on the most recent certification or re-certification obtains employment; or
- C. The household's income increases by more than \$200.00 per month.

### **Leaving the Community**

Planning to leave the community? Please see the information below regarding the proper procedure for terminating or changing your Lease Agreement.

- 1) 30- Day Notice to Vacate: If all household members are leaving the community, a written notice indicating intention to leave must be received a minimum of 30 days prior to the termination of the lease agreement. All leaseholders will be required to sign the Move-Out Packet and will be required to pay rent up until the notice is fulfilled.

- 2) Roommate Release: If a residence will be experiencing a change in roommates while continuing residency within the community, a 30-Day Notice to Vacate is not necessary. Please contact our Leasing Office for further details on how to begin the Roommate Release process.

**FORT ORD REUSE AUTHORITY BOARD REPORT**

**OLD BUSINESS**

<b>Subject:</b>	Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination	
<b>Meeting Date:</b>	January 10, 2014	<b>ACTION</b>
<b>Agenda Number:</b>	8b	

**RECOMMENDATION(S):**

Approve Resolution 14-XX (**Attachment A**), concurring in the County of Monterey’s (County) legislative land use determination that the 2010 Monterey County General Plan (General Plan) is consistent with the Fort Ord Base Reuse Plan (BRP).

**OTHER OPTIONS:**

- I. Per FORA Master Resolution section 8.01.020(e), approve Resolution 14-XX (**Attachment B**), refusing certification of the General Plan until the FORA Board’s suggested modifications (included in this resolution) are adopted and transmitted to the FORA Board by the County. If the County adopts such modifications, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed certified.
- II. Refuse certification of the General Plan. Such action results in the Monterey County 2001 General Plan amendment, found consistent by the FORA Board on January 18, 2002, remaining in effect for County Fort Ord lands.

**BACKGROUND:**

The County submitted the General Plan for consistency determination on September 24, 2013 (**Attachment C**). **Attachment C** includes a link to the County of Monterey’s website where documents related to the 2010 Monterey County General Plan consistency determination submittal can be obtained electronically. This link is: [http://www.co.monterey.ca.us/planning/gpu/GPU\\_2007/2010\\_Mo\\_Co\\_General\\_Plan\\_Adopted\\_102610/2010\\_Mo\\_Co\\_General\\_Plan\\_Adopted\\_102610.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm) At the October 11, 2013 Board meeting, several Board members raised concerns that a hard copy of the 2010 Monterey County General Plan consistency determination submittal was not included in the packet. The FORA Executive Committee previously established a policy directing staff to make large documents available on the internet in lieu of including voluminous pages in FORA Board packets. If any Board member finds this difficult, please contact staff to address the concern.

With its submittal for concurrence, the County requested a Legislative Land Use Decision review of the General Plan in accordance with section 8.02.010 of the Fort Ord Reuse Authority (FORA) Master Resolution. Under state law, (as codified in FORA’s Master Resolution) legislative land use decisions (plan level documents such as General Plans, Zoning Codes, General Plans, Redevelopment Plans, etc.) must be scheduled for FORA Board review for consideration of concurrence under strict timeframes. This item is included on the Board agenda because the General Plan is a legislative land use decision, requiring Board approval.

The FORA Administrative Committee reviewed this item on October 2nd and October 30th, 2013.

At the October 30th FORA Administrative Committee meeting, County representatives addressed each of the issues that were surfaced by the two letters received earlier that month, and then also reviewed their own response letter that had been sent to the Administrative Committee. Staff described the Board report that was prepared and noted the individual meetings between the County and FORA Staff/Counsel leading up to the County letter addressing the issues in the late arriving correspondence. The Administrative Committee asked that the issues be addressed by counsel and outlined for the FORA Board at its meeting on November 8<sup>th</sup>.

FORA Special Counsel Alan Waltner's response memorandum is included in **Attachment D** to this report, outlining how his previous memoranda addressed issues raised in recent comment letters and reiterating those points.

**Update: At its January 2, 2014 meeting, the Administrative Committee heard a report from FORA staff, heard comments from member of the public Jane Haines, and heard comments from County of Monterey Senior Planner John Ford. The Committee passed a motion to sustain its previous recommendation that the FORA Board concur in the County's determination that the 2010 Monterey County General Plan is consistent with the BRP.**

#### **DISCUSSION:**

County staff will be available to provide additional information to the FORA Board on January 10, 2014. In all consistency determinations, the following additional considerations are made, and summarized in table form (**Attachment E**).

**Rationale for consistency determinations** FORA staff finds that there are several defensible rationales for making an affirmative consistency determination. Sometimes additional information is provided to buttress those conclusions. In general, it is noted that the BRP is a framework for development, not a precise plan to be mirrored. However, there are thresholds set in the resource constrained BRP that may not be exceeded without other actions, most notably 6,160 new residential housing units and a finite water allocation. More particularly, the rationales for consistency analyzed are:

#### **LEGISLATIVE LAND USE DECISION CONSISTENCY FROM SECTION 8.02.010 OF THE FORA MASTER RESOLUTION**

*(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence support by the record, that:*



(1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;

The General Plan would not establish a land use designation that is more intense than the uses permitted in the BRP. Compared to the 1997 BRP, the General Plan increases the amount of habitat within the County's jurisdiction by 246.7 acres as a result of the December 20, 2005 Memorandum of Understanding (MOU) among the County, Monterey Peninsula College (MPC), FORA, the Bureau of Land Management (BLM), and U.S. Army, which swapped land uses between East Garrison and Parker Flats areas of the former Fort Ord. The result of the MOU is that an additional 210 acres are available for development in East Garrison in exchange for the preservation of approximately 447 additional habitat acres in Parker Flats. Also, the MOU added additional habitat acres next to the Military Operations Urban Terrain (MOU) facility and provides for MPC to relocate a planned public safety officer training facility from the East Garrison area to the Parker Flats area. The County, FORA, and MPC entered into an October 21, 2002 agreement entitled "Agreement Regarding Public Safety Officer Training Facilities," which further describes relocation of MPC's planned facilities from the East Garrison area to the Parker Flats area.

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

No increase in density would be permitted by the General Plan.

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

The General Plan is in substantial conformance with applicable programs. FORA staff notes that a member of the public and representatives of the Ventana Chapter of the Sierra Club, Keep Fort Ord Wild, the Open Monterey Project, and LandWatch Monterey County provided correspondence at the August 27 and September 17, 2013 Monterey County Board of Supervisors hearings pertaining to consistency between the 2010 Monterey County General Plan 1997 BRP. In summary, these individual letters requested that the Monterey County Board of Supervisors not adopt the consistency finding, citing instances of incomplete policies and programs and other issues. FORA staff concurs with Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/ Resolution No. 13-307 page 5 of 13 that:

Some but not all of the policies programs have been implemented. Implementation efforts are currently underway. Implementation of the Base Reuse Plan policies is a separate measure from Consistency with the Base Reuse Plan.

Special legal counsel Alan Waltner's September 3, 2013 memorandum further stated that "FORA's procedures for determining consistency correctly interpret and apply the FORA Authority Act, Government Code Sections 67650-67700 and the FORA Master Resolution."

Comment letters from the Ventana Chapter of the Sierra Club and member of the public Jane Haines are included in **Attachment F**.

County staff submitted an October 23, 2013 letter (**Attachment G**) providing additional analysis on concerns raised in recent comment letters and how these concerns are addressed.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;

The General Plan is compatible with open space, recreational, and habitat management areas.

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

County development within the former Fort Ord that is affected by the General Plan will pay its fair share of the basewide costs through the FORA Community Facilities District special tax and property taxes that will accrue to FORA, as well as land sales revenues. This is evidenced in Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 page 6 of 13 and the May 8, 2001 Implementation Agreement between FORA and County of Monterey.

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

The Fort Ord Habitat Management Plan (HMP) designates certain parcels for "Development," in order to allow economic recovery through development while promoting preservation, enhancement, and restoration of special status plant and animal species in designated habitats. The General Plan affects lands that are located within areas designated for "Habitat Reserve," "Habitat Corridor," "Development with Reserve Areas and Restrictions," and "Development with no Restrictions" under the HMP. Lands designated as "Development with no Restrictions" have no management restrictions placed upon them as a result of the HMP. The General Plan requires implementation of the Fort Ord HMP.

(7) Is not consistent with the Highway 1 Design Corridor Design Guidelines as such guidelines may be developed and approved by the Authority Board; and

The General Plan would not modify Highway 1 Design Corridor Design Guidelines.

(8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

The General Plan is consistent with the jobs/housing balance approved by the FORA Board.

**Additional Considerations**

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

The General Plan does not modify prevailing wage requirements for future development entitlements within the County's jurisdiction on former Fort Ord.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

This action is regulatory in nature and should have no direct fiscal, administrative, or operational impact. In addition to points already dealt with in this report, it is clarified that the developments expected to be engaged in reuse subject to the General Plan are covered by the Community Facilities District or other agreement that ensure a fair share payment of appropriate future special taxes/fees to mitigate for impacts delineated in the 1997 BRP and accompanying Environmental Impact Report. The County has agreed to provisions for payment of all required fees for future developments in the former Fort Ord under its jurisdiction.

Staff time related to this item is included in FORA's annual budget.

**COORDINATION:**

The County, Planners Working Group, Administrative Committee, and Executive Committee

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

Approved by D. Steven Endsley for  
Michael A. Houlemard, Jr.

**Resolution 14-XX**

Determining Consistency of the 2010 )  
Monterey County General Plan )

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Fort Ord Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the FORA Board of Directors adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan), affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013, the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act, and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings with supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in the County's determination that the General Plan is consistent with the Reuse Plan for those portions of County land that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the supporting material, received additional information, and concurred with

the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee then set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013. The November 8, 2013 hearing was then continued to January 10, 2014.

- I. Master Resolution, Chapter 8, Section 8.02.010(a) states: "In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that:
  - (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
  - (2) Provides a development more dense than the density of use permitted in the Reuse Plan for the affected territory;
  - (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;
  - (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
  - (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
  - (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan."
- J. In considering whether or not the General Plan is consistent with the Reuse Plan, the FORA Board has reviewed all evidence pertaining to the six criteria described in Section 8.0.020(a).
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

- (1) The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
- (2) The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial

additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.

- (3) The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and the Administrative Committee, and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.
- (4) The FORA Board finds that the General Plan is consistent with the Base Reuse Plan. The FORA Board further finds that its legislative decision is based in part upon the substantial evidence submitted regarding allowable land uses, a weighing of the Reuse Plan's emphasis on a resource constrained sustainable reuse that evidences a balance between jobs created and housing provided, and that the cumulative land uses contained in the County's submittal are not more intense or dense than those contained in the Reuse Plan.
- (5) The General Plan will, considering all its aspects, further the objectives and policies of the Reuse Plan. The County application is hereby determined to satisfy the requirements of Title 7.85 of the Government Code and the Reuse Plan.

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
Jerry Edelen, Chair

ATTEST:

\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary

**Resolution 14-XX**

Denial of certification of the 2010 )  
Monterey County General Plan )  
Until suggested modifications are )  
Adopted and submitted )

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the Authority Board of FORA adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan), affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013 the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings and supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in County's determination that the General Plan is consistent with the Reuse Plan for those portions of the County that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the

General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the Supporting Material, received additional information, and concurred with the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013. The November 8, 2013 hearing was then continued to January 10, 2014.

- I. Master Resolution, Chapter 8, Section 8.01.020(e) reads in part: "(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings shall include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision shall be deemed certified..."
- J. Master Resolution, Chapter 8, Section 8.02.010(a)(4) reads in part: "(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [it] (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property..."
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

1. The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
2. The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.
3. The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and Administrative Committee and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.



4. The FORA Board denies certification of the General Plan until the following policies and programs are adopted in the Fort Ord Master Plan component of the General Plan as currently included in the Reuse Plan EIR: Recreation/Open Space Land Use (ROLU) Policy A-1, ROLU Program A-1.2, Hydrology and Water Quality (HWQ) Policy B-1, HWQ Programs B-1.1 through B-1.7, HWQ C-6.1, Biological Resources (BR) Policy C-2, BR Programs C-2.1, C-2.2, C-2.3, and C-2.5.
5. If such modifications are adopted by the County as suggested, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed consistent with the Reuse Plan.

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

\_\_\_\_\_  
Jerry Edelen, Chair

\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Attachment C to Item 8b  
FORA Board Meeting, 1/10/2014

## Planning Department

Mike Novo, AICP, Director of Planning

168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
(831) 755-5025  
Fax: (831) 757-9516  
[www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)



September 24, 2013

Jonathan Garcia, Senior Planner  
Fort Ord Reuse Authority  
920 2<sup>nd</sup> Ave., Suite A  
Marina, CA 93933

**SUBJECT: REQUEST FOR FORA CONSISTENCY DETERMINATION ON THE  
2010 MONTEREY COUNTY GENERAL PLAN PURSUANT TO FORA MASTER  
RESOLUTION, ARTICLE 8.01.020**

Dear Mr. Garcia,

On October 26, 2010 the Board of Supervisors of the County of Monterey adopted a comprehensive General Plan update (2010 General Plan) (Resolution 10-291). The 2010 General Plan now governs the future physical development of the unincorporated areas of the County of Monterey, excluding the Coastal Areas, but including most of the Former Fort Ord. As it relates to property in the territory of the Authority to the Executive Officer, the 2010 General Plan contains the Fort Ord Master Plan (in Chapter 9-E). The Fort Ord Master Plan is essentially the same as the 2001 Fort Ord Master Plan that was adopted by the County and found consistent by the Fort Ord Reuse Authority Board on January 18, 2002 (FORA Resolution #02-3) with some minor updates and amendments including:

- Recognition of the Land Swap Agreement
- Re-insertion of policies missing from the 2001 plan; and
- Updates to policies regarding the landfill parcel, East Garrison, and the York Road Planning area to reflect more recent events.

In February of 2012, the County submitted a package, with a formal request for a consistency determination to the Fort Ord Reuse Authority. That package included 1 hard copy and 5 CD's with the following documents and information:

- **Attachment 1** – The adopted 2010 General Plan
- **Attachment 2** – CEQA documents including:
  - a. Draft EIR
  - b. Final EIR; and
  - c. Supplemental Information to the FEIR
- **Attachment 3** – Reports and Resolutions
  - a. Planning Commission Staff Report and Resolution from August 11, 2010
  - b. Board of Supervisors Staff Report and Resolutions (10-290 and 10-291)

- **Attachment 4** – Fort Ord Master Plan redline version showing changes to text from the previously adopted and certified County version of the Fort Ord Base Reuse Plan.
- **Attachment 5** – Consistency Analysis

The County's consistency determination request was placed on hold while the County processed the consistency findings and certification required by the FORA Master Resolution. Between the time of the original submittal and the submittal of this information, the County has amended the 2010 General Plan three times. Because of these amendments, the County would like to ensure that FORA is working with, and considering consistency of, the most recent version of the General Plan. The updated sections of the General Plan along with the EIR Addendums prepared for those amendments are included in this revised submittal. In total, this revised submittal contains the following documents and information:

- **Amendments to Attachment 1 (The 2010 General Plan)** –
  - Updated Carmel Valley Master Plan Chapter (Chapter 9-B of the General Plan)
  - Updated Public Services Chapter (Chapter 5 of the General Plan)These replace the chapters in the previously submitted General Plan. Note: The third amendment involved a land use designation change on a parcel in southern Monterey County and did not have any effect on Fort Ord Territory.
- **Additions to Attachment 2 (CEQA Documents)** – Addendums to the General Plan EIR were prepared for the General Plan amendments listed above.
  - Addendum 1 – (For Amendment to Chapter 5 of 2010 General Plan)
  - Addendum 2 – (for Amendment to Carmel Valley Master Plan)
  -
- **Additions to Attachment 3 (Reports and Resolutions)** – Two new Board of Supervisors Board Reports and Resolutions certifying that the 2010 General Plan is consistent with the Base Reuse Plan:
  - September 17, 2013 Board Report and Resolution affirming and updating the August 27, 2013 decision (Resolution # 13-0952)
  - August 27, 2013 Board Report and Resolution (Resolution # 13-0290)
  - Board Report for September 17, 2013 Public Hearing
- **Amended Attachment 5 (Consistency Analysis)** – A new and updated consistency analysis was attached to the August 27 and September 17 Board Resolutions. That analysis is the same in both reports.
- **New Attachment 6 (Public Comment)** – New comments and correspondence received on for the August 27 and September 17 Board of Supervisors hearing on the consistency certification.
  - Letter from Sierra Club – Ventana Chapter – September 16, 2013
  - Letter from Law Offices of Michael Stamp – September 17, 2013
  - Letter from Jane Haines -- September 16, 2013
  - Letter from Jane Hainse – August 26, 2013

- Letter from MR Wolfe – August 26, 2013 (Attachement D of September 17, 2013 Board Report.

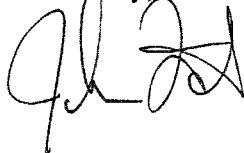
As was the case with the first, submitted with this letter is one hard copy and 5 CD's with the updated information listed above. All of the documents from the original submittal and the updated submittal can be found by following the link below:

[www.co.monterey.ca.us/planning/gpu/GPU\\_2007/2010\\_Mo\\_Co\\_General\\_Plan\\_Adopted\\_102610/2010\\_Mo\\_Co\\_General\\_Plan\\_Adopted\\_102610.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm)

This link will take you to the page for the 2010 General Plan, which provides links to the EIR and all addendums and a link directly to the material submitted as part of this package.

We would be happy to provide FORA staff and the FORA Board with any additional information deemed necessary to complete the Consistency Determination review. We look forward to working with you on this and should you have any questions regarding this submittal please contact Craig Spencer at (831) 755-5233 or John Ford at (831) 755-5158.

Sincerely,



FOR

Craig W. Spencer, Associate Planner  
Monterey County – Planning Department  
Email: [spencerc@co.monterey.ca.us](mailto:spencerc@co.monterey.ca.us)

Attachments

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

## Memorandum

Date: December 26, 2013

To: Fort Ord Reuse Authority

Board of Directors

Mayor Jerry Edelen, Board Chair

Michael Houlemard, Executive Officer

From: Alan Waltner, Esq.

RE: Response to Certain Comments on the Monterey County General Plan  
Consistency Review

This memorandum responds to your request that we address certain comments made in a series of letters submitted to FORA<sup>1</sup> by Jane Haines regarding the Monterey County General Plan Consistency Review that is currently pending before FORA. In general, this response highlights points made in our two previous memoranda that have been overlooked in these letters.

Although the letters are extensive in length, they largely repeat three basic arguments. First, they argue that Section 8.02.010 or the FORA Master Resolution effectively modified the consistency review standards of the FORA Act and Master Resolution to require “strict adherence to the 1997 Reuse Plan” before consistency can be found. Second, they argue that substantial evidence has been provided triggering disapproval of the Monterey County General Plan under one or more of the provisions of Master Resolution Section 8.02.010 – specifically provisions relating to the intensity of land uses, the density of land uses, and substantial conformance with applicable programs in the Reuse Plan. Third, they argue that there is no legal authority supporting a consistency review standard that parallels the standard applying in the local planning context under the Planning and Zoning Law. All three of these arguments were addressed in our previous memoranda, as summarized in this memorandum.

First, there is no support in the FORA Act or Master Resolution for a “strict adherence” standard for consistency reviews. The FORA Act itself simply requires that the FORA Board find that “the portions of the general plan or amended general plan applicable to the territory of the base . . . are consistent with the reuse plan.” Government Code Section 67840.2. As with all statutes, this provision is to be interpreted in accordance with the “plain meaning” of the word chosen by the Legislature, which is “consistent.”

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<sup>1</sup> Abbreviations, acronyms and references used in our previous memoranda dated July 3 and September 3, 2013 will be applied in this memorandum.

Regardless of the dictionary chosen, the definition of the word is similar. For example, the Merriam-Webster online dictionary defines the term as: “marked by harmony, regularity, or steady continuity: free from variation or contradiction.” The term does not require that two items be identical or strictly adhere to one another. Instead, it only requires harmony and a lack of conflict. This is the approach taken in extensive case law interpreting the Legislature’s intention in using the same word in the Planning and Zoning Law, as summarized in our previous memoranda.<sup>2</sup> It is also reflected in various provisions of the Master Resolution. For example, Section 8.02.010(b) clearly allows the “transfer of the intensity of land uses and/or density of development” between specific locations on the base, so long as “the cumulative net density or intensity of the Fort Ord Territory is not increased.” This means that “strict adherence” to the uses on specific parcels is not required so long as a base-wide balance of intensity and density is demonstrated. Regarding compliance with BRP programs, Section 8.02.010(a)(3) of the Master Resolution requires only “substantial conformance” with “applicable” programs. Again, this is much different than the “strict adherence” standard urged in the comment letters. We continue to conclude that the standards being applied by FORA accurately implement the FORA Act and the Master Resolution.

The comment letters argue that language in Master Resolution Section 8.02.010(a) stating that the Board “shall disapprove any legislative land use decision for which there is substantial evidence of [six listed factors]” implicitly modifies the meaning of the word “consistent” or alters the consistency review criteria of the Master Resolution to create a “strict adherence” standard. This implied modification of the applicable standard is unsupported by the structure or language of the provision. Such an interpretation would also conflict with several rules of statutory construction, particularly the rule against rendering language surplusage (the interpretation would effectively read Section 8.02.010(b) and the “substantial conformance” language out of the Master Resolution) and the rule disfavoring implied repeals.<sup>3</sup> The plain meaning of the term “consistent” still applies, as do the limitations of the Master Resolution embodied in the “substantial conformance” and “applicable” references.

Second, there is no substantial evidence that any of the six criteria of Master Resolution Section 8.02.010(a) have been triggered.<sup>4</sup> The comment letters reflect several

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<sup>2</sup> The extensive discussion in the comment letters of differences between the FORA Act and the Planning and Zoning Law does not alter the fact they both use the same term (“consistent”) in a similar context.

<sup>3</sup> There are also substantial questions as to whether the 1997 FORA Board could adopt provisions in the Master Resolution that conflict with the FORA Act, establish review standards binding on a reviewing Court, or limit the police power discretion of subsequent FORA Boards. These issues are reserved for subsequent elaboration if needed.

<sup>4</sup> We note that the six criteria of this section are connected with the word “and.” Literally read, then, there would need to be substantial evidence that all six criteria have been triggered before disapproval is required. The comment letters focus on three of the six criteria and no argument is made regarding the other three. Since there is no substantial evidence that any of the criteria have been triggered, this memorandum does not rely upon the use of the word “and” in this provision, but the argument is reserved. Master Resolution 8.02.010(a)(3) also refers only to substantial conformance with “programs” and does not reference substantial conformance with “policies” of the BRP. Again, this memorandum does not rely

fundamental flaws in making this argument. Most importantly, the comment letters generally do not point to any specific evidence of a lack of consistency, but instead simply reference the Monterey County General Plan and FORA BRP as a whole and urge that within them are unspecified inconsistencies. In other words, the comment letters do not identify the “substantial evidence” upon which they are relying. The comment letters also do not attempt to rebut Monterey County’s analyses of consistency that support the application. The argument further erroneously applies the “strict adherence” standard addressed earlier herein. Thus, for example, regarding the requirement of “substantial conformance” with “applicable” programs of the BRP, there is no specifically identified evidence in any of the comment letters that any particular applicable program has not met the substantial conformance test.

We note in this regard that the entirety of the BRP has been incorporated by reference into the Monterey County General Plan that is the subject of the pending consistency review application. See Monterey County 2010 General Plan, Chapter 9.E (“This plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area.”). The comment letters do not attempt to explain how, despite this incorporation, “substantial conformance” with applicable BRP programs has not been achieved.

Given the general lack of specific objections in the comments, a more detailed response to the commenter’s substantial evidence argument cannot be made. The most specific objection made is to the fact that a natural ecosystem easement has not yet been recorded by Monterey County for the Monterey Downs area. See October 10, 2013 letter from Jane Haines. However, a commitment has been made by Monterey County, through incorporation of the BRP program requiring such an easement. The fact that implementation of this easement obligation is not yet applicable (there is not yet a specific Monterey Downs proposal and adjustments to any protected areas are likely to be made, meaning that the property description in an easement cannot yet be defined and recording such an easement is not yet possible) does not provide any evidence that substantial conformance with this BRP program is not reflected in the Monterey County General Plan. Any specific development entitlements for Monterey Downs will be subject to further review by the FORA Board at which time the easement obligation can be enforced if necessary. The other objections in the comment letters are very cursory and do not describe the substantial evidence purported to demonstrate a lack of substantial conformance with applicable BRP programs.

Third, although no challenge to a FORA consistency determination has ever been brought, and no other challenge to a FORA land use action has ever proceeded to a written judicial opinion, this does not mean that there is no legal authority for the interpretation and application of the consistency standard. As discussed earlier herein, the Legislature’s use of the word “consistent” in the FORA Act, and FORA’s interpretations and implementation of this language in the Master Resolution, are the applicable law, as discussed earlier herein and in our earlier memoranda.

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upon this omission, since there is no substantial evidence of applicable BRP policies that have not been substantially complied with, but this argument is likewise reserved.

<b>FORA Master Resolution Section</b>	<b>Finding of Consistency</b>	<b>Justification for finding</b>
(1) Does not provide for a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not establish land use designations more intense than permitted in the Base Reuse Plan (“BRP”). See Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 (Reso. 13-307) page 5 of 13.
(2) Does not provide for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not allow denser development than permitted in the BRP. See Reso. 13-307 page 5 of 13.
(3) Is in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.	Yes	The General Plan is in compliance with applicable programs. See Reso. 13-307 page 5 of 13.
(4) Does not provide uses which conflict with or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict with or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;	Yes	No conflict or incompatibility exists between the General Plan and BRP. See Reso. 13-307 page 6 of 13.
(5) Requires or otherwise provides for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision;	Yes	The General Plan does not modify County obligations to contribute to basewide costs. See Reso. 13-307 page 6 of 13.
(6) Requires or otherwise provides for implementation of the Fort Ord Habitat Management Plan (“HMP”).	Yes	The General Plan provides for HMP implementation. See Reso. 13-307 page 6 of 13.
(7) Is consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.	Yes	The General Plan does not modify Highway 1 Scenic Corridor design standards.
(8) Is consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.	Yes	The General Plan is consistent with job/housing balance requirements. See Reso. 13-307 page 13 of 13.
(9) Prevailing Wage	Yes	The General Plan does not modify prevailing wage requirements.



## JANE HAINES

October 10, 2013

Fort Ord Reuse Authority Board of Directors  
920 2nd Avenue  
Marina, CA 93933

Re: October 11 Agenda - Item 8c - Consistency Determination:  
2010 Monterey County General Plan

Dear FORA Board of Directors:

The 2010 Monterey County General Plan is inconsistent with the 1997 Base Reuse Plan (BRP) because it omits applicable BRP programs. Certification of consistency between the two plans should be delayed until the omitted programs are added to the General Plan. Otherwise, the plans are inconsistent and the California Environmental Quality Act (CEQA) will require environmental review of impacts that could result from the inconsistencies.

This letter will explain which BRP programs have been omitted from the 2010 General Plan and how omitting those programs will result in potentially significant environmental impacts.

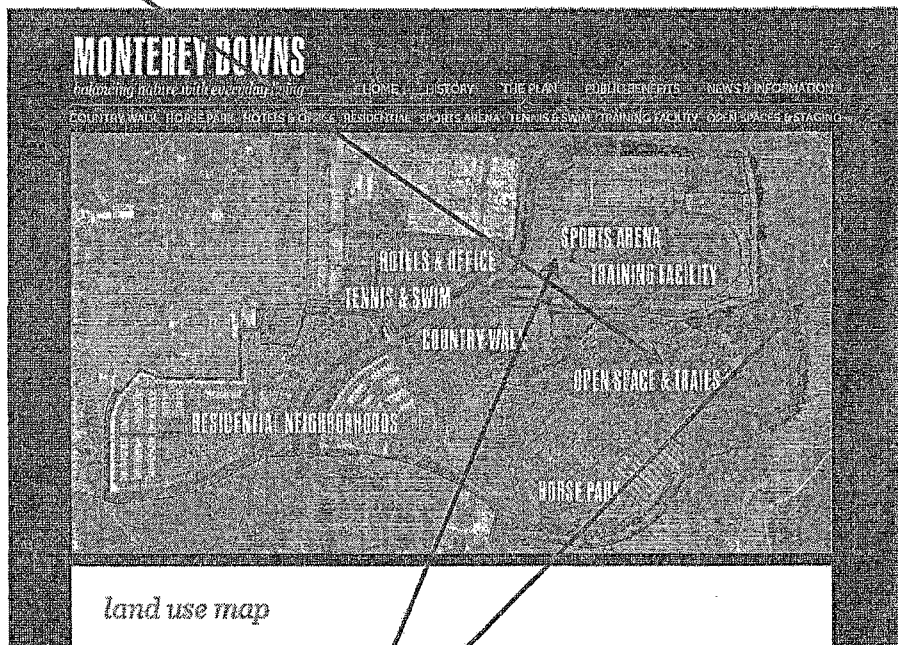
FORA's October 11 and the County's September 17 staff reports discount the publics' comments on the inconsistencies by saying that implementation is a different matter than consistency. However, I and others are commenting about the **omission** of BRP programs from the 2010 Monterey County General Plan. The omission of applicable programs is **not** an implementation issue.<sup>1</sup> It is a consistency issue as well as a CEQA issue.

The following page uses the proposed Monterey Downs project to illustrate the potentially significant environmental impacts from omitting three applicable programs, assuming that Seaside will annex Monterey County land for Monterey Downs, although of course the impacts would also occur to other County projects too. There will be arrows pointing to various locations on the Monterey Downs land use map. The arrows are connected to boxes which explain the BRP program that was omitted from the County's 2010 General Plan, and how omission of that program is likely to cause a significant adverse environmental impact.

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<sup>1</sup> Implementation is defined in the Oxford dictionary as "the process of putting a decision or plan into effect." Consistency is defined as "conformity in the application of something, typically that which is necessary for the sake of logic, accuracy, or fairness."

**Recreation/Open Space Land Use Program A-1.2.** This Open Space & Trails parcel is 72.5 acres entitled Parcel E19a.2 . The HMP designates it for Habitat Reserve. BRP Recreation/Open Space Land Use Program A-1.2 states: "The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all Identified open space lands." (A natural ecosystem deed restriction is intended to mitigate the cumulative effects of development on sensitive soils, including Arnold and Oceano soils. Parcel E19a.2 is comprised of Arnold soil.) Without Recreation/Open Space Land Use Program A-1.2, Monterey County will not have to record a Natural Ecosystem Easement deed restriction on Parcel E19a.2. Thus, the natural ecosystem on Parcel E19a.2 will not be protected. Program A-1.2 is on page 270 of Volume II of the BRP, but it is omitted from the Monterey County 2010 General Plan.



**Noise Program B-1.2.** The Sports Arena Training Facility adjoins CSUMB. Students who are studying or in lectures could be distracted by shouting, loud speakers and other noisy activities at the Sports Arena. BRP Noise program B-1.2 on page 412 of BRP Volume II states: "Whenever practical and feasible, the County shall segregate sensitive receptors, such as residential land uses, from noise generators through land use." Noise program B-1.2 is omitted from the Monterey County 2010 General Plan. It must be included to protect CSUMB against distracting noises from the Sports Arena.

**Recreation/Open Space Land Use Program B-2.1.** Nearly the entire eastern edge of Monterey Downs adjoins a habitat management area. (Continued next page.)

**(Recreation/Open Space Land Use Program B-2.1 continued)**, BRP Recreation/Open Space Land Use program B-2.1 is partially included in the 2010 Monterey County General Plan although the final two sentences are omitted. The final two sentences prohibit general purpose roads within a 150 feet buffer area adjoining habitat management areas. BRP Recreation/Open Space Land Use Program B-2.1 states on pg. 270 of BRP Vol. II: "The County of Monterey shall review each future development project for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into the development plan of incompatible land uses as a condition of project approval. *When buffers are required as a condition of approval adjacent to habitat management areas, the buffer shall be at least 150 feet. Roads shall not be allowed within the buffer area except for restricted access maintenance or emergency access roads.*" (Emphasis added to final two sentences to identify the two sentences omitted from the 2010 Monterey County General Plan Recreation/Open Space Land Use Program B-2.1.) Without the complete text of Program B-2.1 to protect it, the adjoining habitat management area can be adversely impacted.

The above omissions do **not** pertain to implementation. Rather, they pertain to **inconsistency** between the BRP and the 2010 Monterey County General Plan. They and other omitted or misstated BRP policies<sup>2</sup> make the 2010 Monterey County General Plan inconsistent with the BRP.

#### **FORA Master Resolution Section 67675.4**

In addition to the inconsistency issues described above, I want to mention Master Resolution section 67675.4 which required FORA to set a date for Monterey County to submit to FORA its zoning ordinances and other implementing actions pertaining to Fort Ord land after the 2001-2002 certification of consistency between Monterey County's General Plan with the BRP.

Section 67675.4 states:

*(a) Within 30 days after the certification of a general plan or amended general plan, or any portion thereof, the board shall, after consultation with the county or a city, establish a date for that county or city to submit the*

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<sup>2</sup> Additional omissions and errors can be identified by comparing BRP Hydrology and Water Quality programs B-2, B-1.3, B-1.4, B-1.5, B-1.6 and B-1.7 on page 353 (and 347) of BRP Volume II with pages FO-38, 39 in the Monterey County General Plan (MCGP). Additional omissions and errors are in BRP Hydrology and Water Quality program C-6.1 on page 4-66 of BRP Vol. II which does not appear on page FO-41 of the MCGP, which is where it would be located if it were included. Also, compare the words "concurrently with development approval" in Pedestrian and Bicycles program B-1.2 on page 310 of BRP Vol. II with the omission of those words in program B-1.2 on page FO-29 in MCGP. Also, compare Biological Resources program A-8.1 on page 381 of BRP Vol. II with program A-8.1 on pg. FO-46 of the MCGP. In each instance, a program required by the BRP for Monterey County is either partially or wholly omitted in the 2010 MCGP, or written in a manner inconsistent with the gist of the corresponding BRP program.

*zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord.*

*(b) If the county or city fails to meet the schedule established pursuant to subdivision (a), the board may waive the deadlines for board action on submitted zoning ordinances, zoning district maps, and, where necessary, other implementing actions, as set forth in Section 67675.5.*

Apparently, FORA never required Monterey County to submit its zoning ordinances and other implementing actions, because the 2012 Scoping Report lists the following incomplete implementation of Monterey County zoning ordinances and other implementing actions:

- appropriate infill residential zoning for CSUMB to expand its housing stock (Scoping Report pg. 4-5)
- amend zoning in the Greater Monterey Peninsula Area Plan (Scoping Report pg. 4-8)
- amend zoning ordinance in regard to all Fort Ord areas other than East Garrison (Scoping Report pgs. 4-7, 4-13, 4-20, 4-29)
- amend County Code Chapter 11.24 to regulate card rooms and to prohibit gambling within Fort Ord (Scoping Report pg. 4-27)
- amend County Subdivision Ordinance which identifies a standard of 3 acres per 1,000 people (Scoping Report pg. 4-40)
- amend County's review procedures to ensure compatibility with the historic context and associated land uses as a condition of project approval (Scoping Report pg. 4-158)

Thus, I am requesting that FORA do what it apparently failed to do in 2001-2002, which is to require Monterey County to submit its zoning ordinances and other implementing actions to FORA within 30 days after the certification of the General Plan. The submittal should include the above-mentioned zoning ordinances.

#### **Conclusion**

I request FORA to require Monterey County to add the omitted applicable BRP programs to the 2010 Monterey County General Plan and to correct related errors before FORA makes a finding of consistency. I also request FORA to comply with Master Resolution section 67675.4.

Sincerely,

Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

10 October 2013

Dear Fort Ord Reuse Authority Board Members;

The Sierra Club recommends that the FORA Board find the 2010 Monterey County General Plan, and the included Fort Ord Master Plan (FOMP), inconsistent with the Fort Ord Reuse Plan (FORP) based on evidence that the General Plan does not reflect the appropriate language and programs of the FORP Final Environmental Impact Report (EIR). In point of fact, parts of the FOMP precisely *reverse* specific changes made in and for the FORP Final EIR. Following CEQA law, the Sierra Club expects that the 2010 Monterey County General Plan reflects rather than alters the provisions of the FORP Final EIR before it would be found to be consistent with the FORP.

The Sierra Club further recommends that the FORA Board defer a finding of consistency until the County of Monterey Land Use Plan map (Figure 6a) accurately reflects the FORP County of Monterey Land Use Concept Map 4.1-7 and the FORP Land Use Concept Map 3.3-1. Ensuring that planning maps are carefully aligned in detail and designation will not only support a finding of consistency, but may serve to avoid later conflicts that arise from the differences between the documents.

By way of illustration, this letter will address three specific differences between the 2010 General Plan and the FORP, including:

- 1) The omission in the FOMP of the FORP Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction (FORP Volume 2, p. 270).
- 2) The reversed articulation of the Recreation/Open Space Land Use Program A-1.
- 3) The mismatched land use designation between the County of Monterey Land Use Plan (Figure 6a) and the FORP County of Monterey Land Use Concept Map 4.1-7/ FORP Land Use Concept Map 3.3-1.

These examples are meant to provide clear differences, but are not meant to represent a complete list of differences between the General Plan and the FORP EIR.

**Program Omission**

As is clearly shown in the FORP Final Draft EIR (p. 4-14, see attached except of same), the following program in underlined, which means that it was an edit meant to be included in the Final Draft EIR.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

Appropriately, Program A-1.2 also appears in Volume Two: Reuse Plan Elements of the FORP (see page 270).

At the 17 September 2013 Board of Supervisor's meeting, Monterey County staff acknowledged that Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction was left out of the FOMP brought forward to the Board. The staff representative went on to note that despite this omission, the county was in the process of having these easements reviewed and approved by FORA, so the county was carrying out this program (captured on the video from the 17 September 2013 Board of Supervisor's meeting, 1:40:10 in the web video record). However, he offered no supporting evidence to

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support this claim. Regardless, the omission still represents a specific and significant alteration of the Final EIR.

The stated omission of a specific Land Use program – a program that is separate from and in addition to the Habitat Management restrictions – renders the FOMP inadequate to carry out the self-same provision of the FORP.

Further, Program A-1.2 is quite specific in the action it proscribes for establishing “criteria and standards for the uses of land, water, air, space, and other natural resources within the area of the base.” (Govt. Code § 67675(c) (1)). This distinguishes it from the latitude that accompanies shifts in land use density with regard to the “integrated arrangement and general location and extent of land, water, air, space, and other natural resources within the area of the base.” Excluding such a specific provision renders the FOMP out of substantial conformance with the FORP.

#### Reversed Articulation of Program

Recreation/ Open Space Land Use Policy A-1, as stated in the FOMP (p. FO-21), misquotes the policy in the FORP and thereby changes its specificity. In order to be in conformance with the FORP, the policy should read: “The County of Monterey shall *protect* irreplaceable natural resources and open space at former Fort Ord.” (my italics to emphasize the language that was neglected in the FOMP).

Because the wording in the FOMP – “...encourage the conservation and preservation of...” – is more general and does not convey the same level of responsibility as the FORP language does, it represents a notable difference in the policy language. This is underscored by the fact that this is the precise change that was made in the Final Environmental Impact Report: “encourage the conservation and preservation of” is marked by strikethrough text, and “protect” is added, as shown by underlining (p. 4-14, FORP: Final Environmental Impact Report). As with the addition of Program A-1.2 mentioned above, this change in language is also reflected on p. 270 in Volume Two of the FORP.

Monterey County staff’s response to the Board of Supervisors regarding this point (captured on the video from the 17 September 2013 Board of Supervisor’s meeting, 1:40:00 in the web video record) was that the “protect” language *was changed* to the “encourage” language. It is not clear how the precise language that was altered for the Final EIR could or would have been returned to the very same language that was altered. It is also not clear which succession of document represent this reversion. Again, Monterey County staff offered not evidence to support their claim.

#### Mismatched maps

The Reassessment process has brought to light the importance of FORP maps that align with the specific provisions of the FORP and subsequent determinations of consistency. The Category II considerations in the Reassessment Report are testimony to this point. Withholding a finding of consistency *until* the FOMP Figure 6a accurately reflects both FORP County of Monterey Land Use Concept Map 4.1-7 and FORP Land Use Concept Map 3.3-1 would ensure the land use designations accurately describe the provisions of the FORP. For an extended, but not exhaustive list of the errors in the FOMP Figure 6a, see attached 16 September 2013 letter to the Monterey County Board of Supervisors.

The response of the Monterey County staff to each of the errors identified on FOMP Figure 6a is available by viewing the web video from the 17 September 2013 Board of Supervisor’s meeting. The primary defense offered by the County staff was that FOMP Figure 6a, as is, was found consistent in 2001. The Sierra Club would point out that increased attention to accuracy, despite past oversights, serves to guide all parties more effectively in the realization of the FORP.

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The points above are illustrations of apparent errors in the current version of the FOMP, but they likely do not exhaust the changes that would be required before a vote of consistency by the FORA Board would be merited. For instance, the header near the bottom of p. FO-4 reads "Design Principals" when it should read "Design Principles".

The Sierra Club looks forward to further work on the Fort Ord Master Plan so that, as described in the Master Resolution, its substantial conformance with the Fort Ord Reuse Plan is assured.

Sincerely,

Scott Waltz, Ph.D.  
Sierra Club, Ventana Chapter  
(SW/RD)

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November 7, 2013

Dear Fort Ord Reuse Authority Board of Directors:

The Sierra Club objects to a finding of consistency between the Fort Ord Master Plan in the 2010 Monterey County General Plan and the Fort Ord Reuse Plan for the reasons stated in our 10 October 2013 letter which appears on pages 21 to 23 of the November 8 Board Packet.

Sincerely,

Rita Dalessio  
Conservation Chair  
Sierra Club/Ventana Chapter  
(RD/SW)

Cc:  
Congressman Sam Farr  
State Senator Bill Monning  
Assembly member Mark Stone  
Larry Silver, California Environmental Law Project



## JANE HAINES

November 8, 2013

Fort Ord Reuse Board of Directors  
920 2nd Avenue  
Marina, CA 93933

[board@fora.org](mailto:board@fora.org)

Re: FORA's proposed resolutions for item 6a on the November 8 agenda

Dear FORA Board of Directors:

I met with FORA's attorney and other FORA staff on November 4 to discuss legal issues pertaining to FORA's consistency findings. It was my understanding that FORA would rewrite its resolutions prior to the November 8 Board meeting so I did not address the issue of FORA's resolutions in my November 7 letter to the FORA Board. Apparently FORA did rewrite the resolutions because last night I found revised resolutions posted on the FORA website. However, the revised resolutions contain the same legal errors that I'd expected would be corrected.

This letter will attempt to explain why FORA's resolutions for finding consistency between a general plan and the Reuse Plan omit legally required findings, and why FORA's past omissions of the legally-required findings have inappropriately resulted in general plans shaping the Reuse Plan rather than the Reuse Plan shaping general plans.

It's complicated, but I will try to explain:

- Chapter 8, section 8.02.010(a), states the standard for determining consistency between a general plan and the Reuse Plan as follows: "In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [any of six criteria are met]."
- The above standard is written in the negative and it greatly limits the FORA Board's discretion. Any substantial evidence showing that the legislative decision meets any of the criteria for disapproval requires that the FORA Board shall disapprove a finding of consistency.

- In contrast, FORA's current and past resolutions have been written in the affirmative to give the FORA Board broad discretion. Any substantial evidence showing that the legislative decision is consistent with the Reuse Plan allows the resolutions' findings to support a finding of consistency.
- The difference between the negative and the affirmative finding is similar to the difference between criminal and civil law. In criminal law, the evidence must prove beyond a reasonable doubt that a person is guilty. In civil law, a person is liable if a preponderance of the evidence shows the person is liable. It is much harder to prove a fact beyond a reasonable doubt than it is to show that the preponderance of the evidence proves the fact. (That is why O.J. Simpson was not criminally liable but was liable for civil damages.)
- In the case of general plan consistency with the Reuse Plan, it is much harder to show that no substantial evidence requires disapproval of a consistency finding than it is to show that substantial evidence supports a consistency finding.

The resolutions' affirmative findings do not meet the criteria for adequate findings set forth by the *California Supreme Court in Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. *Topanga* holds that findings must bridge the analytic gap between the raw evidence and ultimate decision. It states: "If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and **between findings and ultimate action** (emphasis added), the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action." *Topanga* 11 Cal.3d 506 at 515.

The governing legal authority for the FORA Board to evaluate consistency between a general plan and the Reuse Plan is Chapter 8, Section 8.02.010(a). It states that the FORA Board shall disapprove consistency if any substantial evidence shows that any of six criteria are met. Thus, FORA's resolution must show the analytic route by stating that FORA examined the evidence and found that no substantial evidence supports any of the six criteria for disapproval in Section 8.02.010(a). (Alternatively, the resolution could state that FORA examined the evidence and found that substantial evidence supports one or more of the criteria.)

Instead, FORA's resolutions state that FORA finds substantial evidence to support finding that the General Plan and Reuse Plan are consistent. That affirmative finding does not bridge the analytic gap between evidence and the ultimate decision in the manner required by Section 8.02.010(a).

Probably the above distinction seems trivial to you, but consider this. If the standard is whether any evidence supports finding that the 2010 Monterey County General Plan is consistent with the Base Reuse Plan, the answer is obviously “yes, it does.” There is plenty of evidence that the 2010 Monterey County General Plan is consistent with the Reuse Plan.

On the other hand, if the standard is whether any evidence shows that the 2010 General Plan does not meet the third criteria (substantial conformance with applicable programs specified in the Reuse Plan), the answer is obviously that the evidence clearly shows that the General Plan omits two applicable Reuse Plan programs and an important component of a third applicable program.

Thus, the difference between utilizing an affirmative or a negative standard will determine whether or not FORA must disallow a finding of consistency (which it must in the case of the negative finding), or whether FORA can find that the 2010 General Plan is consistent with the Reuse Plan (which it must in the case of the affirmative finding).

Pursuant to *Topanga*, FORA will abuse its discretion if it utilizes an affirmative finding in its resolution, because the affirmative finding does not address the analytic route that Section 8.02.010(a) requires FORA to follow from consideration of the evidence to the ultimate decision.

In sum, FORA's resolutions must be rewritten to show the analytic route prescribed by Master Resolution Section 8.02.010(a). Rather than affirmatively finding that the General Plan is, or is not, consistent with the Reuse Plan, the resolution must find either that no substantial evidence shows that the General Plan is not in substantial conformance with applicable Reuse Plan programs (in which case FORA must find the plans to be consistent), or that substantial evidence shows that the General Plan is not in substantial conformance with applicable Reuse Plan programs (in which case FORA must disallow a finding of consistency).

In their current form, the resolutions require your Board to find the 2010 General Plan is consistent the Reuse Plan. However, the current form of the resolutions lacks findings that bridge the analytic gap between the raw evidence and your ultimate decision. Thus, the resolutions must be redrafted to bridge that gap, or otherwise making your decision based on the resolutions in their current form will be an abuse of discretion.

If Fort Ord is to be redeveloped in accordance with the Reuse Plan, step #1 is to correct FORA's past procedure for finding general plan consistency.

Sincerely,

Jane Haines

## JANE HAINES

November 7, 2013

Fort Ord Reuse Board of Directors  
920 2nd Avenue  
Marina, CA 93933

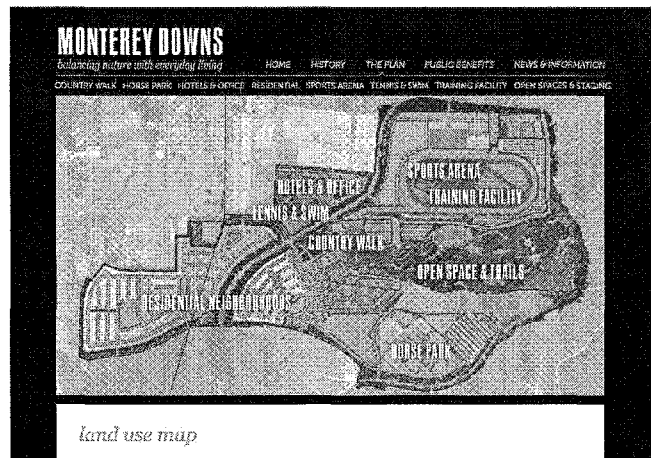
board@fora.org

Re: November 8 Agenda - Item 6a - 2010 Monterey County General Plan  
Consistency Determination

Dear FORA Board of Directors:

The November 5 defeat of Measures K and M shows that the voters want the 1997 Base Reuse Plan implemented. However, the 2010 Monterey County General Plan fails to implement important programs from the 1997 Base Reuse Plan, including programs applicable to land currently under Monterey County jurisdiction which Seaside wants to annex for the Monterey Downs project. This exclusion of important applicable programs necessitates that the 2010 General Plan not be found consistent with the 1997 Base Reuse Plan.

My October 10 letter, included in your packet on pages 24-27 and incorporated herein, shows that the 2010 Monterey County General Plan omits Base Reuse Plan Recreation/Open Space Land Use Program A-1.2, a program that would apply to the central eastern parcel within the Monterey Downs project and would require an easement deed restriction to run with the land to protect the parcel's sensitive soils. Also omitted is Noise Program B-1.2 that would apply to the Monterey Downs Sports Arena in the northern central portion of the land to protect the adjacent land owner (CSUMB)



against loud noises. Also omitted are two important sentences in Recreation/ Open Space Land Use Program B-2.1 which would bar roads through a 150 feet wide buffer area on the central east 72.5 acre parcel adjoining adjacent habitat management areas.

The 1997 Base Reuse Plan expressly makes those omitted programs applicable to Monterey County lands. (1997 Base Reuse Plan pages 270 and 460.)

FORA's Master Resolution, section 8.02.010 (a)(3), states that "in the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board **shall disapprove** (emphasis added) any legislative land use decision for which there is substantial evidence supported by the record, that...[the legislative land use decision] is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution."

Since the 2010 Monterey County General Plan completely omits two applicable programs and an essential component of a third program, and the Master Resolution states that the Authority Board **shall disapprove** (emphasis added) a consistency finding when substantial evidence shows the general plan is not in substantial conformance with applicable programs, your Board will violate Master Resolution section 8.02.010(a)(c) if you find the 2010 Monterey County General Plan consistent with the 1997 Base Reuse Plan.

The November 8 staff report asserts that "there are several defensible rationales for making an affirmative consistency determination" and the resolution in your Board packet asserts that "FORA's consistency determination must be based upon the overall congruence between the submittal and the Reuse Plan, not on a precise match between the two." No legal authority supports those assertions. "Defensible rationale" and "overall congruence" are legally improper standards for finding consistency when the controlling regulation says "shall disapprove."

#### The November 5 Election Results

The November 5 election results retain the 1997 Base Reuse Plan. It is a plan that was based on a million dollar study and forged from a lengthy process of political and legal compromise. The Plan has not been implemented according to the plain meaning of its text, nor has Chapter 8 of the Master Resolution been enforced according to the plain meaning of its text.

The November 5 election results will hopefully cause the FORA Board to return to the plain meaning of the Reuse Plan and the plain meaning of Chapter 8:

- The text of the 1997 Reuse Plan says that “The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.” (Volume II of Base Reuse Plan, pg. 270.)
- The text of Chapter 8 says that “In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [the land use decision] is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of the Master Resolution.”

Substantial evidence consists of page 270 of the 1997 Reuse Plan compared to page FO-21 of the 2010 Monterey County General Plan. Page 270 includes the open space program; page FO-21 does not.

Chapter 8 says that when the legislative decision is not in substantial conformance with an applicable program of the Reuse Plan, the FORA Board “shall” disapprove a consistency finding. What could be more clear than that?

The staff report on page 6 of your packet states that “strict timelines” in State law require FORA to act on the County’s request for a consistency finding. State law allows 90 days from the date of submittal. The date of submittal was September 24, 2013. That means that as of your meeting tomorrow (November 8), forty-five days will remain before your Board must act.

Forty-five days is sufficient time for FORA staff to compile an explanation based on **the actual text** of the 1997 Reuse Plan, the **actual text of** 2010 General Plan, and the **actual text** of Chapter 8 to explain to your Board why FORA staff recommends that your Board find consistency when the **actual text** of those three documents mandates your Board to disapprove finding consistency. Your staff report contains terms like “several defensible rationales” and “overall congruence.” However, I’ve been unable to find those terms in any statute, regulation or case law applicable to a consistency finding by FORA.

Tomorrow, three days after the voters spoke, presents an opportunity to the FORA Board to finally require accountability from FORA staff to implement the plain meaning of FORA governing documents. I request that at tomorrow’s hearing, your Board do so.

Sincerely,

JANE HAINES

December 30, 2013  
Alan Waltner, Esq.  
via Michael Houlemard at FORA  
Marina, CA

Dear Mr. Waltner:

I'm the retired land use attorney whose comments on the Monterey County General Plan consistency review you address in your December 26 memorandum to the Fort Ord Reuse Authority. I will provide this letter to Michael Houlemard in an envelope addressed to your San Francisco office and leave it up to Michael and Jon Giffen as to whether or not they forward this to you.

My main purpose for writing is to provide you with the enclosed copy of the 1998 settlement agreement between the Sierra Club and FORA. Your memorandum refers to Chapter 8 of the FORA Master Resolution, which is Exhibit 1 to the settlement agreement. However, I want you to see the entire agreement so you can see that Sierra Club agreed to settle its judicial challenge to the Reuse Plan in exchange for FORA adopting Chapter 8 as an *implementation measure* for the Reuse Plan. (Settlement Agreement, paragraph 2.)

You characterize my first argument as saying that Section 8.02.010 of the Master Resolution modifies the consistency review standards of the FORA Act to require "strict adherence to the 1997 Reuse Plan" before consistency can be found. Although I'm not aware of having phrased it as "strict adherence," I do read Section 8.02.010 literally as saying the FORA Board "shall disapprove" consistency of a general plan when substantial evidence shows the general plan is "not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020." I read subdivision (c) of Section 8.02.010 as saying that substantial compliance is demonstrated when the applicant land use agency has complied with all provisions of Section 8.02.010 in addition

to Section 8.02.020. If that's what you mean by "strict adherence," then yes, that is my argument. It is based on FORA's agreement to adopt Chapter 8 as an *implementation measure* for the Reuse Plan and in that respect does not "modify" the consistency review standards of the FORA Act, but rather denotes how they will be implemented.

You characterize my second argument as saying that evidence of intensity of land uses, density of land uses, and substantial conformance with applicable programs in the Reuse Plan triggers the "shall disapprove" requirement. I'm not aware that I mentioned intensity or density of land uses, but definitely I argued that the Monterey County General Plan's omission of Reuse Plan Recreation/Open Space Land Use Program A-1.2 triggers disapproval, and is also a CEQA violation with foreseeably significant environmental consequences. Program A-1.2 would apply to the 72.5 acre Habitat Reserve Parcel E19.a.2 which Seaside will need to annex from Monterey County for purposes of including the parcel in Seaside's Monterey Downs project. Seaside's General Plan does not include a program such as A-1.2, so if Seaside annexes that parcel without Monterey County having first recorded the Natural Ecosystem Easement deed restriction, the parcel's sensitive Oceano and Arnold soils will lack the protection required by the 1997 FEIR. Similarly, Monterey County General Plan omission of a critical requirement in Program B-2.1 also has foreseeably significant environmental consequences.<sup>1</sup> (See 1997 FEIR pages 4-14 and 4-15 attached.)<sup>2</sup>

You characterize my third argument as saying there is no legal authority supporting a consistency review standard that parallels the consistency standard under the Planning and Zoning Law. I agree with your characterization in that I believe that the "shall disapprove" requirement

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<sup>1</sup> Your memorandum states that my October 10 letter objects that Monterey County has not yet recorded the easement. I can't find that objection in my October 10 letter and it seems unlikely I would have made it because Monterey County has not yet accepted the deed to Habitat Reserve Parcel E19.a.2.

<sup>2</sup> Your memorandum notes that the entirety of the BRP has been incorporated "by reference" into the Monterey County General Plan. I find the General Plan statement that you reference (but without the "by reference"), but the statement is belied by the fact that the Plan omits all or portions of the 8 programs identified in footnote 2 of my October 10 letter in addition to Reuse Plan Recreation/Open Space Land Use Programs A-1.2 and B-2.1 plus Noise Program B-1.2.



in Section 8.02.020 differs significantly from the Planning and Zoning Law consistency standard applicable to consistency with general plans.

As this letter's final point, my November 8 letter, which you've apparently read, explains my belief that FORA's general plan consistency determination is an adjudicatory decision and is therefore subject to the *Topanga* holding that the findings must bridge the analytic gap between the raw evidence and the ultimate decision. The Board Report for FORA's upcoming January 10 hearing on the Monterey County General Plan consistency determination contains a proposed resolution to find consistency (resolution available on the FORA website) utilizing the findings I object to, such as the factual finding that "consistency" in this context is defined by OPR's General Plan Guidelines and that substantial evidence shows the General Plan is in substantial conformance with applicable Reuse Plan programs. In my view, those findings do not bridge the analytic gap between a consistency decision and the requirement of Section 8.02.020.

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Attorneys whom I highly respect, respect you highly. That's why I thought it worth the time to write you this letter -- to ensure that you are aware of Sierra Club's stated reason for supporting the Reuse Plan. I'm not affiliated with Sierra Club and I'm on inactive status with the California Bar so I can't give legal advice. I simply wanted to communicate to you on my own behalf what I've stated above.

Sincerely,

Jane Haines

Urban Village and Employment Center with approximately 85 acres dedicated to Office/R&D and Business Park/Light Industrial land uses. These manufacturing and possibly labor-intensive uses could create nuisances including increased noise, traffic, and air pollution, which may adversely affect the recreational opportunities and experiences at the Youth Camp District. The ~~MOU~~-POST facility would also potentially conflict with the Youth Camp District due to noise and public safety risks.

The following policies and programs developed for the ~~Draft Fort Ord Reuse Plan~~ for Monterey County relate to both the protection of open space and compatibility of open space areas with adjacent areas:

#### Land Use Element

**Recreation/Open Space Land Use Policy A-1:** The County of Monterey shall protect ~~encourage the conservation and preservation of~~ irreplaceable natural resources and open space at former Fort Ord.

Program A-1.1: The County of Monterey shall identify natural resources and open space, and incorporate them into Greater Monterey Peninsula Area Plan and zoning designations.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

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**Recreation/Open Space Land Use Policy B-2:** The County of Monterey shall use open space as a buffer between various types of land use.

Program B-2.1: The County of Monterey shall review each development project at former Fort Ord with regard to the need for open space buffers between land uses.

**Recreation /Open Space Land Use:** Program E-1.6: The Youth Camp District in the Reservation Road Planning Area is intended for rehabilitation of the existing travel camp. The County of Monterey shall assure that this planned use is compatible with adjacent land uses which may include a public safety agency training facility with shooting ranges in the East Garrison area located to the East.

**Institutional Land Use Policy A-1:** The County of Monterey shall review and coordinate with the universities, colleges and other school districts or entities the planning of both public lands designated for university-related uses and adjacent lands.

Program A-1.4: The County of Monterey shall minimize the impacts of proposed land uses which may be incompatible with public lands, such as major roadways near residential or university areas, location of the York School augmentation area adjacent to the habitat management area, and siting of the Monterey Peninsula College's MOU law enforcement training program in the BLM Management/Recreation Planning Area.

Further policies regarding the general protection of open space areas can be found in Section 4.3 - Recreation and Open Space Element of the ~~Draft Fort Ord Reuse Plan~~. Additional policies and

programs to protect natural habitat resources and implement the HMP are listed in Section 4.4.3 - Biological Resources section of the Conservation Element.

While these policies and programs require the identification of open space and natural habitat areas and review of compatibility with adjacent uses, they provide no mechanism for assuring that incompatible land uses will not be introduced. Therefore, significant adverse impacts on adjacent open space areas may occur. Implementation of the following mitigation measure would reduce potential impacts to the extent that they would be considered less than significant.

**Mitigation:** Amend Program B-2.1 within the Fort Ord Reuse Plan to state: The County of Monterey shall review each future development project for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into the development plan of incompatible land uses as a condition of project approval. When buffers are required as a condition of approval adjacent to habitat management areas, the buffer shall be at least 150 feet. Roads shall not be allowed within the buffer area except for restricted access maintenance or emergency access roads.

## 2. Impact: Development in the Coastal Zone

Implementation of the proposed project would result in development of the coastal zone. In the Fort Ord Dunes State Park Planning Area, the ~~Draft Fort Ord Reuse Plan~~ proposes a 59-acre multi-use area, a 23-acre future desalination plant, and ~~803~~ 949 acres reserved for park and open space. This coastal area, which contains significant environmental and natural resources, would be managed by the California Department of Parks and Recreation (CDPR) for habitat restoration and limited visitor-serving activities. ~~Development of the proposed multi-use area, which would potentially include a 40-room lodge (including Stilwell Hall) and other associated facilities, has the potential to destroy or disturb a portion of these resources.~~ The following policy and programs relate to protection and appropriate use of the coastal area:

### Land Use Element

**Recreation/Open Space Land Use Policy E-1:** The County of Monterey shall limit recreation in environmentally sensitive areas, such as dunes and areas with rare, endangered, or threatened plant or animal communities to passive, low-intensity recreation, dependent on the resource and compatible with its long term protection.

Program E-1.1: The County of Monterey shall assist the CDPR to develop and implement a Master Plan for ensuring the management of the former Fort Ord coastal dunes and beaches for the benefit of the public by restoring habitat, recreating the natural landscape, providing public access, and developing appropriate day use and overnight lodging facilities (limited to a capacity of 40 rooms).

Program E-1.2: The County of Monterey shall assist CDPR to carry out a dune restoration program for the Fort Ord Dunes State Park.

Additional policies and programs to protect natural habitat in the coastal zone and to implement the HMP are described in Section 4.10 and are listed in the Biological Resources section of the Conservation Element. Any development in the coastal zone would need to be consistent with the

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Agreement is made this 30 day of November, 1998, by and between Petitioner SIERRA CLUB and Respondent FORT ORD REUSE AUTHORITY.

### Recitals

A. On July 16, 1997, Petitioner SIERRA CLUB, a California non-profit corporation, filed a Petition for Writ of Mandamus against Respondent FORT ORD REUSE AUTHORITY ("FORA"), a governmental entity organized under the laws of the State of California, challenging actions of FORA in approving the Fort Ord Reuse Plan and the Reuse Plan's concomitant Environmental Impact Report. The Petition for Writ of Mandamus was filed in Monterey County Superior Court and is identified in the official records of the court as Case No. 112014.

B. Pursuant to the provisions of the California Environmental Quality Act, the Petitioner and Respondent have met on numerous occasions over many months in an attempt to resolve the dispute in an amicable and constructive manner.

C. Without admitting liability or guilt, all parties desire to resolve this litigation and avoid incurring further cost, expense, and disruption incident to the litigation. The parties further desire to achieve a full and complete settlement of all claims and causes of action with reference to each other.

D. Settlement of the dispute involves FORA adoption of a legislative action in the form of an amendment to FORA's "Master Resolution." This legislative action has been identified as "Chapter 8 to the Fort Ord Reuse Authority Master Resolution, relating to Base Reuse Planning and Consistency Determinations" and the proposed legislative action has been subject to public hearings and discussions. The most recent draft of this legislative action reflects the results of this hearing process and it is attached to this agreement as Exhibit "A." The form of the deed restriction and notice required by Section 8.01.010 (j) and (k) of Chapter 8 are attached to this agreement as Exhibits "B" and "C." The Sierra Club has reviewed Exhibits "A", "B" and "C" and the Sierra Club has approved these documents and supports the FORA Board of Directors' adoption of this legislation in its current form.

### Terms

The parties hereby agree, warrant, and represent as follows:

1. FORA adopted Chapter 8 to the Fort Ord Reuse Authority Master Resolution in substantially the form contained in Exhibit "A" to this Agreement, subject to Sierra Club

Sierra Club v. FORA  
Case Number 112014

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

executing a settlement agreement in this litigation agreeing to dismiss the litigation. The deed restriction and notice required by Section 8.01.010 (j) and (k) of Chapter 8 shall be approved and recorded in the form contained in Exhibits "B" and "C" to this agreement.

2. With FORA adoption of Chapter 8 in the form described in Paragraph 1 as an implementation measure for the Reuse Plan, the SIERRA CLUB endorses and supports the Reuse Plan and acknowledges the Reuse Plan as a constraint driven plan that requires that development of Fort Ord as planned in the Reuse Plan will only occur within the resource constraints within Fort Ord and that any new development will be obligated to pay its fair share to regional improvements and infrastructure necessary to serve Fort Ord.

3. In a form acceptable to Authority Counsel of FORA, the SIERRA CLUB will dismiss the litigation referenced in the recitals, with prejudice.

4. FORA agrees that in the event FORA considers any amendment to Chapter 8 of the FORA Master Resolution, FORA shall perform an environmental assessment consistent with the provisions of the California Environmental Quality Act ("CEQA") and the rules and regulations promulgated thereunder prior to consideration of approval of any such amendment. In addition, FORA shall provide the SIERRA CLUB and its attorney of record at least 30 days notice of the preparation of such environmental assessment, which shall include an opportunity to comment on such assessment, and at least 15 days notice of any hearing on any proposed amendment of Chapter 8. The parties further agree that each amendment to Chapter 8 will be reviewed under CEQA as a new project not be subject to the environmental review limitations of Public Resources Code Section 21166.

5. FORA shall forthwith upon the execution of this agreement contribute the amount of \$ \_\_\_\_\_ directly to the SIERRA CLUB'S attorneys towards the total cost the SIERRA CLUB's attorneys fees and legal costs in the preparation and filing of the Petition and in the negotiation of the settlement of this dispute, including the review and comment on the proposed Chapter 8 and the preparation of this agreement. Except as otherwise provided in this paragraph, the parties agree that each party shall be responsible respectively for the payment of their own costs, attorneys' fees, and all other expenses incurred in connection with the above action or any matter or thing respecting the released claims.

6. In consideration of the covenants mutually and individually undertaken in this agreement and except as expressly provided in this agreement, the SIERRA CLUB, its agents, assigns, successors-in-interest, and any other person acting by, through, under or in concert with any of them hereby irrevocably and unconditionally releases FORA, it's members, and any and all

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

of FORA's or its members' agents, assigns, attorneys, executives, managers, officers, trustees, employees, successors-in-interest, including any and all employees of FORA, its members, and any other person acting by, through, or in concert with them, from any and all charges, complaints, claims, allegations, actions, causes of action, liabilities, obligations, costs (other than as set forth above), controversies, damages, rights, of any nature whatsoever, known or unknown, suspected or unsuspected, which SIERRA CLUB has or might have had, or which SIERRA CLUB at any time heretofore had or might have had, claimed to have or may claim to have, against FORA, its members, or any or all of FORA's or its members' agents, assigns, attorneys, managers, executives, officers, employees, successors-in-interest, or any other person at FORA or its members acting by, through, under, or in concert with any of them, which were raised or might have been raised in this litigation arising out of the preparation of the Reuse Plan and the Environmental Impact report prepared in conjunction with the Reuse Plan. This release shall not apply to future actions taken by FORA to amend the Reuse Plan or Chapter 8.

7. Each party expressly waives and relinquishes any and all rights and benefits afforded by California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Each of the parties hereby expressly waives the provisions of California Civil Code Section 1542, and each party further expressly waives any right to invoke said provisions now or at any time in the near future.

8. The parties recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and the parties hereby expressly assume any and all of the risks thereof and further expressly assume the risks of waiving the rights provided by California Civil Code Section 1542.

9. Each party represents that in executing this Agreement, the party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein and that party has conferred with his, her, or its own attorneys with regard to the basis or effect of this Agreement.

10. Each party denies any wrongdoing in this matter, and the payment of any sums of money in the matter is not to be deemed an admission of guilt or liability. The parties understand

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

and agree that this settlement is made to bring an end to the contested and complex litigation which has resulted from the filing of the Monterey County Superior Court Case Number 112014.

11. This Agreement is executed and delivered in the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with the laws of the State of California.

12. This Settlement Agreement and General Release is the complete agreement between the parties, and supersedes any prior agreements or discussions between the parties.

13. This Agreement may be executed by the parties in any number of counterparts, which are defined as duplicate originals, all of which taken together shall be construed as one document.

14. Time is of the essence.

15. The parties agree that they have separately and independently thoroughly discussed all aspects of this Agreement with their legal counsel, and that they have carefully read and fully understand all of the provisions contained in this Agreement.

///

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

SIERRA CLUB

DATED: Dec. 6, 1998.

By: Jillian Taylor  
Title: Chapter Chair

Sierra Club v. FORA  
Case Number 112014

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

FORT ORD REUSE AUTHORITY

DATED: 12/6/, 1998.

By: [Signature]  
Title: EXECUTIVE OFFICER

Approved as to Form and Content:

By: [Signature]  
Authority Counsel

By: [Signature]  
Attorney for Sierra Club

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Sierra Club v. FORA  
Case Number 112014



**EXHIBIT A**

**A RESOLUTION OF THE FORT ORD REUSE AUTHORITY, AMENDING SECTION  
1.01.050 AND ADDING CHAPTER 8 TO THE FORT ORD REUSE AUTHORITY  
MASTER RESOLUTION, RELATING TO BASE REUSE PLANNING AND  
CONSISTENCY DETERMINATIONS**

Section 1. Section 1.01.050 of the Fort Ord Reuse Authority Master Resolution is amended by adding the following definitions to such section in alphabetical order:

“Affected territory” means property within the Fort Ord Territory that is the subject of a legislative land use decision or an application for a development entitlement and such additional territory within the Fort Ord Territory that may be subject to an adjustment in density or intensity of allowed development to accommodate development on the property subject to the development entitlement.

“Army urbanized footprint” means the Main Garrison Area and the Historic East Garrison Area as such areas are described in the Reuse Plan.

“Augmented water supply” means any source of potable water in excess of the 6,600 acre feet of potable water from the Salinas Basin as allowed under the Reuse Plan.

“Development entitlements” includes but is not limited to tentative and final subdivision maps, tentative, preliminary, and final parcel maps or minor subdivision maps, conditional use permits, administrative permits, variances, site plan reviews, and building permits. The term “development entitlement” does not include the term “legislative land use permits” as that term is defined in this Master Resolution. In addition, the term “development entitlement” does not include:

- 1) Construction of one single family house, or one multiple family house not exceeding four units, on a vacant lot within an area appropriately designated in the Reuse Plan.
- 2) Improvements to existing single family residences or to existing multiple family residences not exceeding four units, including remodels or room additions.
- 3) Remodels of the interior of any existing building or structure.
- 4) Repair and maintenance activities that do not result in an addition to, or enlargement of, any building or structure.
- 5) Installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and development approved pursuant to the Authority Act.
- 6) Replacement of any building or structure destroyed by a natural disaster with a comparable or like building or structure.
- 7) Final subdivision or parcel maps issued consistent with a development entitlement subject to previous review and approval by the Authority Board.
- 8) Building permit issued consistent with a development entitlement subject to previous review by the Authority Board.

"Fort Ord Territory" means all territory within the jurisdiction of the Authority.

"Habitat Management Plan" means the Fort Ord Installation-Wide Multi-Species Habitat Management Plan, dated April, 1997.

"Land use agency" means a member agency with land use jurisdiction over territory within the jurisdiction of the Authority Board.

"Legislative land use decisions" means general plans, general plan amendments, redevelopment plans, redevelopment plan amendments, zoning ordinances, zone district maps or amendments to zone district maps, and zoning changes.

"Noticed public hearing" means a public hearing noticed in the following manner

1. Notice of the public hearing shall be posted on the public meeting room at the FORA office at least 10 days before the date of the hearing; and
2. Notice of the public hearing shall be mailed or delivered at least 10 days prior to the affected land use agency, to any person who has filed an appeal, and to any person who has requested special notice; and
3. Notice of the public hearing shall be published at least 10 days before the date of the hearing in at least one newspaper of general circulation within the area that the real property that is the subject of the public hearing is located.

"Reuse Plan" means the plan for reuse and development of the territory within the jurisdiction of the Authority, as amended or revised from time to time, and the plans, policies, and programs of the Authority Board, including the Master Resolution.

Section 2. Chapter 8 is added to the Fort Ord Master Resolution to read:

#### CHAPTER 8.

#### BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS.

#### Article 8.01. GENERAL PROVISIONS.

#### 8.01.010. REUSE PLAN

(a) The Authority Board shall prepare, adopt, review, revise from time to time, and maintain a Reuse Plan for the use and development of the territory within the jurisdiction of the Authority. Such plan shall contain the elements mandated pursuant to the Authority Act and such other elements, policies, and programs as the Authority Board may, in its sole discretion, consider and adopt.

(b) The Reuse Plan, including all elements, policies, and programs adopted in conjunction with the Reuse Plan, and any amendments thereto, shall be the official and controlling plan for the reuse of the Fort Ord territory for the purposes specified or inferred in the Authority Act.

(c) All general and specific plans, redevelopment plans, and all other community and local plans regardless of title or description, and any amendments thereto, and all policies and programs relating to the land use or the construction, installation, or maintenance of capital improvements or public works within the Fort Ord territory, shall be consistent with the Reuse Plan of the Authority and the plans and policies of the Authority, including the Master Resolution. The Authority shall make a determination of consistency as provided pursuant to the provisions of the Authority Act and, after the effective date hereof, this Chapter.

(d) A revision or other change to the Reuse Plan which only affects Fort Ord territory and only one of the member agencies may only be adopted by the Authority Board if one of the following conditions is satisfied:

- (1) The revision or other change was initiated by resolution adopted by the legislative body of the affected land use agency and approved by at least a majority affirmative vote of the Authority Board; or
- (2) The revision or other change was initiated by the Authority Board or any entity other than the affected land use agency and approved by at least a two-thirds affirmative vote of the Authority Board.

(e) All property transferred from the federal government to any user or purchaser, whether public or private, shall only be used in a manner consistent with the Reuse Plan, with the following exceptions:

- (1) Property transferred to California State University or the University of California and such property is used for educationally related or research oriented purposes; or
- (2) Property transferred to the California State Parks and Recreation Department.

(f) No land use agency or any local agency shall permit, approve, or otherwise allow any development or other change of use, or approve any development entitlement, for property within the territory of the Authority that is not consistent with the Reuse Plan.

(g) No land use agency shall issue, approve, or otherwise allow any building permit until all applicable permits, development entitlements, and approvals required under law have been approved, including, but not limited to, the approvals and permits described and enumerated in Section 3.7 of the Final Environmental Impact Report for the Reuse Plan.

(h) The Reuse Plan shall be reviewed periodically at the discretion of the Authority Board. The Authority Board shall perform a full reassessment, review, and consideration of the Reuse Plan and all mandatory elements as specified in the Authority Act prior to the allocation of

an augmented water supply, or prior to the issuance of a building permit for the 6001st new residential dwelling unit (providing a total population of 35,000 persons) on the Fort Ord territory or by January 1, 2013, whichever event occurs first. No more than 6000 new dwelling units shall be permitted on the Fort Ord territory until such reassessment, review, and consideration of the Reuse Plan has been prepared, reviewed, and adopted pursuant to the provisions of the Authority Act, the Master Resolution, and all applicable environmental laws. No development shall be approved by FORA or any land use agency or local agency after the time specified in this subsection unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by CEQA, the Authority Act, the Master Resolution, and all applicable environmental laws.

(i) The failure of any person or entity to receive notice given pursuant to this Chapter shall not constitute grounds for any court to invalidate the action on any legislative act or development entitlement pursuant to this Chapter for which required notice was given.

(j) The Authority shall record a notice on all property in the Fort Ord territory advising all current and future owners of property of the existence of the Reuse Plan and that development of such property shall be limited by the Reuse Plan, the policies and programs of the Authority, including the Master Resolution, and/or the constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

(k) In the event the Authority receives, purchases, or acquires, by any means, fee interest title to property within the Fort Ord territory, the Authority shall record a covenant running with the land advising all future owners of such property that development and use of the property is subject to the Reuse Plan and that development of such property shall be limited by the Reuse Plan, the policies and programs of the Authority, including the Master Resolution, and/or constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

**8.01.020. PROCEDURES FOR CONSISTENCY DETERMINATIONS FOR LEGISLATIVE LAND USE DECISIONS.**

(a) Each land use agency shall submit all legislative land use decisions affecting property in the territory of the Authority to the Executive Officer for review and processing.

(b) All submissions regarding a legislative land use decision shall include:

- (1) A complete copy of the legislative land use decision, including related or applicable text, maps, graphics, and studies;
- (2) A copy of the resolution or ordinance of the legislative body approving the legislative land use decision, adopted at the conclusion of a noticed hearing certifying that the portion of a legislative land use decision

- applicable to the Fort Ord territory is intended to be carried out in a manner fully in conformity with the Reuse Plan and the Authority Act;
- (3) A copy of all staff reports and materials presented or made available to the legislative body approving the legislative decision, or any advisory agency relating to the legislative land use decision;
  - (4) A copy of the completed environmental assessment related to the legislative land use decision;
  - (5) A statement of findings and evidence supporting the findings that the legislative land use decision is consistent with the Reuse Plan, the Authority's plans and policies, including the Master Resolution, and is otherwise consistent with the Authority Act; and
  - (6) Such other materials as the Executive Officer deems necessary or appropriate and which have been identified within 15 days of the receipt of the items described in subsection (b) of this Section.

(c) Within 90 days of the receipt of all of the items described in subsection (b) above, or from the date the Executive Officer accepts the submission as complete, whichever event occurs first, the Authority Board shall conduct a noticed public hearing, calendared and noticed by the Executive Officer, to certify or refuse to certify, in whole or in part, the portion of the legislative land use decision applicable to Fort Ord territory. The Authority Board shall adopt a resolution making findings in support of its decision, such decision shall be rendered within the time frame described in this section, and such decision shall be final. In the event the Authority Board fails, within the time frames described in this section, to conduct a public hearing or take action on determining whether the land use decision is consistent with the Plan and the Authority Act, the land use agency may file, upon ten days notice, a request with the Executive Officer to have the matter placed on the next Board agenda for a noticed public hearing to take action to consider the consistency finding and the Board shall take action at such noticed public hearing and such decision shall be final.

(d) In the event the Authority Board finds, on the basis of substantial evidence supported on the record, that the legislative act is consistent with the Reuse Plan and this Chapter, the Authority Board shall certify the legislative act pursuant to the provisions of the Authority Act.

(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings shall include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision shall be deemed certified. In the event the affected land use agency elects to meet the Authority Board's refusal of certification in a manner other than as suggested by the Authority Board, the legislative body of the affected land use agency shall resubmit its legislative land use decision to the Executive Officer and follow the procedures contained in this Section.

(f) No legislative land use decision shall be deemed final and complete, nor shall any land use entitlement be issued for property affected otherwise permitted by such legislative land use decision unless it has been certified pursuant to the procedures described in this Section.

(g) The Authority Board may only refuse to certify zoning ordinances, zoning district maps, or other legislative land use decision on the grounds that such actions do not conform with, or are inadequate to carry out, the provisions of the general plan, certified as consistent with the Reuse Plan pursuant to the provisions of this Section, applicable to the affected property.

(h) Nothing in this Section or in this Chapter shall apply to or be construed as adversely affecting any consistency determination previously obtained by a land use agency and certified by the Authority Board pursuant to the Authority Act.

#### 8.01.030. REVIEW OF DEVELOPMENT ENTITLEMENTS.

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

(b) All decisions on development entitlements of a land use agency affecting property within the territory of the Authority may be reviewed by the Authority Board on its own initiative, or may be appealed to the Authority Board, subject to the procedures specified in this Section. No development entitlement shall be deemed final and complete until the appeal and review procedures specified in this Section and Sections 8.01.040 and 8.01.050 of this Chapter have been exhausted.

(c) The land use agency approving a development entitlement within the jurisdiction of the Authority shall provide notice of approval or conditional approval to the Executive Officer. Notice of approval or conditional approval of a development entitlement shall include:

- (1) A complete copy of the approved development entitlement, including related or applicable text, maps, graphics, and studies.
- (2) A copy of all staff reports and materials presented or made available to any hearing body that reviewed the development entitlement.
- (3) A copy of the completed environmental assessment related to the development entitlement.

**8.01.040. REVIEW OF DEVELOPMENT ENTITLEMENTS BY INITIATIVE OF THE AUTHORITY BOARD.**

Within 35 days of the receipt of all of the notice materials described in subsection (d) of Section 8.01.030, the Authority Board, on its own initiative, may consider a resolution setting a hearing on a development entitlement affecting Fort Ord territory. The Authority Board may continue the matter of setting a hearing once for any reason. In the event the Authority Board does not act to set the matter for hearing within the 35 day time period or at the continued meeting, whichever event is last, the decision of the land use agency approving the development entitlement shall be deemed final and shall not be subject to review by the Authority Board pursuant to this Section. Nothing in this section shall be construed as abrogating any rights that any person may have to appeal development entitlements to the Authority Board pursuant to Section 8.01.050. In the event the Authority Board sets the matter for hearing, such hearing shall commence at the first regular meeting of the Authority Board following the date the Authority Board passed its resolution setting the matter for hearing or at a special hearing date prior to such regular meeting. The Authority Board may continue the matter once. In the event the Authority Board fails to take action on the development entitlement within such time period, the development entitlement shall be deemed approved.

**8.01.050. REVIEW OF DEVELOPMENT ENTITLEMENTS BY APPEAL TO AUTHORITY BOARD.**

(a) Within 10 days of a land use agency approving a development entitlement, any person aggrieved by that approval and who participated either orally or in writing, in that agency's hearing on the matter, may file a written appeal of such approval with the Executive Officer, specifically setting forth the grounds for the appeal, which shall be limited to issues raised at the hearing before the land use agency. The person filing the appeal shall pay a filing fee in an amount equal to the fee for appeal of combined development permits as established by the Monterey County Board of Supervisors for the cost of processing the appeal. The Executive Officer shall set, schedule, and notice a public hearing before the Authority Board. In the event the Authority Board fails to act on the development entitlement within the time periods specified in this Section to conduct a public hearing and take action within 60 days on determining whether the development entitlement is consistent with the Reuse Plan and the Authority Act, the land use agency may file, upon ten days notice, a request with the Authority Board to have the matter placed on the next Board agenda for a noticed public hearing to take action to consider the development entitlement.

(b) At the time and place noticed by the Executive Officer, the Authority Board will conduct a hearing on the development entitlement. The Authority Board may continue the matter once for any reason.

(c) Said continued hearing must be rescheduled to a date that is not later than 35 days from the date of the initial hearing date. In the event the Authority Board determines the development entitlement is not consistent with the Reuse Plan, the development shall be denied



and the Authority Board's decision shall be final. In the event the Authority Board determines the development entitlement is consistent with the Reuse Plan, the Authority Board shall approve the development entitlement.

**8.01.060. SUPERCESSION.**

In the event of a conflict or inconsistency between this Chapter of the Master Resolution and the Reuse Plan, the Development and Resource Plan, and other adopted FORA policies and procedures in regards to legislative land use decisions and/or development entitlements affecting lands within the affected territory, the provisions of this Chapter shall govern.

**8.01.070. FORA AS RESPONSIBLE AGENCY UNDER CEQA.**

In taking action on all legislative land decisions and for review of all development entitlements, the Authority Board shall act as a responsible agency under CEQA.

**8.01.080. ADMINISTRATIVE APPEALS.**

Any administrative decision made by the Executive Officer may be appealed to the Authority Board within 15 days by completing and filing a notice of appeal at the Office of the Executive Officer.

**Article 8.02. CONSISTENCY DETERMINATION CRITERIA.**

**8.02.010. LEGISLATIVE LAND USE DECISION CONSISTENCY.**

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that

- (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
- (2) Provides a development more dense than the density of use permitted in the Reuse Plan for the affected territory;
- (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
- (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and

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

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

(c) The Authority Board, in its discretion, may find a legislative land use decision is in substantial compliance with the Reuse Plan when the Authority Board finds that the applicant land use agency has demonstrated compliance with the provisions specified in this section and Section 8.02.020 of this Master Resolution.

**8.02.020. SPECIFIC PROGRAMS AND MITIGATION MEASURES FOR INCLUSION IN LEGISLATIVE LAND USE DECISIONS.**

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

- (1) Each land use agency shall review each application for a development entitlement for compatibility with adjacent open space land uses and require suitable open space buffers to be incorporated into the development plans of any potentially incompatible land uses as a condition of project approval.
- (2) When buffers are required as a condition of approval adjacent to Habitat Management areas, the buffer shall be designed in a manner consistent with those guidelines set out in the Habitat Management Plan. Roads shall not be allowed within the buffer area adjacent to Habitat Management areas except for restricted access maintenance or emergency access roads.

(b) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure consistency of future use of the property within the coastal zone through the master planning process of the California Department of Parks and Recreation, if applicable. All future use of such property shall comply with the requirements of the Coastal Zone Management Act and the California Coastal Act and the coastal consistency determination process.

(c) Monterey County shall include policies and programs in its applicable general, area, and specific plans that will ensure that future development projects at East Garrison are compatible with the historic context and associated land uses and development entitlements are appropriately

conditioned prior to approval.

(d) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall limit recreation in environmentally sensitive areas, including, but not limited to, dunes and areas with rare, endangered, or threatened plant or animal communities to passive, low intensity recreation, dependent on the resource and compatible with its long term protection. Such policies and programs shall prohibit passive, low density recreation if the Board finds that such passive, low density recreation will compromise the ability to maintain an environmentally sensitive resource.

(e) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall encourage land uses that are compatible with the character of the surrounding districts or neighborhoods and discourage new land use activities which are potential nuisances and/or hazards within and in close proximity to residential areas. Reuse of property in the Army urbanized footprint should be encouraged.

(f) Each land use agency with jurisdiction over property in the Army urbanized footprint shall adopt the cultural resources policies and programs of the Reuse Plan concerning historic preservation, and shall provide appropriate incentives for historic preservation and reuse of historic property, as determined by the affected land use agency, in their respective applicable general, area, and specific plans.

(g) The County of Monterey shall amend the Greater Monterey Peninsula Area Plan and designate the Historic East Garrison Area as an historic district in the County Reservation Road Planning Area. The East Garrison shall be planned and zoned for planned development mixed uses consistent with the Reuse Plan. In order to implement this aspect of the plan, the County shall adopt at least one specific plan for the East Garrison area and such specific plan shall be approved before any development entitlement shall be approved for such area.

(h) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall support all actions necessary to ensure that sewage treatment facilities operate in compliance with waste discharge requirements adopted by the California Regional Water Quality Control Board.

- (i) Each land use agency shall adopt the following policies and programs
- (1) A solid waste reduction and recycling program applicable to Fort Ord territory consistent with the provisions of the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.*
  - (2) A program that will ensure that each land use agency carries out all action necessary to ensure that the installation of water supply wells comply with State of California Water Well Standards and well standards established by the Monterey County Health Department; and
  - (3) A program that will ensure that each land use agency carries out all actions necessary to ensure that distribution and storage of potable and non-

potable water comply with State Health Department regulations.

(j) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to address water supply and water conservation. Such policies and programs shall include the following:

- (1) Identification of, with the assistance of the Monterey County Water Resources Agency and the Monterey Peninsula Water Management District, potential reservoir and water impoundment sites and zoning of such sites for watershed use, thereby precluding urban development;
- (2) Commence working with appropriate agencies to determine the feasibility of developing additional water supply sources, such as water importation and desalination, and actively participate in implementing the most viable option or options;
- (3) Adoption and enforcement of a water conservation ordinance which includes requirements for plumbing retrofits and is at least as stringent as Regulation 13 of the Monterey Peninsula Water Management District, to reduce both water demand and effluent generation.
- (4) Active participation in the support of the development of "reclaimed" or "recycled" water supply sources by the water purveyor and the Monterey Regional Water Pollution Control Agency to ensure adequate water supplies for the territory within the jurisdiction of the Authority.
- (5) Promotion of the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use.
- (6) Adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development at territory within the jurisdiction of the Authority to assure that it does not exceed resource constraints posed by water supply.
- (7) Adoption of appropriate land use regulations that will ensure that development entitlements will not be approved until there is verification of an assured long-term water supply for such development entitlements.
- (8) Participation in the development and implementation of measures that will prevent seawater intrusion into the Salinas Valley and Seaside groundwater basins.
- (9) Implementation of feasible water conservation methods where and when determined appropriate by the land use agency, consistent with the Reuse Plan, including: dual plumbing using non-potable water for appropriate functions; cistern systems for roof-top run-off; mandatory use of reclaimed water for any new golf courses; limitation on the use of potable water for golf courses; and publication of annual water reports disclosing water consumption by types of use.

(k) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will require new development to demonstrate that

all measures will be taken to ensure that storm water runoff is minimized and infiltration maximized in groundwater recharge areas. Such policies and programs shall include:

- (1) Preparation, adoption, and enforcement of a storm water detention plan that identifies potential storm water detention design and implementation measures to be considered in all new development, in order to increase groundwater recharge and thereby reduce potential for further seawater intrusion and provide for an augmentation of future water supplies.
- (2) Preparation, adoption, and enforcement of a Master Drainage Plan to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan, and develop plans for the control of storm water runoff from future development. Such plans for control of storm water runoff shall consider and minimize any potential for groundwater degradation and provide for the long term monitoring and maintenance of all storm water retention ponds.

(l) Each land use agency shall adopt policies and programs that ensure that all proposed land uses on the Fort Ord territory are consistent with the hazardous and toxic materials clean-up levels as specified by state and federal regulation.

(m) Each land use agency shall adopt and enforce an ordinance acceptable to the California Department of Toxic Substances Control ("DTSC") to control and restrict excavation or any soil movement on those parcels of the Fort Ord territory which were contaminated with unexploded ordnance and explosives. Such ordinance shall prohibit any digging, excavation, development, or ground disturbance of any type to be caused or otherwise allowed to occur without compliance with the ordinance. A land use agency shall not make any substantive change to such ordinance without prior notice to and approval by DTSC.

(n) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will help ensure an efficient regional transportation network to access the territory under the jurisdiction of the Authority, consistent with the standards of the Transportation Agency of Monterey County. Such policies and programs shall include:

- (1) Establishment and provision of a dedicated funding mechanism to pay for the "fair share" of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of the Authority, and
- (2) Support and participate in regional and state planning efforts and funding programs to provide an efficient regional transportation effort to access Fort Ord territory.

(o) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure that the design and construction of all major arterials within the territory under the jurisdiction of the Authority will have direct connections to the regional network consistent with the Reuse Plan. Such plans and policies shall include:

- (1) Preparation and adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development to assure that it does not exceed resource constraints posed by transportation facilities;
- (2) Design and construction of an efficient system of arterials in order to connect to the regional transportation system; and
- (3) Designate local truck routes to have direct access to regional and national truck routes and to provide adequate movement of goods into and out of the territory under the jurisdiction of the Authority.

(p) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to provide regional bus service and facilities to serve key activity centers and key corridors within the territory under the jurisdiction of the Authority in a manner consistent with the Reuse Plan.

(q) Each land use agency shall adopt policies and programs that ensure development and cooperation in a regional law enforcement program that promotes joint efficiencies in operations, identifies additional law enforcement needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(r) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure development of a regional fire protection program that promotes joint efficiencies in operations, identifies additional fire protection needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(s) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure that native plants from on-site stock will be used in all landscaping except for turf areas, where practical and appropriate. In areas of native plant restoration, all cultivars, including, but not limited to, manzanita and ceanothus, shall be obtained from stock originating on Fort Ord territory.

#### 8.02.030. DEVELOPMENT ENTITLEMENT CONSISTENCY

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board shall withhold a finding of consistency for any development entitlement that:

- (1) Provides an intensity of land uses which is more intense than that provided for in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;

- (2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;
- (3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
- (5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision.
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
- (7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.

#### **8.02.040. ADOPTION OF REQUIRED PROGRAMS.**

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

### **Article 8.03. ENVIRONMENTAL QUALITY.**

#### **8.03.010. ENVIRONMENTAL QUALITY AND PURPOSE.**

The purposes of this article is to provide guidelines for the study of proposed activities and the effect that such activities would have on the environment in accordance with the requirements of the California Environmental Quality Act ("CEQA").

#### **8.03.020. DEFINITIONS.**

Except as otherwise defined in this section, words and phrases used in this article shall have

the same meaning given them by Chapter 2.5 of the California Environmental Quality Act and by Article 20 of the State CEQA Guidelines.

**8.03.030. STATE CEQA GUIDELINES ADOPTED.**

The Authority hereby adopts the State CEQA Guidelines ("Guidelines") as set forth in Title 14, Section 15000 et seq. of the California Administrative Code and as may be amended from time to time. This adoption shall not be construed so as to limit the Authority's ability or authority to adopt additional implementing procedures in accordance with Section 15022 of such Guidelines, or to adopt other legislative enactments the Board may deem necessary or convenient for the protection of the environment.

**8.03.040. EXECUTIVE OFFICER'S RESPONSIBILITY.**

- (a) The Executive Officer shall, consistent with FORA obligations:
- (1) Generate and keep a list of exempt projects and report such list to the Board.
  - (2) Conduct initial studies.
  - (3) Prepare negative declarations.
  - (4) Prepare draft and final environmental impact reports.
  - (5) Consult with and obtain comments from other public agencies and members of the public with regard to the environmental effect of projects, including "scoping" meetings when deemed necessary or advisable.
  - (6) Assure adequate opportunity and time for public review and comment on a draft environmental impact report or negative declaration.
  - (7) Evaluate the adequacy of an environmental impact report or negative declaration and make appropriate recommendations to the Board.
  - (8) Submit the final appropriate environmental document to the Board who will approve or disapprove a project. The Board has the authority to certify the adequacy of the environmental document.
  - (9) File documents required or authorized by CEQA and the State Guidelines.
  - (10) Collect fees and charges necessary for the implementation of this article in amounts as may be specified by the Board by resolution and as may be amended from time to time.
  - (11) Formulate rules and regulations as the Executive Officer may determine are necessary or desirable to further the purposes of this article.

**8.03.050. COMPLETION DEADLINES.**

(a) Time limits for completion of the various phases of the environmental review process shall be consistent with CEQA and Guidelines and those time limits are incorporated in this article by reference. Reasonable extensions to these time limits shall be allowed upon consent by any applicant.



- (b) Time limits set forth in this section shall not apply to legislative actions.
- (c) Any time limits set forth in this section shall be suspended during an administrative appeal.

**8.03.060. PUBLIC NOTICE OF ENVIRONMENTAL DECISION.**

(a) Notice of the decision of whether to prepare an environmental impact report, negative declaration, or declare a project exempt shall be available for public review at the Office of the Executive Officer. Notices of decisions shall be provided in a manner consistent with CEQA and the Guidelines.

(b) Notice that the Authority proposes to adopt a negative declaration shall be provided to the public at least ten (10) days prior to the date of the meeting at which consideration of adoption of the negative declaration shall be given.

(c) Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County.

**8.03.070. APPEAL OF ENVIRONMENTAL DECISION.**

(a) Within fifteen (15) days after the Executive Officer provides notice of a decision, any interested person may appeal the decision to the Board by completing and filing a notice of appeal at the Office of the Executive Officer.

(b) The appellant shall pay a fee in the amount as specified in Section 8.01.050 (a) of this Resolution.

(c) The Board shall hear all appeals of decisions on any environmental issue. The hearing shall be limited to considerations of the environmental or procedural issues raised by the appellant in the written notice of appeal. The decision of the Executive Officer shall be presumed correct and the burden of proof shall be on the appellant to establish otherwise. The Board may uphold or reverse the environmental decision, or remand the decision back to the Executive Officer if substantial evidence of procedural or significant new environmental issues are presented.

(d) The decision of the Board will be final.

8.03.080. CONFLICT DETERMINATIONS.

This article establishes procedural guidelines for the evaluation of the environmental factors concerning activities within the jurisdiction of the Authority and in accordance with State Guidelines. Where conflicts exist between this article and State Guidelines, the State Guidelines shall prevail except where this article is more restrictive.

Section 3. This resolution shall become effective upon adoption.

PASSED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 1998, upon motion of Member \_\_\_\_\_, seconded by Member \_\_\_\_\_, and carried by the following vote:

AYES:

NOES:

ABSENT:

**EXHIBIT B**

## DEED RESTRICTION AND COVENANTS

This Deed Restriction and Covenants is made this \_\_\_\_ day of \_\_\_\_\_, 199 \_\_, by the Fort Ord Reuse Authority ("Owner"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances:

A. Owner is the owner of the real property described in Exhibit "A" to this Deed Restriction and Covenants ("the property"), by virtue of a conveyance of the property from the United States Government and/or the United States Department of the Army to Owner in accordance with state and federal law, the Fort Ord Base Reuse Plan ("the Reuse Plan"), and the policies and programs of the Fort Ord Reuse Authority.

B. Future development of the property is governed under the provisions of the Reuse Plan and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located consistent with the Reuse Plan.

C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.

D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services and by other residual effects of a former military reservation, including unexploded ordnance.

E. It is the desire and intention of Owner, concurrently with its acceptance of the conveyance of the property, to recognize and acknowledge the existence of these development constraints on the property and to give due notice of the same to the public and any future purchaser of the property.

F. It is the intention of the Owner that this Deed Restriction and Covenants is irrevocable and shall constitute enforceable restrictions on the property.

---

NOW, THEREFORE, Owner hereby irrevocably covenants that the property subject to this Deed Restriction and Covenants is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following restrictions and covenants on the use and enjoyment of the property, to be attached to and become a part of the deed to the property. The Owner, for itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

3. \_\_\_\_\_  
\_\_\_\_\_

4. This Deed Restriction and Covenants shall remain in full force and effect immediately and shall be deemed to have such full force and effect upon the first conveyance of the property from FORA, and is hereby deemed and agreed to be a covenant running with the land binding all of the Owner's assigns or successors in interest.

5. If any provision of this Deed Restriction and Covenants is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

6. Owner agrees to record this Deed Restriction and Covenants as soon as possible after the date of execution.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above written.

\_\_\_\_\_  
OWNER

-----ACKNOWLEDGMENT-----

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**EXHIBIT C**

## NOTICE OF APPLICATION OF PLAN AND DEVELOPMENT LIMITATIONS

This Notice of Plan Application and Development Limitations is made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, by the Fort Ord Reuse Authority ("Authority"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances:

A. Authority, consistent with its charge and obligations under the Fort Ord Reuse Authority Act, Title 7.85, Section 67650, et seq., of the California Government Code, has prepared and adopted a Fort Ord Reuse Plan (the "Reuse Plan") as the controlling planning document regulating and limiting development of property within the territory of the former Fort Ord Military Reservation.

B. Future development of the property is governed under the provisions of the Reuse Plan, the policies and programs of the Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located.

C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.

D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services.

E. It is the desire and intention of Authority to give due notice of the existence of these development constraints on the property within the territory of the former Fort Ord Military Reservation to the public and any future purchaser of the property.

NOW, THEREFORE, Authority hereby gives notice to the public and any and all future owners of property located on territory within the boundaries of the former Fort Ord Military Reservation, that

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

3.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above written.

\_\_\_\_\_  
Authority

ACKNOWLEDGMENT :

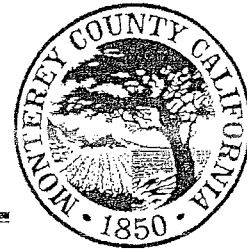
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# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director  
Carl P. Holm, AICP, Deputy Director

Michael A. Rodriguez, C.B.O., Chief Building Official  
Michael Novo, AICP, Director of Planning  
Robert K. Murdoch, P.E., Director of Public Works



168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
<http://www.co.monterey.ca.us/rma>

October 23, 2013

Fort Ord Reuse Authority  
Jonathan Garcia, Senior Planner  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933

SUBJECT: 2010 Monterey County General Plan Consistency Determination.

Dear Mr. Garcia,

This letter is provided as the County's responses to comments received during the General Plan consistency determination process.

## Overview

In 2001, Monterey County added the Fort Ord Master Plan to our General Plan, which the FORA Board found consistent with the Fort Ord Reuse Plan in 2002 (FORA Resolution #02-3). In 2010, the Fort Ord Master Plan (FOMP) was updated to recognize actions that the FORA Board had already taken. The changes included references to the Land Swap Agreement, the East Garrison approvals (both of which were found consistent with the Reuse Plan by the FORA Board) and other minor text changes made in consultation with FORA staff. There was no intent to change any policy or program.

It has come to our attention through the consistency determination process that the 2001 Master Plan and hence the 2010 Monterey County General Plan does not accurately copy word for word several Base Reuse Plan policies and programs. Policies and programs certified by FORA for the 2001 plan were not changed as part of the 2010 update. The County has stated its intent in the language of the FOMP and the subsequent resolution to carry out the General Plan in a manner fully in conformity with the Reuse Plan, which includes the FEIR, Implementation agreement and the Authority Act. The County submits for your consideration that fulfilling the intent of the policies and programs is more important than whether the language is identical between the FOMP and the Base Reuse Plan. In this case there is significant history in the Fort Ord Reuse Plan, and in the FEIR that shape and guide how the policies of the FOMP are interpreted and applied. The County submits that while the language is different, the implementation must be consistent with the intent of the Reuse Plan, as such the Fort Ord Master Plan should be found consistent with Reuse Plan. To demonstrate this, below are the County's responses to comments received during the consistency determination process describing how the plans are consistent.

## Comments and Responses

**Issue 1:** Parts of the FOMP [Fort Ord Master Plan] reverse specific changes made in response to comments in the Fort Ord Reuse Plan Final EIR.

County's Response: As noted above it was not the County's intent to change anything as part of the 2010 General Plan that had not been acted on by FORA. The policies and programs do seem to be based upon the draft plan evaluated in the DEIR for the Reuse Plan. The question is whether these policies would be implemented in a manner consistent with the plan. Those policies identified are:

- *Recreation/Open Space Land Use Policy A-1.* The word change from "shall encourage the conservation and preservation" to "shall protect"

This word change in the FEIR was made as a result of potential Land Use Compatibility Impacts, specifically concerning the "Frog Pond" which is in Del Rey Oaks, the Police Officer Safety Training (POST) facility that was relocated by the Land Swap Agreement, and the Youth Camp/East Garrison development that has already been addressed through approvals of the East Garrison development and Youth Camp restrictions in the HMP. The concerns behind this language change have already been resolved through implementation.

- *Recreation/Open Space Land Use Program A-1.2* – program calling for Natural Ecosystem Easement Deeds on "identified open space lands" omitted.

This program also was the result of the potential Land Use Compatibility Impacts described above yet the County is committed to complying with this requirement through plan implementation. The item is included in the County's Long-range work program.

- *Hydrology and Water Quality Policy B-1 and Programs B-1.1 through B-1.7.*

The language of the FOMP is not identical to the Reuse Plan, but the language has been included in other policies and programs in an equivalent or more comprehensive manner.

- *Hydrology and Water Quality Program C-6.1* – Program requiring the County to work closely with other FORA jurisdictions and CDRP to develop and implement a plan for storm water disposal that will allow for the removal of ocean outfall structures.

The County is under order from the State Water Board to develop storm water requirements that meet current state standards. The County is nearing completion of those standards including eliminating ocean outfalls and will work closely with other FORA jurisdiction to accomplish the same in Fort Ord. The County is leading a storm water task force to address this issue.

- *Biological Resources Policy C-2 and Programs C-2.1, C-2.2, C-2.3 and C-2.5.* – Preservation of oak woodlands in the natural and built environments.

Oak woodlands are protected under the General Plan, state law, and within Current County code. The County reviews and requires each development to minimize impacts on native trees through siting, design, and other mitigations pursuant to policies within the Fort Ord Master Plan, the HMP, the Open Space Element of the General Plan (Policies OS-5.3, OS-5.4, OS-5.10, OS-5.11; OS-5.4, and OS-5.23), and the Land Use Element of the General Plan (Policies LU-1.6 and LU-

1.7). Appropriate protections are provided for Oak woodlands within the natural and built environments.

**Issue 2:** Fort Ord does not have a long-term sustainable Water Supply contrary to County General Plan Policy PS-3.1 [which establishes a rebuttable presumption that there is a long-term water supply in Zone 2C which includes Fort Ord Territory].

*County's Response:* Policy PS-3.1 requires a determination that there is a long-term sustainable water supply. An exception is given to development within Zone 2C; however, "This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C {...} Development in Zone 2C shall be subject to all other policies of the General Plan **and applicable Area Plan**" (emphasis added.) In the case of the Fort Ord Master Plan (an Area Plan), there are more specific area plan policies that give guidance on making a finding that a Long Term Sustainable Water Supply exists consistent with PS-3.1. The Determination of a Long Term Sustainable Water supply would rely on the Hydrology and Water Quality policies of the Reuse Plan including the requirement to comply with the Development Resource Management Plan (DRMP). The DRMP establishes a water allocation for the County. The Public Services Element and the Fort Ord Master Plan policies work in conjunction with each other in a manner that is consistent with the Reuse Plan.

**Issue 3:** The Fort Ord Master Plan does not comply with the Land Swap Agreement because the Land Swap Agreement traded residential density at Parker Flats for increased residential density at East Garrison. This trade made the Eastside Parkway no longer desirable as a primary travel route.

*County's Response:* The Fort Ord Master Plan reflects the action taken on the Land Swap Agreement in 2002 and 2003 by acknowledging the revised Habitat Lands under the HMP. The Land Swap Agreement did not include amendments to the Reuse Plan. The Land Swap Assessment that accompanied the Land Swap Agreement provided the biological evidence necessary to gain concurrence from HMP stakeholders that the "swap" was sufficient under the terms of the HMP. The Biological Assessment mentions changes being considered at the time of the Land Swap Agreement preparation<sup>1</sup>, but those references within the biological assessment for an HMP amendment did not amend the Reuse Plan nor do they make the adopted General Plan inconsistent with adopted Reuse Plan since both documents have the same land use designations for the areas in question.

<sup>1</sup> The FORA Master Resolution states "FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased."

**Issue 4:** The County Still has not complied with the Fort Ord Reuse Plan Policies after Fifteen (15 Years).

*County's Response:* The County has implemented some of the Reuse Plan policies and is actively working on others. Delays in implementation do not make the General Plan inconsistent with the Reuse Plan.

**Issue 5: Is the County the lead agency under CEQA?**

County's Response: Yes. The FORA Master Resolution describes FORA's role as a "Responsible Agency" under CEQA for review of legislative decisions and development projects (Section 8.01.070). The County has certified an EIR prior for the 2010 General Plan. The DEIR, FEIR, Supplemental Information, and subsequent addendums to the EIR have all been provided to FORA with the consistency determination submittal/request.

**Conclusion**

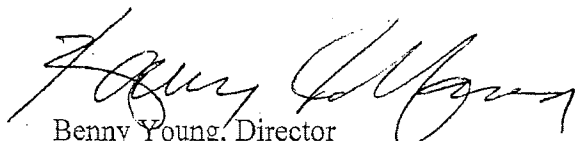
The Description of the Fort Ord Master Plan on pg FO-1 states "The purpose of this plan is to designate land uses and incorporate objectives, programs and policies to be consistent with the Fort Ord Reuse Plan (Reuse Plan) adopted by the Fort Ord Reuse Authority (FORA) in 1997." The County is implementing the Reuse Plan by adopting Reuse Plan Land Use Designations, enforcing the Habitat Management Plan, participating in the Base-wide Habitat Conservation Plan process, and coordinating with the public and private jurisdiction regarding development and open space in Fort Ord.

The County has supported the purpose statement of the Fort Ord Master Plan by adopting a resolution containing findings and certification that the 2010 General Plan is consistent with and intended to be carried out in a manner fully in conformity with the Reuse Plan (as required by the FORA Master Resolution). Attached to the findings is a table that outlines how the County's General Plan addresses all of the "Specific Programs and Mitigation Measures For Inclusion in Legislative Land Use Decisions" (Section 8.02.020 of the FORA Master Resolution).

None of the Findings requiring denial of the consistency determination, contained in 8.02.010 of the FORA Master Resolution can be made. The General Plan does not allow more intensity (1) or density (2) of Land Use than the Reuse Plan (see Land Use Designations), (3) Required programs and Mitigation Measures have been included and/or are being implemented as evidenced in the attachment to the County's consistency resolution and as further explained above, (4) The General Plan contains the same types of Land Uses that the Reuse Plan and the General Plan will not conflict or be incompatible with open space, recreational, or habitat management areas, (5) Financing and the provisions for adequate public services and facilities are required, and (6) implementation of the HMP is required.

The 2010 General Plan is consistent with the Fort Ord Reuse Plan.

Sincerely,



Benny Young, Director  
Resource Management Agency  
County of Monterey

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** Pollution Legal Liability (PLL) Insurance Policy

**Meeting Date:** January 10, 2014

**Agenda Number:** 8c

**INFORMATION/ACTION**

### RECOMMENDATION(S):

- i. Receive a presentation regarding the PLL insurance policy from Executive Officer Houlemard, Special Counsel Barry Steinberg (Kutak Rock, LLP), and FORA Insurance Broker Kathy Gettys (Marsh) INFORMATION
- ii. Consider insurance coverage options, provide direction to staff INFORMATION/ACTION

### BACKGROUND/DISCUSSION:

In June 2000, the Fort Ord Reuse Authority (FORA) entered into an Economic Development Conveyance Agreement with the United States Army (Army) for the transfer of former Fort Ord land. In 2001, FORA entered into property transfer agreements with underlying jurisdictions. Under the terms of these Implementation Agreements, with a few exceptions, FORA is obligated to transfer former Army property to individual jurisdictions, and those jurisdictions are required to accept title to this property from FORA (or direct FORA to transfer to their designee) once regulatory approval of environmental conditions is achieved. The affected jurisdiction then owns former Fort Ord land within their jurisdictional boundary to transfer for private development or to maintain for public purposes. Since both FORA and the underlying jurisdictions are in the chain of title for these former military lands, environmental liability concerns exist. Board members expressed concern that associated environmental risk might expose their general funds to claims and asked FORA staff to provide options for environmental insurance coverage, which would be cheaper and more efficient if acquired collectively. In 2002, after research and industry inquiries, FORA staff determined that only limited coverage was available for former military owned land. Subsequently, after consultation with FORA special counsel Barry Steinberg, it was concluded that coverage could be obtained, but at significant cost.

In 2004, after noting changes in the financial markets and upon receipt of information from the Association of Defense Communities, staff reported on options for coverage for PLL insurance. That year, the Board authorized purchase of a ten-year policy to provide PLL insurance coverage to FORA, its member land use jurisdictions, and their developers. That policy of insurance coverage will expire at the end of calendar year 2014, and staff recommends the Board provide guidance addressing environmental risk. The options are: 1) obtaining an extension of the existing policy, 2) securing a new policy, 3) self-insuring, or 4) allowing the existing policy to lapse with no provision for coverage. The existing PLL insurance has only been called upon in limited ways; no formal claims against the policy have been made over the years it has been in place. While the existing cost cap policy addresses FORA's obligations under the Environmental Services Cooperative Agreement (ESCA) with the Army, that coverage terminates upon completion of remedial work. The current cost-cap policies do not adequately address many of the risks associated with the day-to-day operations and activities that will occur over the next 5 to 10 years.

In Spring 2005, the Army and FORA entered negotiations for an Army-funded ESCA for removal of remnant Munitions and Explosives of Concern (MEC) on the former Fort Ord. Under the terms of this ESCA contract, FORA accepted transfer of 3,340 former Fort Ord acres prior to regulatory environmental sign-off. In early 2007, the Army awarded FORA approximately \$98 million to perform the ESCA parcels MEC cleanup. FORA also entered into an Administrative Order on Consent (AOC) with the U.S. Environmental Protection Agency and the California Department of Toxic Substance Control defining conditions under which FORA performs contractual responsibilities for these Army remediation obligations.

In order to complete the AOC defined work, after a competitive selection process, FORA entered into a Remediation Services Agreement with LFR Inc. (now ARCADIS) to provide MEC remediation services and executed a Cost-Cap insurance policy for this remediation work through American International Insurance Group. The Army ESCA Grant also provided FORA with \$916,056 toward the purchase of PLL insurance coverage similar to what the FORA Board purchased in 2004.

Through FORA's ESCA contract and the Army's other work under the Comprehensive Environmental Response, Compensation, and Liability Act, most of the remaining lands transferring through FORA have completed significant risk "characterization." In other words, much more is known today about the pollution conditions on the 6,000 acres than was known ten years ago. This should assist in attracting proposals from the insurance industry. The combination of: 1) the availability of ESCA PLL insurance funds and 2) the status of the investigations and characterization that has been performed since 2004 provides the FORA Board with a unique opportunity to supplement these funds and negotiate an extension to or replacement of the existing FORA PLL policy. There may exist an opportunity in this year to extend coverage at a reasonable price and terms partially using funds already intended for that purpose.

FORA Special Counsel Barry Steinberg and Insurance Broker Kathy Gettys will be present at the January 10, 2014 meeting to provide a brief presentation outlining the policy, options, and a recommended acquisition process for Board consideration.

**FISCAL IMPACT:**

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

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

**COORDINATION:**

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

Prepared by Jonathan Garcia Reviewed by Stan Cook  
Jonathan Garcia Stan Cook

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

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** Environmental Services Cooperative Agreement (ESCA) Update

**Meeting Date:** January 10, 2014

**Agenda Number:** 8d

**INFORMATION**

### RECOMMENDATION(S):

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

### BACKGROUND:

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

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

The ESCA Remediation Program (“RP”) has been underway for approximately six years. Currently, the FORA team has completed the known ESCA RP field work, pending Regulatory Agency review.

### DISCUSSION:

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

Under the ESCA grant contract with the U.S. Army, FORA received a \$97.7 million grant to clear munitions and to secure regulatory approval for the former Fort Ord ESCA parcels. FORA subsequently entered into a guaranteed fixed-price contract with LFR (now "ARCADIS") to complete the work as defined in a Technical Specifications and Review Statement ("TSRS") appended to the ESCA grant contract. As part of a contract between FORA and LFR, insurance coverage was secured from AIG (formerly "AIG" then "Chartis" and now "AIG" again) for which FORA paid \$82.1 million upfront from grant funds. This policy provides the funds that AIG uses to pay ARCADIS for the work performed.

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

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

Item	Originally Allocated	Accrued as of September 2013
FORA Self-Insurance or Policy	\$916,056	\$916,056
Reimburse Regulators & Quality Assurance	\$4,725,000	\$1,985,401
State of California Surplus Lines Tax, Risk Transfer, Mobilization	\$6,100,000	\$6,100,000
Contractor's Pollution Liability Insurance	\$477,344	\$477,344
Work Performed ARCADIS/AIG Commutation Account	\$82,117,553	\$66,229,121
FORA Administrative Fees	\$3,392,656	\$2,710,242
<b>Total</b>	<b>\$97,728,609</b>	<b>\$78,418,164</b>
	<b>ESCA Remainder</b>	<b>19,310,445</b>

For the County North and Parker Flats Phase 1 ESCA properties, FORA has received written confirmation from the Regulatory agencies that CERCLA MEC remediation work is complete (regulatory site closure). For these properties, ARCADIS has commuted ESCA insurance coverage for related clean-up costs to coverage for unknown conditions. Per the existing FORA/Jurisdiction Implementation Agreements and Memorandum of Agreements regarding property ownership and responsibilities during the period of Environmental Services, deeds have transferred these properties to the following:

- County of Monterey - County North
- County of Monterey – Portion of Parker Flats
- Monterey Peninsula College – Portion of Parker Flats

Access to these properties has been transferred to the underlying recipient new land owner. At the County's request, FORA staff is working with County staff to adjust the signage based on a signage plan under the joint direction of County staff, the Monterey County Sheriff's Department and the Bureau of Land Management with review by the FORA ESCA team. The relocation of the ESCA signage will be coordinated with the County's installation of their new signage.



As noted above, the FORA ESCA RP team has completed the known ESCA Remediation Program MEC field work (remedial investigations). It is important to highlight that the data collected during this investigation stage remains under review by the Regulatory agencies who determine when the remediation work is complete. They will only issue written confirmation of Regulatory site closure when they are satisfied the work is protective of human health and that the Final Proposed Plan, Record of Decision, Land Use Control Operation and Maintenance Plan have been completed and approved. The process of completing the review and documentation is expected to take up to eighteen (18) months depending on the Regulatory agency responses/decisions. Until regulatory site closure has been received, the ESCA property remains closed to the public. As regulatory site closure has been received, FORA will transfer land title to the appropriate jurisdiction.

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

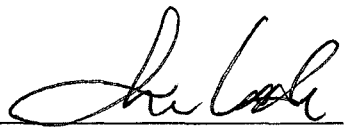
**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**COORDINATION:**

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

Prepared by   
Stan Cook

Approved by   
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

<b>Subject:</b>	Multi-modal Transit Corridor – Presentation by Transportation Agency for Monterey County	
<b>Meeting Date:</b>	January 10, 2014	<b>INFORMATION</b>
<b>Agenda Number:</b>	8e	

### **RECOMMENDATION:**

Receive a Transportation Agency for Monterey County (TAMC) presentation outlining the planning process for finalizing the Multi-modal Transit Corridor (MMTC) alignment.

### **BACKGROUND**

Transit obligations in the 1997 TAMC Regional Transportation Study were included in the adopted 1997 Fort Ord Base Reuse Plan (BRP). The BRP defined a transit corridor that was/is intended to serve as a major transportation route from Highway 1 to Salinas, through former Fort Ord lands. The “original” alignment (included in the BRP) extended from Highway 1 along Imjin Parkway and Imjin Road, diverting through University of California Santa Cruz (UCSC) managed habitat lands to Reservation Road/Blanco intersection, and then to/along Blanco Road into Salinas. The route “envisioned/anticipated” light rail as the mass transit vehicle which in part determined many of the alignment requirements. Issues were identified with the original alignment, including potential impacts to wildlife habitat lands and agricultural operations.

Interested parties, including FORA, TAMC, Monterey-Salinas Transit, City of Marina, Monterey County, California State University Monterey Bay, UCSC Monterey Bay Education, Science and Technology Center and Golden Gate University (collectively known as the “stakeholders”) reviewed and identified an alternate MMTC route than the alignment presented in the BRP, its Final Environmental Impact Report, and FORA Capital Improvement Program (CIP). Initial planning for implementing the MMTC surfaced a significant number of detailed concerns about habitat protection and the impact of the corridor on the agricultural community along Blanco Road. Consequently, long range planning for transit service resulted in the stakeholders identifying an alternative transit route of Intergarrison – Reservation – Davis Roads corridor to a) mitigate impact on the agricultural users along Blanco Road, b) increase habitat protection, c) provide additional support for needed improvements to the Davis Road Bridge and d) fulfill the transit service needs between the Salinas area and Peninsula cities and campuses. Bus-Rapid-Transit replaced the light rail method as the mass transit component of the multi-modal corridor - which requires a much less restrictive alignment.

A series of stakeholder meetings were conducted to adjust and refine the proposed multi-modal corridor re-alignment plan-line. The stakeholders completed a Memorandum of Agreement (MOA) in November 2010, agreeing to cooperate with each other to process the proposed re-designation of the transit corridor from the original alignment to the new alignment, complete preliminary designs for portions of the new alignment that would extend through their respective boundaries, and agree to grant right of way reservations for the new alignment. These steps would have to be completed prior to any FORA Board action to formally rescind the designation of the multi-modal corridor alignment presented in the BRP. The MOA and alternative new alignment was presented to the FORA Board in December 2010 for 1) approval of the new alignment, 2) rescission of the reservations of the previous alignment, and 3) to authorize FORA to adopt the MOA and include it in any subsequent update of its BRP. The FORA Board provided all necessary approvals at their December 2010 meeting and the prior (“original”)

route was rescinded. That MOA currently defines the corridor and must be amended or modified by written and recorded instrument, executed by all parties, if change is desired.

**DISCUSSION:**

TAMC staff has indicated that since the 2010 MOA was signed, several stakeholders including CSUMB have requested that the alignment be re-evaluated. TAMC has agreed to re-evaluate the alignment and plans to focus on expanding existing roadways, attempt to address unresolved concerns and uncover new opportunities for high quality transit and transit-oriented development. (A map illustrating roadway segment alignment alternatives is included as **Attachment A**).

The first part of the planning process will focus on determining a preferred corridor route which will then be adopted by TAMC partner agencies. The second part of the planning process will identify preferred conceptual roadway design features along the agreed upon corridor route. Some features that may be considered are bicycle facilities, sidewalks or paths, transit stops/shelters, transit prioritization at signalized intersections, dedicated bus rapid transit facilities and pedestrian and equestrian crossing enhancements. (**Attachment B** outlines the project schedule.)

Because the route will traverse several jurisdictions and provide access to a mix of land uses, the planning process will strive for stakeholder consensus and community collaboration. TAMC will coordinate the creation of a comprehensive transportation/land use plan for the corridor. The process will engage a diverse group of stakeholders that represent different socio-economic, jurisdictional and community interests. TAMC staff will use visualizations to better communicate detailed corridor options to a wide range of community members and potential users, including Spanish speakers and students. The visualizations produced will help frame the potential trade-offs between different roadway alignments and designs and help solicit the community's preferences.

A conceptual plan for the multimodal transportation corridor will be a guiding document for development and roadway designs, and serve as a tool to raise money for project implementation. Land uses along the corridor will be evaluated to identify opportunities to create transit-oriented developments and enhance the community environment. TAMC will work with FORA and other partner agency staff to ensure that the MMTTC Plan is consistent with existing local plans and policies as well as current planning efforts.

TAMC staff will present the project to Transportation Agency committees and all partner agency councils and boards throughout the planning process beginning in November 2013. A series of public workshops will be held in Salinas and the Marina area. The first round of workshops will be held in January 2014.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

FORA previously contributed \$15,000 in matching funds for a CalTrans planning grant application made by TAMC which was approved by the FORA Board on April 13, 2012. These funds were applied against FORA's obligation to Inter-Garrison Road improvements, Capital Improvement Program Project #FO6. No additional contributions are anticipated.

**COORDINATION:**

Administrative Committee, Executive Committee, TAMC

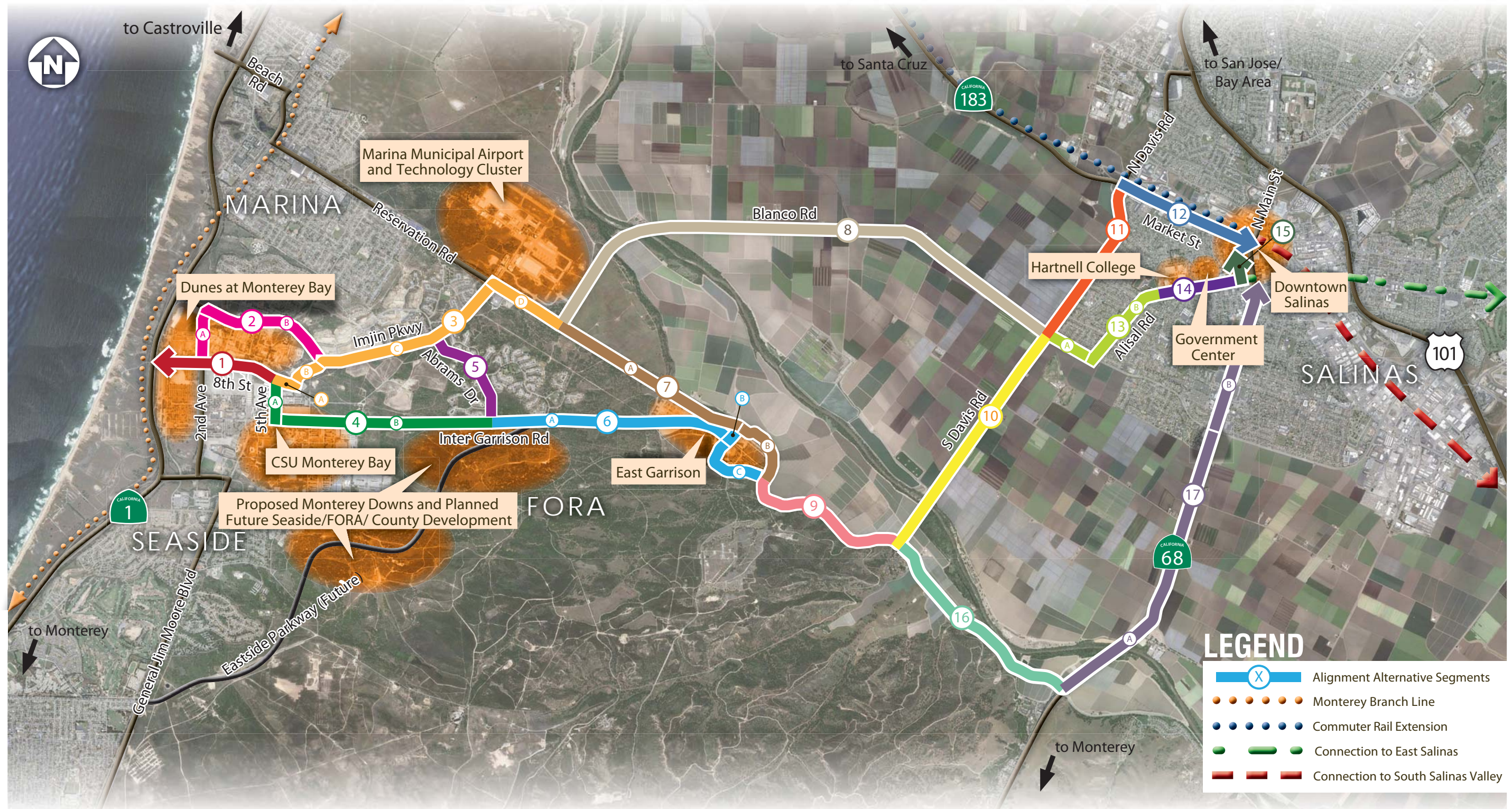
Prepared by   
Crissy Maras

Approved by  for  
Michael A. Houlemard, Jr.

# Marina-Salinas Multimodal Corridor Conceptual Plan



## Alignment Alternatives - Roadway Segments



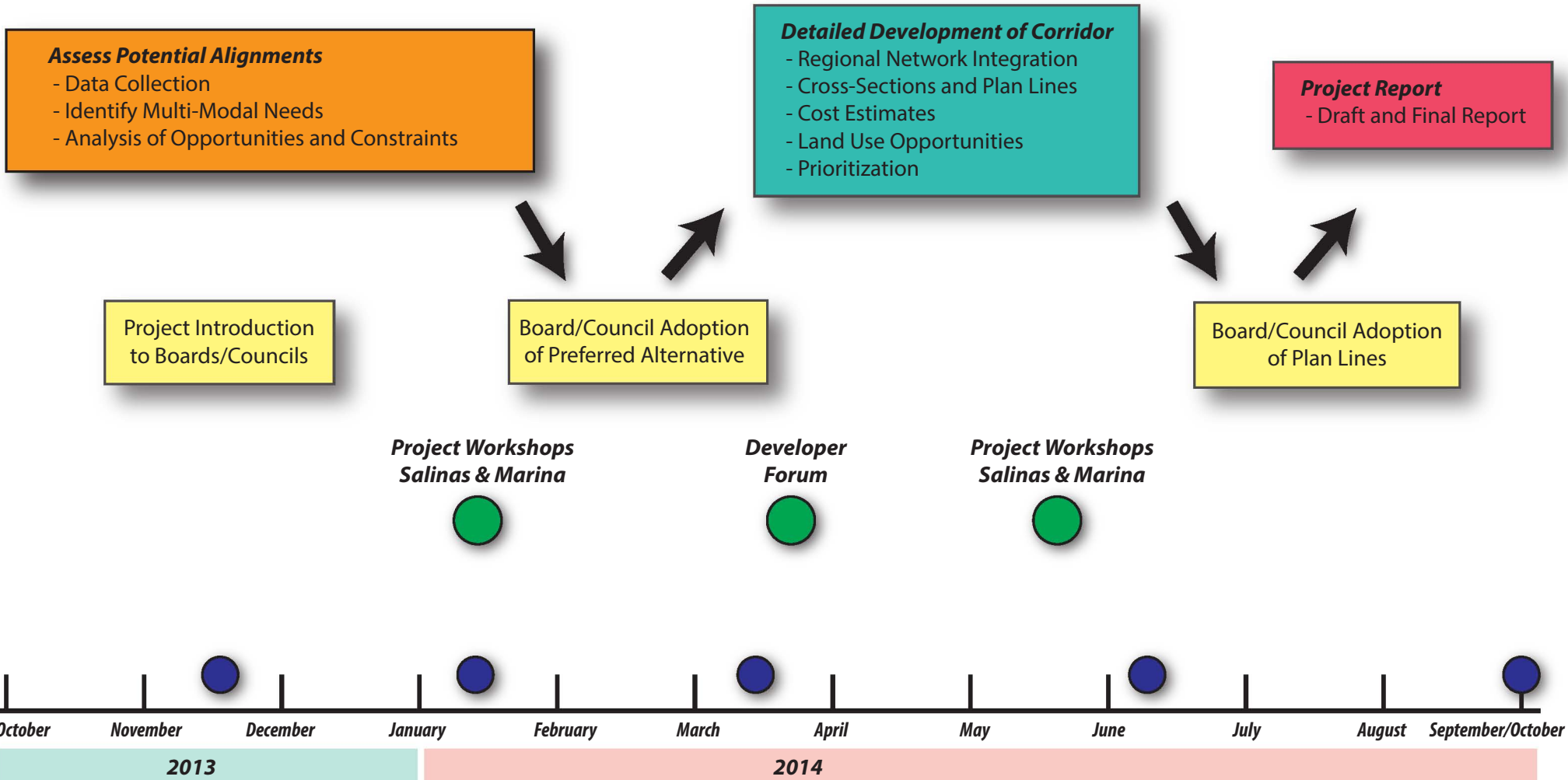
# Marina-Salinas Multimodal Corridor Conceptual Plan



## Project Schedule

**Project Phase 1**  
Goal: Identify Preferred Alignment

**Project Phase 2**  
Goal: Define Concepts and Identify ROW



Partner Agency Meetings

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

**Subject:** Accept Fiscal Year 12-13 Annual Financial Report

**Meeting Date:** January 10, 2014

**Agenda Number:** 9a

**ACTION**

### RECOMMENDATION:

Accept the Moss, Levy & Hartzheim, Certified Public Accountants (Auditor) Fort Ord Reuse Authority (FORA) Fiscal Year 12-13 Annual Financial Report (Audit Report) (**Attachment A**).

### BACKGROUND:

Each fall, FORA staff and/or Auditor present the Audit Report to the Finance Committee (FC) for its review and consideration before the Audit Report is forwarded to the FORA Board. The FORA Board has directed that every three to five years the FC evaluate the financial consultant providing the requisite opinion. Last year the firm Moss, Levy & Hartzheim (the Auditor) was hired to conduct the FY 11-12, FY 12-13, and FY 13-14 audits. For FY 12-13, the Auditor also conducted an audit of the Preston Park Housing financial operations – a change from past years where such audits were performed under the prior management contract.

### DISCUSSION:

In the FY 12-13 review, the audit work of both the FORA and Preston Park financial operations began in October. The Auditor met with FORA Management and a Finance Committee representative as well as with the Preston Park management team (Alliance) to discuss pertinent items and audit procedures. The draft Audit Report was completed in early December and the Auditor presented the draft report at the December 17, 2013 FC meeting.

FORA has held title to the Preston Park Housing complex since 2000. However, the asset was not noted in past reports as it was expected to be acquired by the City of Marina. The Auditor has determined this capital asset should be included in the FORA financial reports. The FY 11-12 report included “unaudited” Preston Park information and as stated above, the Auditor audited Preston Park for the FY 12-13 report.

As a result, the Auditor issued a “qualified” opinion with respect to the Government-Wide Financial Statements because FORA (thru Alliance) has not yet recorded the value of Preston Park land and buildings. Accounting principles generally accepted in the U.S. require that those capital assets be capitalized and depreciated. The Auditor also reported several third-party (Alliance) findings with respect to the Preston Park internal control structure. Alliance management provided response and corrective actions, which the Auditor accepted.

With respect to FORA operations (Fund Financial Statements), the Auditor issued an “unmodified” opinion (formerly “unqualified”) and complimented FORA staff for implementing previous year’s recommendations. There were no findings/questionable costs in the FY 12-13 financial audit concerning FORA internal control structure. The Auditor’s letter expresses the opinion that the financial statements present fairly, in all material respects, FORA’s financial position as of June 30, 2013, and the respective changes in financial position, for the fiscal year then ended, in accordance with accounting principles general accepted in the United States of America.

The FC unanimously voted to recommend to the FORA Board that: a) it accept the FY 12-13 Audit Report (after making specific typographical and other grammatical corrections and inserting additional footnotes requested by the FC), and 2) FORA staff implement the Auditor's recommendation to determine the Preston Park asset valuation and include this information in future annual audit reports. *Please refer to item 11d for more details regarding the FC meeting.*

Copies of the Audit Report are included in the FORA member board packets. Interested members of public can obtain copies at the FORA office or on-line at [www.fora.org](http://www.fora.org).

**FISCAL IMPACT:**

Cost for the audit services is included in the approved FORA and Preston Park budgets.

**COORDINATION:**

Finance Committee, Executive Committee, the Auditor

Prepared by:   
Ivana Bednarik

Approved by:  for  
Michael A. Houlemard, Jr.

**FORT ORD REUSE AUTHORITY  
MARINA, CALIFORNIA**

**Annual Financial Report**

**June 30, 2013**

**Board of Directors**

<u>Voting Members</u>	<u>Representing</u>	<u>Title</u>
Mayor Jerry Edelen	City of Del Rey Oaks	Chair
Mayor Pro Tem Frank O'Connell	City of Marina	1st Vice Chair
Mayor Ralph Rubio	City of Seaside	2nd Vice Chair
Mayor Jason Burnett	City of Carmel-by-the-Sea	Director
Council Member Gail Morton	City of Marina	Director
Supervisor Dave Potter	County of Monterey	Director
Supervisor Jane Parker	County of Monterey	Director
Supervisor Simon Salinas	County of Monterey	Director
Council Member Nancy Selfridge	City of Monterey	Director
Mayor David Pendergrass	City of Sand City	Director
Mayor Joe Gunter	City of Salinas	Director
Mayor Pro Tem Ian Oglesby	City of Seaside	Director
Mayor Bill Kampe	City of Pacific Grove	Director

**Appointed Official**

Michael A. Houlemard, Jr.  
Executive Officer



**FORT ORD REUSE AUTHORITY**  
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**June 30, 2013**

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## FINANCIAL SECTION



**PARTNERS**

RONALD A. LEVY, CPA  
CRAIG A. HARTZHEIM, CPA  
HADLEY Y. HUI, CPA

**COMMERCIAL ACCOUNTING & TAX SERVICES**

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BEVERLY HILLS, CA 90210  
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CULVER CITY, CA 90230  
TEL: 310.670.2745  
FAX: 310.670.1689  
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**INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
Fort Ord Reuse Authority  
Marina, California

We have audited the accompanying financial statements of the governmental activities, the business-type activities, and each major fund of the Fort Ord Reuse Authority (Authority), California, as of and for the fiscal year ended June 30, 2013, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

**Basis for Qualified Opinion on Proprietary Fund**

The Authority has not recorded the value of land and buildings within its business-type activities (Preston Park), and accordingly, has not recorded depreciation expense on those assets. Accounting principles generally accepted in the United States of America require that those capital assets be capitalized and depreciated, which would increase the assets, net position, and expenses of the business-type activities (Preston Park). These amounts are not reasonably determinable.

**Qualified Opinion**

In our opinion, except for the effects of the matter described in the "Basis for Qualified Opinion on Proprietary Fund" paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of the Proprietary Fund of the Authority, as of June 30, 2013, and the changes in financial position and, where applicable, cash flow thereof for the fiscal year then ended, in accordance with accounting principles generally accepted in the United States of America.

**Unmodified Opinions**

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Fort Ord Reuse Authority, California, as of June 30, 2013, and the respective changes in financial position, for the fiscal year then ended, in accordance with accounting principles generally accepted in the United States of America.

**Emphasis of Matter**

As discussed in Note 1 of the notes to the basic financial statements, effective July 1, 2012, the Authority adopted the provisions of Governmental Accounting Standards Board (GASB) Statement No. 60 – *Accounting and Financial Reporting for Service Concession Arrangements*, GASB Statement No. 61 – *The Financial Reporting Entity: Omnibus—an amendment of GASB Statements No. 14 and No. 34*, GASB Statement No. 62 – *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*, and GASB Statement No. 63 – *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*. Our opinion is not modified with respect to this matter.

**Other Matters**

*Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management’s discussion and analysis on pages 3 through 9, the budgetary comparison schedule on page 37, the schedule of funding progress for defined benefit pension plan on page 38, and the schedule of funding progress for post-employment benefits other than pensions on page 39, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

**Other Information**

Our audit was performed for the purpose of forming opinions on the financial statements that collectively comprise the Authority’s basic financial statements. The Schedule of Expenditures of Federal Awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and is also not a required part of the basic financial statements of the Authority.

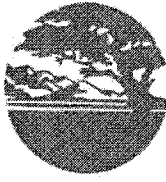
The Schedule of Expenditures of Federal Awards is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

**Other Reporting Required by Government Auditing Standards**

In accordance with Government Auditing Standards, we have also issued our report dated January 2, 2014 on our consideration of the Authority’s internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and do not provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority’s internal control over financial reporting and compliance.

*Moss, Levy & Hartzheim*

MOSS, LEVY & HARTZHEIM, LLP  
Culver City, California  
January 2, 2014



# FORT ORD REUSE AUTHORITY

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## MANAGEMENT'S DISCUSSION AND ANALYSIS

June 30, 2013

This section of the Fort Ord Reuse Authority's (FORA) financial statements presents an analysis of the FORA's financial performance during the fiscal year ended June 30, 2013. This information is presented in conjunction with the basic financial statements and related notes, which follow this section.

This is management's discussion and analysis (MD&A) of FORA financial performance for the fiscal year ended June 30, 2013.

## FINANCIAL HIGHLIGHTS

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The national and state economic downturn/recession from the 2006-2012 fiscal years has significantly slowed Fort Ord reuse and economic recovery. Consequently, FORA developer fee and land sale revenues have been deferred and/or reduced during those several years. However, the past two fiscal years showed evidence of change as building permit issuances and new projects began to return. During the FY 12-13, FORA:

- ❖ Accomplished significant munitions and explosives cleanup as 100% of known MEC field work has been completed under the U.S. Army ESCA contract. Additional property transfers now in progress as a result.
- ❖ Completed \$540,000 (\$350K in FY 12-13) in Base Reuse Plan Reassessment. On May 17, 2013, the Northern California Chapter of the American Planning Association recognized the Reassessment Report with an Award of Merit for Best Planning Practices.
- ❖ Completed \$130,000 in the Habitat Conservation Plan (HCP) preliminary draft, which currently awaits wildlife agency review prior to distribution of a public draft.
- ❖ Finalized a Capital Improvement Program Developer Fee review process, resulting in a 24% Fee reduction/adjustment for most future projects.
- ❖ Collected \$5.7 million in redevelopment revenues, including \$4.5 million in development fees and \$1.2 million in property tax payments.
- ❖ The County of Monterey, City of Seaside, and FORA dedicated and agreed to transfer approximately 78 acres of former Ford Ord land to the State of California to establish the California Central Coast Veterans Cemetery (CCCVC). FORA assisted in the completion of local documentation needed to transfer ownership of the dedicated parcels to the State of California for submission to the U.S. Department of Veteran Affairs in order to apply for grants to construct and operate the CCCVC.

## OVERVIEW OF THE FINANCIAL STATEMENTS

This MD&A is intended to serve as an introduction to the FORA's basic financial statements. FORA's basic financial statements include three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the financial statements.

1) The *government-wide financial statements* provide both long-term and short-term information about FORA's overall financial status and inform how FORA's general government services were financed in the short term as well as what remains for future spending. 2) The *fund financial statements* focus on individual parts of FORA's governmental funds and report FORA's operations in more detail than the government-wide statements. 3) The *notes to the financial statements* provide additional information that is essential to a full understanding of the data provided in the financial statements.

### Government-wide Financial Statements

The government-wide financial statements provide information about FORA activities as a whole and present a comprehensive overview of FORA's finances. The government-wide financial statements include information on Preston Park Housing project, reported in business-type of activities.

The statement of net position presents information on all of the FORA's assets and liabilities, with the difference between the two reported as net position. Over time, increases or decreases in FORA's net position are one indicator of whether its financial health is improving or deteriorating.

The statement of activities presents information showing how the FORA's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, all the current year's revenue and expenses are reported in the statement of activities regardless of when cash is received or paid. The focus of the government-wide statement of activities is on the net cost of governmental activities provided by a governmental entity.

FORA was engaged in the following types of activities:

*Governmental Activities:* During the FY 12-13 FORA employed federal grants, property tax receipts, lease proceeds, development fees, franchise fees and membership dues to finance:

- Munitions and explosives of concern remediation investigation, processing, and removals;
- Infrastructure construction/planning and development;
- General administration and planning;
- Property surveys and transfers;
- Habitat conservation planning;
- Water augmentation planning;
- Insurance policy and liability protection issues;

- Real property development, consistency determination, and planning review; and
- Preston Park Housing management.

The government-wide financial statements can be found on pages 10-11 of this report. Fund Financial Statements

Fund financial statements provide a *short-term* look at FORA's fiscal accountability and compliance with restrictions on the use of certain financial resources. The fund financial statements provide detailed information about the most significant funds - not the Authority as a whole.

Governmental Funds: FORA's services and activities are reported in governmental funds, which focus on how money flows into and out of those funds and the balances left at fiscal year-end that are available for appropriation. FORA maintains 5 individual governmental funds the General Fund and Special Revenue Funds.

The General Fund: The general operating fund accounts for all of FORA's financial resources except for those resources that are required to be accounted for in Special Revenue Funds, which are restricted as to expenditures.

Special Revenue Funds: In FY 12-13 FORA maintained 4 Special Revenue Funds: 1) Lease/Land Sale Proceeds Fund - land sale proceeds are designated to finance the FORA CIP (building removal), lease proceeds to debt financing (Preston Park Loan); 2) Developer Fees Fund – CFD/developer fees are designated to finance the FORA CIP (CEQA mitigations); 3) Pollution Legal Liability (PLL) Fund – revenue is designated to finance the PLL coverage; and 4) Army Grant ET/ESCA – grant funds are designated to finance the munitions and explosives cleanup activities.

Proprietary Fund: Revenues and expenses of Preston Park Housing complex are reported in this fund.

The fund financial statements can be found on pages 12-19 of this report.

## FINANCIAL ANALYSIS OF THE GOVERNMENT-WIDE STATEMENTS

The government-wide financial statements provide long-term and short-term information about FORA's overall financial condition.

Net position in the Statement of Activities on page 10 of this report show FORA governmental activities improved from negative \$6.4 million to negative \$3.8 million. The negative balance in net assets means that all liabilities (including long-term debt not due at the end of the fiscal year) exceed all assets FORA had at the fiscal year end (including long-term receivables and non-liquid assets). In addition, the unspent balance in the ESCA grant fund at June 30, 2013 of \$4.4 million is classified as revenue collected in advance of the earnings process and recorded as unearned revenue, a liability account, for financial statement purposes. It will be recognized as revenue when it is earned. The business-type activities (Preston Park) also show an increase in net assets from \$5.5 million to \$5.9 million.

## Revenue

FORA annual revenue decreased from \$15.1 million to \$14.5 million, this variance is attributable to the conclusion of the EDA grant revenue for the General Jim Moore Boulevard/Eucalyptus Road construction in FY 11-12. There were increased development fees (as compared to the previous fiscal year) but other revenue sources did not vary significantly.

Revenue sources in FY 12-13 were provided from the following:

- Federal funding - 9%
- Lease proceeds (Preston Park) - 18%
- Property tax - 13%
- Development fees – 47%
- Membership dues and franchise fees - 5%
- Other revenue sources (land sales, interest) - 8%

## Expenditures

The FY 12-13 cost of FORA programs was \$11.2 million. The cost of governmental programs was about \$6.2 million and business-type activities (Preston Park) about \$5 million. The major governmental programs were the Environmental cleanup and Fort Ord Base Reuse Plan reassessment.

The government-wide financial statement showing the net cost of FORA's major projects can be found on pages 10-11 of this report.

## FINANCIAL ANALYSIS OF THE FUND STATEMENTS

A fund is a group of related accounts used to maintain resource control and is segregated for specific activities or objectives. Reporting standards require that a major governmental fund be presented in a separate column in the fund financial statements. In accordance with GASB Stmt. No. 34, paragraph 76, FORA has elected to report all its special revenue funds as major funds as these funds are important to financial statement users. The General Fund is always considered a major fund and therefore presented in a separate column. The fund financial statements focus on FORA's individual parts.

The segregated governmental funds provide information on near-term inflows, outflows and balances of expendable resource balance. As FORA completed the fiscal year, its governmental funds reported a combined fund balance of \$14.9 million; an increase of \$2.6 million from FY 11-12.

\$10 million of the \$14.9 million ending fund balance is assigned for specific use, such as federal grant funds assigned for environmental cleanup or developer impact fees and land sale proceeds assigned for the CIP projects, it also includes non-spendable funds such pre-paid insurance. Approximately \$4.9 million is available for administration and operations.



Ending Fund Balances

Fiscal Year	General Fund	Land Sale/Leases	Developer Fees	Pollution Liability	Federal Grants	TOTALS
2011-2012	3,232,455	2,865,493	4,670,842	1,533,815	-	12,302,605
2012-2013	2,556,202	4,091,215	7,305,343	964,070	-	14,916,830
Change + (-)	(676,253)	1,225,722	2,634,501	(569,745)	-	2,614,225

BUDGETARY HIGHLIGHTS

A budget is a plan of financial operations that provides a basis for the planning, controlling, and evaluating of governmental activities. Governmental funds generally use a fixed budget, which reflects a specific estimate for revenue and expenditures. Once expenditures and revenue are incorporated into the budget, the total estimated expenditure appropriation amount becomes a limit for current expenditures, and the estimated revenue amount becomes the basis for comparison to actual revenue. Even though FORA is not legally subject to any budgetary controls, the budget is included as a part of the general accounting record, and it is used as a guide to controlling expenses.

The FORA Board approved the FY 12-13 budget on July 13, 2012 and the mid-year budget update on February 15, 2013. Despite continuous recessionary economic conditions slowing the former Fort Ord redevelopment activities, FORA Board policies have sustained financial stability.

Budget Variances (from mid-year budget projections to year-end actual)

Revenue: \$78,500 increase

Land sale and property tax revenue decreased and other funding slightly increased, as follows:

- \$471.7K decrease in land sale revenue;
- \$88.6K decrease in property tax revenue, direct payments from Monterey County;
- \$301.6K increase in development fee revenue;
- \$281.7K increase in lease income from Preston Park;
- \$50K revenue increase from other funding sources (such as insurance reimbursements and investments).

Expenditures: \$991,600 decrease

FORA realized savings in all expenditure categories including salaries and benefits. The most significant expenditure variances were:

- \$120K decrease in salaries and benefits; mid-year budget assumed \$60K for temporary help and vacation cash out set aside. The temp help was not hired and only \$18K of the vacation cash out was spent. One lost permanent position not replaced until FY 13-14;

- \$48K decrease in administrative categories due cost saving measures and expense policies reinforcement;
- 107.6K decrease in consulting services mainly attributable to savings in Legal fees (\$500K projected, \$400K spent);
- \$1.3 million capital project decrease due to capital projects timing;
- \$600,000 adjustment in amortization; FORA does not include amortization expenses (non-cash expenses) in the operating budget.

The budgetary comparison information schedule can be found on page 37 of this report.

## LONG-TERM DEBT

FORA employs real property assets and lease revenue (such as Preston Park Housing) to amortize or collateralize long-term indebtedness. Current asset valuation is in the range of \$100 - \$150 million, of which FORA is entitled to a 50% share. Please refer to page 24, Note 1-I for more information regarding capital assets. As of June 30, 2013, FORA had about \$18.8 million in long-term debt consisting of:

- a. \$18.2 million - Preston Park loan;
  - b. \$0.1 million - capital lease equipment purchase obligation; and
  - c. \$0.5 million – compensated absences and retirement funding obligations.
- a) In March 2010, FORA borrowed \$19 million (Preston Park Loan) from Rabobank. The FORA Board authorized the loan to 1) provide stimulus grant local matching funds and 2) retire certain existing debts (Revenue Bonds and Line of Credit). The loan must be paid off in June 2014.
  - b) The capital lease obligation was incurred in 2003 to purchase firefighting equipment and will be repaid in July 2013.
  - c) This amount represents FORA's liability for compensated absences (vacation and sick leave), postemployment benefit cost and the Public Employees Retirement System (PERS) side fund at June 30, 2013.

More detailed information about FORA's total long-term debts is presented on pages 31-33, Notes 7-12 to the financial statements.

## ECONOMIC FACTORS AND NEXT YEAR'S BUDGETS

In FY 12-13 major economic revitalization projects were approved or moved toward construction, including the VA Monterey Health Care Center Project, California Central Coast Veterans Cemetery, South County Housing University Villages Apartments, and Mid-Peninsula Housing Coalition Manzanita Place project. These major projects are supported by FORA's completion of the General Jim Moore Boulevard/Eucalyptus Road project and the conclusion of much of the remaining field work under the U.S. Army ESCA contract.

Despite these successes, the past fiscal year has reinforced the need to emphasize blight removal and to complete the Regional Urban Design Guidelines – two significant remaining goals to the reuse effort.

As a consequence of two unanticipated referenda/initiatives targeted at certain Fort Ord developments, FORA is obligated to pay for its share of the County of Monterey 2013 fall elections cost. It will be reflected in the FY 13-14 budget, but is noted here as an impending expense/debt.

#### CONTACTING FORA'S FINANCIAL MANAGEMENT

This financial report is designed to provide our citizens, taxpayers, customers, investors and creditors with a general overview of FORA's finances, and to demonstrate FORA's accountability for the money it receives. If you have questions about this report or need additional financial information, contact the Fort Ord Reuse Authority, Executive Officer, 920 2<sup>nd</sup> Avenue, Suite A, Marina, California, 93933.

Michael A. Houlemard, Jr.  
Executive Officer

Government-wide Financial Statements
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**FORT ORD REUSE AUTHORITY**  
**Statement of Net Position**  
**June 30, 2013**

	<b>Governmental</b>	<b>Business-type</b>	
	<b>Activities</b>	<b>Activities</b>	<b>Total</b>
<b>ASSETS</b>			
Cash and investments	\$ 18,742,041	\$ 794,101	\$ 19,536,142
Cash restricted for equipment purchases		4,341,403	4,341,403
Accounts receivable	867,455		867,455
Interest receivable	20,848		20,848
Tenant receivables		2,748	2,748
Prepaid expenses		97,224	97,224
Prepaid insurance	910,323		910,323
Capital assets, net of accumulated depreciation	80,991	1,263,822	1,344,813
Total Assets	<u>20,621,658</u>	<u>6,499,298</u>	<u>27,120,956</u>
<b>LIABILITIES</b>			
Accounts payable and accrued expenses	365,020	57,580	422,600
Unearned revenue	5,258,817	30,062	5,288,879
Long-term debt and obligations:			
Due within one year	18,385,266		18,385,266
Due in more than one year	436,676	474,335	911,011
Total Liabilities	<u>24,445,779</u>	<u>561,977</u>	<u>25,007,756</u>
<b>NET POSITION</b>			
Net investment in capital assets	80,991	1,263,822	1,344,813
Restricted for:			
Capital purchases and projects		4,341,403	4,341,403
Unrestricted	(3,905,112)	332,096	(3,573,016)
Total Net Position (Deficit)	<u>\$ (3,824,121)</u>	<u>\$ 5,937,321</u>	<u>\$ 2,113,200</u>

Government-wide Financial Statements

FORT ORD REUSE AUTHORITY  
Statement of Activities  
For the Fiscal Year Ended June 30, 2013

Functions/Programs	Program Revenues			Net (Expenses) Revenues and Changes in Net Position		
	Program Expenses	Charges for Services	Operating Grants and Fees	Governmental Activities	Business-type Activities	Total
<b>Governmental Activities</b>						
General government	\$ 2,675,571	\$ -	\$ 81,719	\$ (2,593,852)	\$ -	\$ (2,593,852)
Capital improvements	505,014		4,559,337	4,054,323		4,054,323
Environmental cleanup	827,746		827,746			
Reuse planning/EDC transfers & environmental subtotal - capital improvement program	1,043,247		1,689,204	645,957		645,957
	2,376,007		7,076,287	4,700,280		4,700,280
Interest on long-term debt and short-term debt	1,106,998			(1,106,998)		(1,106,998)
Total governmental activities	6,158,576		7,158,006	999,430		999,430
<b>Business-type Activities</b>						
Preston Park	5,076,271	5,444,979			368,708	368,708
Total business-type activities	5,076,271	5,444,979			368,708	368,708
Total primary government	\$ 11,234,847	\$ 5,444,979	\$ 7,158,006	999,430	368,708	1,368,138
<b>General revenues:</b>						
Property tax revenue				1,211,423		1,211,423
Membership dues				261,000		261,000
Franchise fees				244,506		244,506
Investment earnings				142,130	9,004	151,134
Miscellaneous				10,817	39,142	49,959
Total general revenues				1,869,876	48,146	1,918,022
<b>Change in net position</b>				2,869,306	416,854	3,286,160
Net position at beginning of fiscal year				(6,404,048)	5,520,467	(883,581)
Prior period adjustments				(289,379)		(289,379)
Net position at beginning of fiscal year, restated				(6,693,427)	5,520,467	(1,172,960)
Net position (deficit) at end of fiscal year				\$ (3,824,121)	\$ 5,937,321	\$ 2,113,200

<b>Fund Financial Statements</b>
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**FORT ORD REUSE AUTHORITY**  
**Balance Sheet**  
**Governmental Funds**  
**June 30, 2013**

	<b>General Fund</b>	<b>Lease and Sale Proceeds</b>	<b>Developer Fees</b>	<b>Pollution Legal Liability</b>	<b>Army Grant ET/ESCA</b>	<b>Total Governmental Funds</b>
<b>ASSETS</b>						
Cash and investments	\$ 2,545,202	\$ 4,093,008	\$ 7,380,078	\$ 64,069	\$ 4,659,684	\$ 18,742,041
Accounts receivable	126,561	21,224	24,750	694,920		867,455
Interest receivable				20,848		20,848
Prepaid insurance	10,323			900,000		910,323
Total Assets	<u>\$ 2,682,086</u>	<u>\$ 4,114,232</u>	<u>\$ 7,404,828</u>	<u>\$ 1,679,837</u>	<u>\$ 4,659,684</u>	<u>\$ 20,540,667</u>
<b>LIABILITIES AND FUND BALANCES</b>						
Liabilities						
Accounts payable	\$ 75,427	\$ 1,793	\$ 74,735	\$ -	\$ 213,065	\$ 365,020
Unearned revenue	50,457	21,224	24,750	715,767	4,446,619	5,258,817
Total Liabilities	<u>125,884</u>	<u>23,017</u>	<u>99,485</u>	<u>715,767</u>	<u>4,659,684</u>	<u>5,623,837</u>
Fund Balances (Note L, page 25)						
Non-spendable	10,323			900,000		910,323
Committed				64,070		64,070
Assigned		1,653,590	7,305,343			8,958,933
Unassigned	2,545,879	2,437,625				4,983,504
Total Fund Balances	<u>2,556,202</u>	<u>4,091,215</u>	<u>7,305,343</u>	<u>964,070</u>		<u>14,916,830</u>
Total Liabilities and Fund Balances	<u>\$ 2,682,086</u>	<u>\$ 4,114,232</u>	<u>\$ 7,404,828</u>	<u>\$ 1,679,837</u>	<u>\$ 4,659,684</u>	<u>\$ 20,540,667</u>

**FORT ORD REUSE AUTHORITY**

**Reconciliation of the Balance Sheet of Governmental Funds  
to the Statement of Net Position  
June 30, 2013**

Total fund balances - governmental funds \$ 14,916,830

In governmental funds, only current assets are reported. In the statement of net position, all assets are reported, including capital assets and accumulated depreciation.

Capital assets at historical cost \$ 159,584

Accumulated depreciation (78,593)

Net 80,991

Long-term liabilities: In governmental funds, only current liabilities are reported. In the statement of net position, all liabilities, including long-term liabilities, are reported.

Long-term liabilities relating to governmental activities consist of:

Capital lease obligations \$ (110,645)

PERS Side fund (266,098)

OPEB (113,926)

Preston Park Loan Payable (18,188,205)

Compensated absences (143,068)

Total (18,821,942)

Total net position, governmental activities \$ (3,824,121)

Fund Financial Statements
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**FORT ORD REUSE AUTHORITY**  
**Statement of Revenue, Expenditures, and Change in Fund Balances**  
**Governmental Funds**  
**For the Fiscal Year Ended June 30, 2013**

	General Fund	Lease and Sale Proceeds	Developer Fees	Pollution Legal Liability	Army Grant ET/ESCA	Governmental Funds
<b>REVENUE</b>						
Membership dues	\$ 261,000	\$ -	\$ -	\$ -	\$ -	\$ 261,000
Franchise fees	244,506					244,506
Property taxes	1,211,423					1,211,423
Federal grants					827,746	827,746
Developer fees			4,232,542			4,232,542
Lease/Rental income	81,719	1,660,908				1,742,627
Real estate sales		28,296				28,296
CSU mitigation fees			326,795			326,795
Investment/Interest earnings	110,859			31,271		142,130
Other revenue	3,529		7,288			10,817
Total Revenue	<u>1,913,036</u>	<u>1,689,204</u>	<u>4,566,625</u>	<u>31,271</u>	<u>827,746</u>	<u>9,027,882</u>
<b>EXPENDITURES</b>						
Salaries and benefits	1,434,591		249,719		320,285	2,004,595
Supplies and services	113,170		11,501		12,124	136,795
Contractual services	1,041,528	9,234	171,777	1,016	495,337	1,718,892
Capital improvements			472,457			472,457
Insurance amortization				600,000		600,000
Debt service		1,364,918	116,000			1,480,918
Total Expenditures	<u>2,589,289</u>	<u>1,374,152</u>	<u>1,021,454</u>	<u>601,016</u>	<u>827,746</u>	<u>6,413,657</u>
<b>Excess of revenues over (under) Expenditures</b>	<u>(676,253)</u>	<u>315,052</u>	<u>3,545,171</u>	<u>(569,745)</u>		<u>2,614,225</u>
<b>OTHER FINANCING SOURCES (USES)</b>						
Transfers in		910,670				910,670
Transfers out			(910,670)			(910,670)
Total other financing sources (uses)		<u>910,670</u>	<u>(910,670)</u>			
<b>Net change in fund balances</b>	<u>(676,253)</u>	<u>1,225,722</u>	<u>2,634,501</u>	<u>(569,745)</u>		<u>2,614,225</u>
Fund Balances - July 1, 2012	<u>3,232,455</u>	<u>2,865,493</u>	<u>4,670,842</u>	<u>1,533,815</u>		<u>12,302,605</u>
Fund Balances - June 30, 2013	<u>\$ 2,556,202</u>	<u>\$ 4,091,215</u>	<u>\$ 7,305,343</u>	<u>\$ 964,070</u>	<u>\$ -</u>	<u>\$ 14,916,830</u>

See accompanying notes to basic financial statements



**FORT ORD REUSE AUTHORITY**

**Reconciliation of the Statement of Revenue, Expenditures, and Change in Fund Balances  
of Governmental Funds to the Statement of Activities  
For the Fiscal Year Ended June 30, 2013**

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Total net change in fund balances - governmental funds	\$ 2,614,225
Capital outlays are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which additions to capital outlay of \$3,272 is less than depreciation expense \$(35,829) in the period.	(32,557)
In governmental funds, repayments of long-term debt are reported as expenditures. In the government-wide statements, repayments of long-term debt are reported as reductions of liabilities.	373,920
To record as an expense the net change in post employment benefit liability in the Statement of Activities.	(113,926)
To record as an expense the net change in PERS side fund liability in the Statement of Activities.	23,281
In governmental funds, compensated absences are measured by the amounts paid during the period. In the statement of activities, compensated absences are measured by the amounts earned. The difference between compensated absences paid and compensated absences earned was:	4,363
Change in net position of governmental activities	<u>\$ 2,869,306</u>

<b>Fund Financial Statements</b>
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**FORT ORD REUSE AUTHORITY  
STATEMENT OF NET POSITION  
PROPRIETARY FUND  
June 30, 2013**

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	Business-type Activities - Enterprise Fund
	<u>Preston Park</u>
<b>ASSETS</b>	
Current Assets:	
Cash and investments	\$ 794,101
Cash restricted for capital purchases and projects	4,341,403
Tenant receivables	2,748
Prepaid expenses	<u>97,224</u>
Total current assets	<u>5,235,476</u>
Noncurrent Assets:	
Property and equipment, net of accumulated depreciation	<u>1,263,822</u>
Total noncurrent assets	<u>1,263,822</u>
Total assets	<u>6,499,298</u>
<b>LIABILITIES</b>	
Current Liabilities:	
Accounts payable and accrued expenses	57,580
Unearned revenue	<u>30,062</u>
Total current liabilities	<u>87,642</u>
Noncurrent liabilities:	
Tenant security deposits	<u>474,335</u>
Total noncurrent liabilities	<u>474,335</u>
Total liabilities	<u>561,977</u>
<b>NET POSITION</b>	
Net investment in capital assets	1,263,822
Restricted for:	
Capital purchases and projects	4,341,403
Unrestricted	<u>332,096</u>
Total net position	<u>\$ 5,937,321</u>

See accompanying notes to basic financial statements - 16 -

<b>Fund Financial Statements</b>
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**FORT ORD REUSE AUTHORITY  
STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION  
PROPRIETARY FUND  
For the Fiscal Year Ended June 30, 2013**

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	Business-type Activities - Enterprise Fund
	<u>Preston Park</u>
Operating Revenues:	
Rental income, net	\$ 5,444,979
Total operating revenues	<u>5,444,979</u>
Operating Expenses:	
Administrative	551,313
Utilities	92,911
Operating and maintenance	453,932
Taxes and insurance	296,412
Depreciation	359,887
Total operating expenses	<u>1,754,455</u>
Operating income (loss)	<u>3,690,524</u>
Non-Operating Revenues (Expenses):	
Interest income	9,004
Miscellaneous revenue	39,142
Total non-operating revenues (expenses)	<u>48,146</u>
Income Before Distribution to Owners	3,738,670
Distribution to owners	<u>3,321,816</u>
Change in net position	416,854
Total net position - July 1, 2012	<u>5,520,467</u>
Total net position - June 30, 2013	<u>\$ 5,937,321</u>

See accompanying notes to basic financial statements - 17 -

<b>Fund Financial Statements</b>
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**FORT ORD REUSE AUTHORITY  
STATEMENT OF CASH FLOWS  
PROPRIETARY FUND  
For the Fiscal Year Ended June 30, 2013**

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	Business-type Activities - Enterprise Fund
	<u>Preston Park</u>
Cash Flows from Operating Activities:	
Cash received from tenants	\$ 5,461,793
Cash paid to suppliers for goods and services	(817,722)
Cash paid to employees for services	(551,313)
Net cash provided (used) by operating activities	<u>4,092,758</u>
Cash Flows from Non-Capital and Related Financing Activities:	
Miscellaneous income	39,142
Distribution to owners	(3,321,816)
Net cash provided (used) by non-capital financing activities	<u>(3,282,674)</u>
Cash Flows from Capital and Related Financing Activities:	
Purchases of property and equipment	(276,432)
Net cash provided (used) by capital and related financing activities	<u>(276,432)</u>
Cash Flows from Investing Activities:	
Interest revenue	<u>9,004</u>
Net cash provided by investing activities	<u>9,004</u>
Net increase (decrease) in cash and cash equivalents	542,656
Cash and Cash Equivalents at Beginning of Fiscal Year	<u>4,592,848</u>
Cash and Cash Equivalents at End of Fiscal Year	<u>\$ 5,135,504</u>
Reconciliation to Statement of Net Position:	
Cash and investments	\$ 794,101
Cash restricted for capital purchases and projects	<u>4,341,403</u>
	<u>\$ 5,135,504</u>

(Continued)

<b>Fund Financial Statements</b>
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**FORT ORD REUSE AUTHORITY  
STATEMENT OF CASH FLOWS  
PROPRIETARY FUND  
For the Fiscal Year Ended June 30, 2013  
(Continued)**

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	Business-type Activities - Enterprise Fund
	<u>Preston Park</u>
Reconciliation of Operating Income (Loss) to Net Cash Provided (Used) by Operating Activities:	
Operating income (loss)	\$ 3,690,524
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:	
Depreciation	359,887
(Increase) decrease in tenant receivables	(1,328)
(Increase) decrease in prepaid expenses	(4,362)
Increase (decrease) in accounts payable and accrued expenses	29,895
Increase (decrease) in tenant security deposits	19,512
Increase (decrease) in unearned revenue	<u>(1,370)</u>
Total adjustments	<u>402,234</u>
Net cash provided (used) by operating activities	<u>\$ 4,092,758</u>

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**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

The notes to the statements include a summary of significant accounting policies and other notes considered essential to fully disclose and fairly present the transactions and financial position of the Fort Ord Reuse Authority, as follows:

- Note 1 - Summary of Significant Accounting Policies
- Note 2 - Cash and Investments
- Note 3 - Interfund Activity
- Note 4 - Capital Assets
- Note 5 - Defined Benefit Pension Plan
- Note 6 - Deferred Compensation Plan
- Note 7 - Long-Term Debt Obligations
- Note 8 - Capitalized Lease Obligation
- Note 9 - Loans Payable
- Note 10 – Public Employees Retirement System Side Fund
- Note 11 - Compensated Absences
- Note 12 - Post Employment Benefits Other than Pensions
- Note 13 - Health Care Plan
- Note 14 - Commitments and Contingencies
- Note 15 - Property Sales and Lease Income
- Note 16 - Contingent Receivables
- Note 17 - US Army Environmental Services Cooperative Agreement Grant
- Note 18 - Office Lease
- Note 19 – Prior Period Adjustments
- Note 20 - Subsequent Events

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies**

A. Reporting Entity

The Fort Ord Reuse Authority (Authority) was created under Title 7.85 of the California Government Code, Chapters 1-7, signed into law on May 10, 1994. The Authority was incorporated in the State of California as an instrumentality and is considered a quasi-governmental regional agency. The Authority has specific powers in State Law to prepare, adopt, finance and implement a plan for the future use and development of the territory formerly operated by the U.S. Army as the Fort Ord Military Reservation in Monterey County, California.

The Authority is governed by a 13-voting member board, which consists of various Monterey County's Board of Supervisors, City Mayors and/or Council Members from surrounding jurisdictions. The Authority Board has 12 non-voting ex-officio members. There are no component units, as defined in the Governmental Accounting Standards Board Statement (GASB) No. 14 that are included in the Authority's reporting entity.

The Authority receives funding from local, state and federal governmental sources and must comply with the accompanying requirements of these funding source entities. However, the Board is not included in any other governmental reporting entity as defined by the Governmental Accounting Standards Board pronouncement. The Board has the authority to levy taxes, the power to designate management and the ability to significantly influence operations and primary accountability for fiscal matters.

Title 7.85 of California Government Code specifies that its terms and provisions would become inoperative when the board determines that 80% of the territory of Fort Ord (that is designated for development or reuse in the plan prepared pursuant to the bill) has been developed or reused in a manner consistent with the plan, or June 30, 2014, whichever occurs first, and would be repealed on January 1, 2015.

B. Accounting Policies

The financial statements of the Authority have been prepared in conformity with accounting principles generally accepted in the United States of America as applied to governmental agencies. GASB is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant accounting policies of the Authority are described below.

C. Basis of Presentation

The financial statement presentation, required by GASB Statements No. 34, 37, and 38 provides a comprehensive, entity-wide perspective of the Authority's assets and liabilities and expands the fund-group perspective previously required.

Government-wide Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the Authority.

The government-wide statements are prepared using the economic resources measurement focus. Government-wide statements differ from the manner in which governmental fund financial statements are prepared. Governmental fund financial statements, therefore, include reconciliations with brief explanations to better identify the relationship between the government-wide statements and the statements for the governmental funds.

The government-wide statement of activities presents a comparison between direct expenses and program revenues for each function or program of the Authority's governmental activities. Direct expenses are those that are specifically associated with a service, program, or department and are therefore, clearly identifiable to a particular function. The Authority does not allocate indirect expenses to functions in the statement of activities. Program revenues include charges paid by the recipients of goods or services offered by a program, as well as grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues, which are not classified as program revenues, are presented as general revenues of the Authority, with certain exceptions. The comparison of direct expenses with program revenues identifies the extent to which each governmental function is self-financing or draws from the general revenues of the Authority.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies (Continued)**

C. Basis of Presentation (Continued)

Fund Financial Statements

Fund financial statements report detailed information about the Authority. The focus of governmental fund financial statements is on major funds rather than reporting funds by type. Each major governmental fund is presented in a separate column.

The accounting and financial treatment applied to a fund is determined by its measurement focus. All governmental funds are accounted for using a flow of current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, only current assets and current liabilities are generally included on the balance sheet. The Statement of Revenues, Expenditures, and Changes in Fund Balances for these funds present increases (i.e., revenues and other financing sources) and decreases (i.e., expenditures and other financing uses) in net current assets.

All proprietary fund types are accounted for on a flow of economic resources measurement focus and the full accrual basis of accounting. With this measurement focus, all assets and all liabilities associated with the operation of these funds are included on the proprietary fund's Statement of Net Position. The Statement of Revenues, Expenses, and Changes in Net Position for proprietary funds present increases (i.e. revenues) and decreases (i.e. expenses) in net total assets. The statement of cash flows provides information about how the Authority meets the cash flow needs of proprietary activities.

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenue of the internal service fund is charges to other funds for self-insurance costs. Operating expenses for the internal service fund include the costs of insurance premiums and claims related to self-insurance.

D. Fund Accounting

The accounts of the Authority are organized on the basis of funds, each of which is considered to be a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity or net position, revenues, and expenditures or expenses, as appropriate. Authority resources are allocated to and accounted for in individual funds based upon the purpose for which they are to be spent and the means by which spending activities are controlled. The Authority's accounts are organized into major funds and a proprietary fund as follows:

Major Governmental Funds

**General fund** is the general operating fund of the Authority and accounts for all revenue and expenditures of the Authority not encompassed within other funds. All general revenue and other receipts that are not allocated by law or contractual agreement to some other fund are accounted for in this fund.

In accordance with GASB Statement No. 34, paragraph 76, the Authority has elected to report all its special revenue funds as major funds because they believe these funds are particularly important to financial statement users, as follows:

**Special Revenue Funds** are established to account for the proceeds from specific revenue sources (other than trusts, major capital projects, or debt service) that are restricted or committed to the financing of particular activities and that compose a substantial portion of the inflows of the fund. Additional resources that are restricted, committed, or assigned to the purpose of the fund may also be reported in the fund. The Authority maintains four major special revenue funds:



**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies (Continued)**

D. Fund Accounting (Continued)

1. Lease and Sale Proceeds Fund is used to account for revenue from the sale/lease of real estate on the former Fort Ord.
2. Developer Fees Fund is used to account for moneys received from fees levied on developers or other agencies as a condition of approving development on the former Fort Ord.
3. Pollution Legal Liability Fund is used to account for resources and payments made for principal and interest on long-term debt associated with the purchase of Pollution Legal liability insurance.
4. Army Grant ET/ESCA Fund is used to account for revenue and projects funded by the U.S. Department of the Army for cleanup of munitions and explosives of concern.

**Proprietary Fund**

Preston Park Fund is used to account for the revenues and expenses of the 354 apartment units that are located at 682 Wahl Court, Marina, California.

E. Budgetary Data

The Authority is not required by state law to adopt annual budgets for the general and special revenue funds. An annual budget is however prepared, adopted by the Authority's Board, and included as a part of the general accounting record and used as a guide to controlling expenses. Each budget is prepared and controlled by the budget controller at the revenue and expenditure function/object level.

The following procedures are followed in establishing the budgetary data reflected in the financial statements:

- A proposed draft budget is submitted to the Board for the fiscal year commencing July 1.
- Once the budget is approved, it can be amended only by approval of a majority of the members of the Board. Amendments are presented to the Board at their regular meetings.

F. Use of Estimates

Financial statement preparation in conformity with accounting principles generally accepted in the United States of America requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenditures during the reporting period. Actual results could differ from those estimates.

G. Cash and Investments

Cash and cash equivalents held by the Authority are reported as cash and investments. Funds can spend cash at any time without prior notice or penalty. Investments are stated at fair value. Fair Value is the value at which a financial instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale

H. Receivables and Payables

Activities between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as interfund receivables/interfund payables (i.e., the current portion of interfund loans) or advances to/from other funds (the noncurrent portion of interfund loans). All other outstanding balances between funds are reported as interfund receivables or interfund payables. Any residual balances outstanding between the governmental activities and the business-type activities are reported in the government-wide financial statements as internal balances.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies (Continued)**

I. Capital Assets

The land and buildings that have been rehabilitated by the Fort Ord Reuse Authority (Preston Park) are owned by the Authority and are not included as part of the building improvements. The building improvements included herein are those associated with the rehabilitation. Repairs occurring during the rehabilitation period were expensed unless they added additional life to the building improvements. As of June 30, 2010 (the last appraisal report before the fiscal year ended), the appraisal value of the land and buildings was \$57,320,000. For the latest available appraisal value of the land and buildings, see Note 20 – Subsequent Events.

Equipment and furniture are stated on the actual cost basis. Capitalization level for capital assets is \$500 per unit (including installation cost). Contributed capital assets are recorded at their estimated fair market value at the time received. There were no contributed capital assets during the fiscal year. Capital assets are depreciated over their estimated useful lives. In accordance with the option provided by Government Accounting Principles Generally Accepted in the United States of America, infrastructure assets such as roads, bridges, curbs and gutters, streets and sidewalks, drainage systems and lighting are not recorded on the Statement of Net Position. Management has determined that the purpose of stewardship for capital expenses is satisfied without recording these assets. In addition, depreciation is not recorded on these capital assets. Depreciation is calculated using the straight-line method over the following estimated useful lives:

Leasehold improvements	5-20 years
Furniture and fixtures	2-7 years
Automobiles	5 years

In all cases, the infrastructure assets are owned by the Authority, as trustee, for a relatively short period of time.

During the reporting period the Authority did not receive or transfer any real property. Real property assets have been transferred from the United States Government under an agreement dated June 23, 2000. These transfers included land, buildings, and infrastructure within the Cities of Marina, Del Rey Oaks, Monterey, Seaside and the County of Monterey. As of June 30, 2013, the Authority owned approximately 3,450 acres of former Fort Ord Army Base land which included the following parcels:

- Preston Park Housing area
- EDC properties transferred in connection with the ESCA Grant

Real property assets are not recorded on the Authority's books since the Authority, as trustee, is a short-term real property holding entity. The Authority transfers property to underlying jurisdictions for disposal/development, retaining 50% interest in any future sale or leasing proceeds from any of these properties transferred for private development or for public non-institutional purposes. The ESCA Grant properties are undergoing munitions and explosives of concern remediation with covenants restricting use of these properties ("CRUPS") and have limited value until the CRUPS are lifted at the completion of remediation.

Management has determined the estimated fiscal year-end value of all Authority owned properties to be in the range of \$100-\$150 million, of which the Authority is entitled to a 50% share of leasing or land sales proceeds.

J. Net Position

GASB Statement No. 63 adds the concept of Net Position, which is measured on the full accrual basis, to the concept of Fund Balance, which is measured on the modified accrual basis.

Net Position is divided into three captions under GASB Statement No. 63. These captions apply only to Net Position as determined at the government-wide level, and are described below:

- Net investment in capital assets - This represents the Authority's total investment in capital assets.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies (Continued)**

J. Net Position (Continued)

- Restricted net position - Restricted net position include resources that the Authority is legally or contractually obligated to spend in accordance with restrictions imposed by external third parties or regulatory agencies that direct usage, or other impositions by contract or adopted covenants.
- Unrestricted net position - Unrestricted net position represent resources derived from franchise fees and membership dues. These resources are used for transactions relating the general operations of the Authority, and may be used at the discretion of the governing board to meet current expenses for any purpose.

K. Long -Term Obligations

In the government-wide financial statements, long-term obligations are reported as liabilities in the statement of net position. In the fund financial statements, long-term debt is not reported.

L. Fund Balance

As of June 30, 2013, fund balances of the governmental funds are classified as follows:

Nonspendable – amounts that cannot be spent either because they are in nonspendable form or because they are legally or contractually required to be maintained intact (Prepaid insurance).

Restricted – amounts that can be spent only for specific purposes because of constitutional provisions or enabling legislation or because of constraints that are externally imposed by creditors, grantors, contributors, or the laws or regulations of other governments.

Committed – amounts that can be used only for specific purposes determined by a formal action of the governing board is the highest level of decision-making authority for the Authority. Commitments may be established, modified, or rescinded only through ordinances or resolutions approved by the governing board (ET/ESCA grant and PLL insurance funds).

Assigned – amounts that do not meet the criteria to be classified as restricted or committed but that are intended to be used for specific purposes. Under the Authority's adopted policy, only the governing board or director may assign amounts for specific purposes (CFD/Developer fees and land sale proceeds – assigned to the Authority CIP program).

Unassigned – all other spendable amounts.

When an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available, the Authority considers restricted funds to have been spent first. When an expenditure is incurred for which committed, assigned, or unassigned fund balance are available, the Authority considers amounts to have been spent first out of committed funds, then assigned funds, and finally unassigned funds, as needed, unless the governing board has provided otherwise in its commitment or assignment actions.

M. Statement of Cash Flows

For the purposes of the statement of cash flows, all highly liquid investments with a maturity of three months or less when purchased are considered to be cash equivalents.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 1 - Summary of Significant Accounting Policies (Continued)**

N. New Accounting Pronouncements

GASB Statement No. 60 – Accounting and Financial Reporting for Service Concession Arrangements

For the fiscal year ended June 30, 2013, the Authority implemented GASB Statement No. 60, "Accounting and Financial Reporting for Service Concession Arrangements". The objective of this Statement is to improve financial reporting by addressing issues related to service concession arrangements (SCAs), which are a type of public-private or public-public partnership. As used in this Statement, an SCA is an arrangement between a transferor (a government) and an operator (governmental or nongovernmental entity) in which (1) the transferor conveys to an operator the right and related obligation to provide services through the use of infrastructure or another public asset (a "facility") in exchange for significant consideration and (2) the operator collects and is compensated by fees from third parties. The implementation of this Statement did not have an effect on these financial statements.

GASB Statement No. 61 – The Financial Reporting Entity: Omnibus—an amendment of GASB Statements No. 14 and No. 34

For the fiscal year ended June 30, 2013, the Authority implemented GASB Statement No. 61, "The Financial Reporting Entity: Omnibus—an amendment of GASB Statements No. 14 and No. 34". The objective of this Statement is to improve financial reporting for a governmental financial reporting entity. The requirements of Statement No. 14, The Financial Reporting Entity, and the related financial reporting requirements of Statement No. 34, Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments, were amended to better meet user needs and to address reporting entity issues that have arisen since the issuance of those Statements. The implementation of this Statement did not have an effect on these financial statements.

GASB Statement No. 62 – Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements

For the fiscal year ended June 30, 2013, the Authority implemented GASB Statement No. 62, "Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements". The objective of this Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the following pronouncements issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements: (1) Financial Accounting Standards Board (FASB) Statements and Interpretations, (2) Accounting Principles Board Opinions, and (3) Accounting Research Bulletins of the American Institute of Certified Public Accountants' (AICPA) Committee on Accounting Procedure. The implementation of this Statement did not have an effect on these financial statements.

GASB Statement No. 63 – Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position

For the fiscal year ended June 30, 2013, the Authority implemented GASB Statement No. 63, "Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position". This Statement is effective for periods beginning after December 15, 2011. The objective of this Statement is to establish guidance for reporting deferred outflows or resources, deferred inflows of resources, and net position in a statement of financial position. This Statement sets forth framework that specifies where deferred outflows of resources and deferred inflows of resources, as well as assets and liabilities should be displayed. This Statement also specifies how net position, no longer referred to as net assets, should be displayed. Implementation of the Statement and the impact of the Authority's financial statements are explained in Note 1 – J.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 2 - Cash and Investments**

Cash and investments as of June 30, 2013 are classified in the accompanying financial statements as follows:

Statement of Net Position	
Cash and investments	\$ 19,536,142
Cash restricted for capital purchases and projects	<u>4,341,403</u>
Total cash and investments	<u><u>\$ 23,877,545</u></u>

Cash and investments as of June 30, 2013 consist of the following:

Cash on hand	\$ 200
Deposits with financial institutions	550,617
Investments	<u>23,326,728</u>
Total cash and investments	<u><u>\$ 23,877,545</u></u>

Investments Authorized by the California Government Code and the Authority's Investment Policy

The table below identifies the investment types that are authorized for the Authority by the California Government Code (or the Authority's investment policy, where more restrictive). The table also identifies certain provisions of the California Government Code (or the Authority's investment policy, where more restrictive) that address interest rate risk, credit risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustee that are governed by the provisions of debt agreements of the Authority, rather than the general provisions of the California Government Code or the Authority's investment policy.

<u>Authorized Investments Type</u>	<u>Maximum Percentages</u>	<u>Maximum Maturity</u>
U.S. Treasury Obligations	per approval	12 months
Other Obligations guaranteed by the U.S. Government	per approval	12 months
Obligations of U.S. Federal Agencies	per approval	12 months
Certificates of Deposit	per approval	12 months
Deposit Notes	per approval	12 months
Repurchase Obligations	per approval	30 days
Bankers Acceptances	per approval	12 months
Savings and Money Market Accounts	per approval	12 months
Money Market Mutual Funds	per approval	12 months
Local Agency Investment Fund (LAIF)	per approval	12 months

The Executive Officer shall consult with the Finance Committee Chair for any investment transaction exceeding 5% of the Authority's total portfolio; the Finance Committee will be routinely informed of these transactions.

Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. Information about the sensitivity of the fair values of the Authority's investments to market interest rate fluctuations is provided by the following table that shows the maturity date of each investment:

		<u>Maturity Date</u>
Money market mutual funds	\$ 13,894,365	Due on demand
Certificates of deposit	\$ 9,432,363	12 months

The Authority has no investments that are highly sensitive to interest rate fluctuations.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 2 - Cash and Investments (Continued)**

Disclosures Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of rating by a nationally recognized statistical rating organization. Presented below is the minimum rating required by (where applicable) the California Government Code, the Authority's investment policy, or debt agreements, and the actual rating as of fiscal year end for each investment type.

Investment Type	Amount	Minimum Legal Rating	Exempt From Disclosure	Rating as of Fiscal Year End			
				AAA	AA	A	Not Rated
Money market mutual funds	\$ 13,894,365	N/A	\$ -	\$ -	\$ -	\$ -	\$ 13,894,365
Certificates of deposit	9,432,363						9,432,363
	<u>\$ 23,326,728</u>		<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 23,326,728</u>

Concentration of Credit Risk

The investment policy of the Authority contains limitations on the amount that can be invested in any type of investment or industry group beyond that stipulated by the California Government Code. There are no investments in any one issuer (other than money market mutual funds and certificates of deposits) that represent 5% or more of total Authority investments.

Custodial Credit Risk

Custodial credit risk for *deposits* is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The California Government Code and the Authority's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits:

The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The fair value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure Authority deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

The custodial credit risk for *investments* is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the Authority's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for investments. With respect to investments, custodial credit risk generally applies only to direct investments in marketable securities. Custodial credit risk does not apply to a local government's indirect investment in securities through the use of mutual funds or government investment pools.

As of June 30, 2013, \$100,403 of the Authority's deposits with financial institutions in excess of federal depository insurance limits were held in collateralized accounts

Cash Restricted for Capital Purchases and Projects

As required by the City of Marina and the Fort Ord Reuse Authority, the Preston Park Property maintains a capital reserve cash account for future capital purchases. As of June 30, 2013, the reserve balance was \$4,341,403.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 3 – Interfund Activity**

Interfund Transfers

Interfund transfers consist of transfers from funds receiving revenue to funds through which the resources are to be expended. Interfund transfers for the 2012-2013 fiscal year are as follows:

	<u>Transfers In</u>	<u>Transfers Out</u>
Major Governmental Funds:		
Lease and Sale Proceeds Special Revenue Fund	\$ 910,670	\$ -
Developer Fees Special Revenue Fund		910,670
Totals	<u>\$ 910,670</u>	<u>\$ 910,670</u>

**Note 4 - Capital Assets**

Capital asset activity for the fiscal year ended June 30, 2013, was as follows:

Governmental Activities

	<u>Balance at July 1, 2012</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance at June 30, 2013</u>
Capital assets, being depreciated:				
Equipment and furniture	\$ 451,051	\$ 3,272	\$ (294,739)	\$ 159,584
Less - accumulated depreciation	(337,503)	(35,829)	294,739	(78,593)
Total capital assets, net	<u>\$ 113,548</u>	<u>\$ (32,557)</u>	<u>\$ -</u>	<u>\$ 80,991</u>

Depreciation expense was \$35,829 for the fiscal year ended June 30, 2013, and charged to the general government function.

Business-type Activities

Preston Park

	<u>Balance at July 1, 2012</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance at June 30, 2013</u>
Capital assets, being depreciated:				
Improvements	\$ 3,970,204	\$ 261,989	\$ -	\$ 4,232,193
Furniture and fixtures	435,172	2,600		437,772
Automobile	35,563	11,843		47,406
Less - accumulated depreciation	(3,093,662)	(359,887)		(3,453,549)
Total capital assets, net	<u>\$ 1,347,277</u>	<u>\$ (83,455)</u>	<u>\$ -</u>	<u>\$ 1,263,822</u>

Depreciation expense was \$359,887 for the fiscal year ended June 30, 2013, and charged to functions/programs of the Authority's business-type activities as Preston Park.

**Note 5 - Defined Benefit Pension Plan**

Plan Description

All eligible full-time employees participate in the Authority's defined benefit pension plan, administered through the California Public Employee's Retirement System, which provides retirement and disability benefits, annual cost of living adjustments and death benefits to plan members and beneficiaries. The California Public Employees' Retirement System (CalPERS) is an agent multiple-employer plan administered by CalPERS, which acts as a common investment and administrative agent for participating public employers within the State of California. A menu of benefit provision as well as other requirements is established by State statutes within the Public Employees' Retirement Law. The Authority selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through local resolution (other local methods). CalPERS issues a separate comprehensive annual financial report. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, 400 P Street, Sacramento, California, 95814.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 5 - Defined Benefit Pension Plan (Continued)**

Funding Status and Progress

Participants are required to contribute 7% of their annual covered salary. The Authority makes the contributions required of its employees on their behalf and for their account. The Authority's required contribution is based upon an actuarially determined rate. The current 2012-13 fiscal year employer rate was 13.578% of annual covered payroll. The 2013-2014 fiscal year employer rate is 14.057% of annual covered payroll. The contribution requirements of plan members, and the Authority, are established and may be amended by CalPERS.

Annual Pension Cost

The Authority's total annual pension cost of \$273,143 to CalPERS was equal to the Authority's required and actual employer contributions of \$180,228 and the employee share of \$92,915. The required contribution was determined as part of the June 30, 2010 actuarial valuation using the entry age normal actuarial cost method.

The actuarial assumptions included:

- a 7.75% investment rate of return (net of administrative expenses).
- projected annual salary increases of 3.55% to 14.45% depending on age, service and type of employment.
- an inflation rate of 3.0%.
- a payroll growth rate of 3.25%.
- individual salary growth merit scale varying by duration of employment coupled with an assumed annual inflation growth of 3.0% and an annual production growth of 0.25%.

The actuarial value of PERS assets was determined using techniques that smooth the effects of short-term volatility in the market value of investments over a three-year period (smoothed market value). The Schedule of Funding Progress on page 32 shows that the plan was underfunded as of June 30, 2011. Information for the fiscal year ended June 30, 2013 has not been released by the Plan Actuary.

The contribution rate for normal cost is determined using the entry-age normal actuarial cost method, a projected benefit cost method. It takes into account those benefits that are expected to be earned in the future as well as those already accrued. Significant actuarial assumptions used to compute the actuarially determined contribution requirement are the same as those used to compute the pension benefit obligation as described above.

Historic Trend Information

Three-year trend information gives an indication of the progress made in accumulating sufficient assets to pay benefits when due.

Fiscal Year	Annual Pension Cost (APC)	Percentage of APC Contributed	Net Pension Obligation
6/30/2011	\$ 135,110	100%	\$ -0-
6/30/2012	\$ 158,799	100%	\$ -0-
6/30/2013	\$ 273,143	100%	\$ -0-

**Note 6 - Deferred Compensation Plan**

The Authority offers its full-time employees a deferred compensation plan in accordance with Internal Revenue Code §457. The plan permits the employee to defer until future years up to 25% of annual gross earnings not to exceed \$17,500; this amount increases to \$23,000 for employees 50 years and older. Assets are not available to participants for disbursement until termination, retirement, death, or an emergency.

The Authority does not fund the compensation deferred under the Plan except for \$833 per month contributed on behalf of the Executive Officer per the employment agreement. The contributions are held in investments that are underwritten by ICMA Retirement Corporation. Periodic contributions are made through payroll deductions of the employees and all plan fees associated with the accounts are the responsibility of the individual employee.



**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 6 - Deferred Compensation Plan (Continued)**

The participants' accounts are not subject to claims of the Authority's creditors. The Authority has no liability for losses under the plan but does have the duty of due care that would be required of any ordinary prudent investor.

**Note 7 - Long-Term Debt Obligations**

Long-term debt activity for the fiscal year was comprised of the following:

	Beginning Balance	Additions	Deletions	Ending Balance	Due Within One Year
Capital lease	\$ 216,182	\$ -	\$ 105,537	\$ 110,645	\$ 110,645
PERS Side fund *	289,379	20,106	43,387	266,098	44,645
OPEB		125,037	11,111	113,926	
Preston Park loan	18,456,588		268,383	18,188,205	18,188,205
Compensated absences	147,431	81,020	85,383	143,068	41,771
<b>Totals</b>	<b>\$ 19,109,580</b>	<b>\$ 226,163</b>	<b>\$ 513,801</b>	<b>\$ 18,821,942</b>	<b>\$ 18,385,266</b>

\*Denotes a prior period adjustment. See note 19 for further detail.

**Note 8 - Capitalized Lease Obligation**

The Authority entered into a lease purchase agreement to acquire fire fighting equipment that was distributed to local jurisdictions for fire suppression on the former Fort Ord Army Base.

Scheduled Payments

Future minimum lease payments are as follows:

<u>Fiscal Year Ending June 30,</u>	
2014	<u>\$ 116,000</u>
Total gross lease payments	116,000
Less amount representing interest	<u>5,355</u>
Net minimum lease payments	<u>\$ 110,645</u>

**Note 9 - Loans Payable**

Preston Park Loan

In March 2010, the Authority borrowed \$19 million from Rabobank Inc. In June 2009, the Board of Directors authorized the new loan to 1) provide stimulus grant local matching funds and 2) retire certain existing debts (2002 Revenue Bonds and \$9M Line of Credit).

The new loan has a fixed interest rate of 5.98% for five years and matures in June 2014. The monthly debt service (principal and interest) of \$113,740 is being funded by the Authority's 50% share of Preston Park lease revenue.

As of June 30, 2013, the amount of outstanding principal was \$18,188,205. See Note 14 – A for further details.

**Note 10 – Public Employees Retirement System Side Fund**

During the fiscal year 2005-2006, the Authority was required to participate in the Public Employees Retirement System (PERS) risk pool. As a result, a side fund was created to account for the difference between the funded status of the pool and the funded status of the Authority's plan, in addition to the existing unfunded liability. The outstanding balance at June 30, 2013 was \$266,098.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 11 - Compensated Absences**

The leave policy was revised in June 2011 to limit vacation accrual and include a vacation cash out provision. The Authority employees are allowed to accrue up to 10 days of sick leave and up to 20 days of vacation per year, depending on length of employment. Employees are permitted to accrue an unlimited amount of sick leave; vacation accrual is limited to 240 hours. Employees may elect to cash out up to 80 hours of accrued vacation one time during a fiscal year. In the event of separation of employment, an employee is reimbursed for any unused vacation leave, and a portion of their unused sick leave (limited to 174 hours). Reimbursement is based on the employee's regular salary rate at the date of termination or resignation. Vacation leave becomes vested immediately and sick leave becomes vested after 5 years of continuous services. Effective July 1, 2006, the Authority management employees are provided 5 days of management leave per year. There is no cash pay-off for unused management leave time.

The Authority's liability for accrued vacation and sick pay at June 30, 2013 was \$143,068.

**Note 12 - Post Employment Benefits Other than Pensions**

Plan Description

The Authority administers a single employer defined benefit healthcare plan (Plan).

The Authority provides post employment healthcare benefits to all qualified employees who met the Authority's Public Employees Retirement System (PERS) current plan requirements. For regular Authority employees hired prior to January 1, 2013, five years of full time continuous employment with the Authority is required. The employee must be at least 50 years of age and has participated in the PERS plan for at least five years for health care benefits. For regular Authority employees hired on or after January 1, 2013, five years of full time continuous employment with the Authority is required. The employee must be at least 52 years of age and has participated in the PERS plan for at least five years for health care benefits.

The Authority pays a fixed sum that is not to exceed 100% of the medical plan premium from the date of retirement for the life of the retired employee. Depending on the PERS payment plan chosen by the employees for spousal coverage after the death of an employee, the Authority would also cover the spouse for life under the same plan.

Funding Policy

The contribution requirement of plan members and the Authority are established and may be amended by the Authority. The required contribution is based on projected pay-as-you-go financing requirements, with an additional amount to prefund benefits as determined annually by the Authority. In the fiscal year 2012 - 2013, the Authority contributed \$11,111 to the Plan.

Annual OPEB and Net OPEB Obligation

The Authority's annual other postemployment benefit (OPEB) cost (expense) is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed thirty years. The following table shows the components of the Authority's annual OPEB cost for the fiscal year, the amount actually contributed to the plan, and changes in the Authority's net OPEB obligation.

Annual required contribution	\$ 125,037
Annual OPEB cost (expense)	125,037
Contributions made	(11,111)
Increase in net OPEB obligation (asset)	113,926
Net OPEB obligation - beginning of the fiscal year	-
Net OPEB obligation - end of the fiscal year	\$ 113,926

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 12 - Post Employment Benefits Other than Pensions (Continued)**

The Authority's annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB obligation for the fiscal year 2012-2013 is as follows:

<u>Fiscal Year Ended</u>	<u>Annual OPEB Cost</u>	<u>Percentage of Annual OPEB Cost Contribution</u>	<u>Net OPEB Obligation (asset)</u>
6/30/2013	\$ 125,037	9%	\$ 113,926

Funded Status and Funding Progress

As of July 1, 2012, the most recent actuarial valuation date, the plan was zero percent funded. The actuarial accrued liability for benefits was \$986,915, and the actuarial value of assets was \$0, resulting in an unfunded actuarial accrued liability (UAAL) of \$986,915.

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, presents multi-year trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

Actuarial Methods and Assumptions

Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

In the July 1, 2012, the actuarial cost method used is the Projected Unit Credit with service prorates. The actuarial assumptions included a 4.0 percent investment rate of return and an annual healthcare cost trend rate of 7.0 percent initially, reduced by decrements to an ultimate rate of 5.0 percent after five years.

The method of determining the actuarial value of assets is not applicable. The UAAL is being amortized on a level dollar basis over thirty years.

**Note 13 – Health Care Plan**

During the year ended June 30, 2013, employees of the Authority were covered by a third party medical insurance plan, the California Public Employees Retirement System (CalPERS) Medical Benefits Program, and by the Principal Financial Group for dental, vision, and life insurance. The Authority contributes to the employee medical premium and to eligible dependents medical premiums up to \$1,323 per month per family. In addition, employees receive monthly cash allowances of \$145 per employee to be applied towards premiums of the optional dental, vision, and life insurance benefits under an Internal Revenue Code Section 125 Flexible Benefit Plan.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 14 - Commitments and Contingencies**

**A. Litigation**

As of June 30, 2013 the Authority was involved in several potential litigations.

Appropriate insurance policies protect the Authority from most potential litigation effects. In addition, the Authority requires indemnification and contract provisions with its vendors and contractors that also guard against, and redirect, litigation costs and potential impact to the Authority's assets. The Authority retains authority and special counsel to defend any such actions.

The Authority borrowed \$19 million to fund Base Reuse Plan activities in 2010 from Rabobank Inc. using the Preston Park Housing complex as collateral. That loan comes due in June 2014 and must be paid off either through the sale to the City of Marina or by public sale. The outstanding balance of \$18,188,205 is the Authority's obligation and the Authority does not have sufficient funds to retire the indebtedness in any other manner when it comes due in June 2014. The City of Marina has legally contested the Authority's ability to sell the property and the use of the property as collateral for the loan by filing an injunction against the sale of the property that was granted by Monterey County Superior Court. That case is expected to be heard in Spring 2014. Since the City of Marina has filed formal action also against Rabobank Inc., it is expected that the loan maturity date will be addressed in the litigation process.

**B. Grant Payments**

The Authority participates in federal grant programs, which are governed by various rules and regulations of the grantor agencies. Costs charged to the respective grant programs are subject to audit and adjustment by the grantor agencies; therefore, to the extent that the Authority has not complied with the rules and regulations governing the grants, refunds of any money received may be required and the collectability of any related receivables may be impaired. In the opinion of management, there are no significant contingent liabilities relating to compliance with the rules and regulations governing the respective grants; therefore, no provision has been recorded in the accompanying combined financial statements for such contingencies. Current year grant information is as follows:

**1. Environmental Remediation Project**

The \$99.3 million federal grant was paid to the Authority in three phases: \$40 million in FY 06-07, \$30 million in FY 07-08, and \$27.7 million in FY 08-09. The Army provided their payments ahead of schedule and secured a \$1.6 million credit for early payments. With the last payment received in December 2008, the grant paid for all contracted expenditures through the end of the remediation project (June 2014).

**o Unearned Revenue**

The Authority's share of unspent, unearned Army grant revenue at June 30, 2013 is classified as revenue collected in advance of the earnings process and is recorded as unearned revenue, a liability account, for financial statement purposes. It will be recognized as revenue when earned.

**Note 15 - Property Sales and Lease Income**

California Law requires that all net lease or property sale proceeds generated on the former U.S. Army Base are to be shared equally between the Authority and the governmental entity with jurisdiction over subject property. This state law is affirmed under contract implementation agreements between the Authority and its underlying jurisdictions. The Authority's share of property sale and lease income activity for the fiscal year was as follows:

Lease income

Preston Park Housing	\$1,742,627
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**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 16 - Contingent Receivables**

Contingent receivables are those for which there is some uncertainty of the legal obligation but have a prospect of a favorable settlement. Generally, a contingency involves some future determination, e.g., judgment or settlement.

1. **\$50,457 - The City of Del Rey Oaks (DRO)**

In 2002, DRO participated in a construction project funded by the EDA grant and local matching funds. On April 23, 2002, the DRO Council affirmed the City's commitment to provide the 25% local match or \$50,457 to pave a portion of South Boundary Road within the DRO city limits. DRO never paid this obligation citing insufficient resources. The Authority reports this debt as a long-term receivable on its financial statements and intends to collect payment as a deduction from the future land sale proceeds of DRO real property. The amount of \$50,457 is recorded as unearned revenue.

2. **\$4.1 million – East Garrison Partners (EGP)**

The Monterey County (County) approved the EGP project in 2005, postponing land sale revenues to future years. A portion of these land sale revenue was due to the Authority under State law and the terms of the Authority/County 2001 Implementation Agreement. As a consequence, the Authority did not collect the deferred \$4.1M in land sale revenue and issued debt of the same amount to fund its ongoing building removal responsibilities. EGP, County and FORA entered into a Memorandum of Understanding (MOU), which required EGP to: a) pay the Authority monthly interest payments on the \$4.1M loan that the Authority acquired in lieu of the land sale proceeds and b) repaid the \$4.1M principal due in 2011 or upon termination of the MOU. In 2009, EGP defaulted on the project. A new developer, Union Community Partners (UCP) purchased the rights and property associated with the project and questions their responsibility for the principal repayments.

**Note 17 - US Army Environmental Services Cooperative Agreement Grant**

Removal of munitions and explosives of concern (MEC) at the former Fort Ord has been in progress by the U.S. Army since 1992. Several areas formerly used for military training at the former base have been cleared over the years, but approximately 3,340 acres must still undergo specific MEC removal activities before they can be reused for key elements of the Fort Ord Base Reuse Plan. In the spring of 2005 the U.S. Army and Authority entered into negotiations to execute an Army funded Environmental Services Cooperative Agreement (ESCA) leading to the transfer of former Fort Ord 3,340 acres prior to regulatory environmental sign-off. In early 2007, the Army awarded the Authority \$99.3 million to perform munitions cleanup on the ESCA parcels. The Authority also entered into an Administrative Order on Consent (AOC) with U.S. Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (DTSC), defining conditions under which the Authority assumes responsibility for the Army remediation of the ESCA parcels. In order to complete the AOC defined work; the Authority entered into a Remediation Services Agreement (RSA) with Arcadis, Inc. to provide MEC remediation services and executed a Cost-Cap insurance policy for this remediation work through the American International Insurance Group (AIG).

The ESCA Remediation Program (RP) has been underway for approximately 5.5 years. The ESCA property was transferred to Authority ownership on May 8, 2009. The FY 2011 ESCA RP field work focused in the Parker Flats, future East Garrison and interim action ranges areas of the former Fort Ord.

On December 17, 2008, the Authority received the fourth and final ESCA Grant fund payment of approximately \$28.6 million. Per the AOC, the majority of these funds have been transferred to AIG (now "Chartis" company) for payment to LFR, Inc. under the terms of the insurance policies and related agreements. The Authority's administrative costs and oversight responsibility, including third-party quality assurance work, are also funded by the ESCA grant.

**FORT ORD REUSE AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2013**

**Note 18 - Office Lease**

On July 2, 2009, the Authority entered into a lease agreement for office space, with occupancy to commence on the date that a certificate of occupancy for the premises is delivered to the Authority, and shall terminate on midnight of the last day of the fifty-seventh (57<sup>th</sup>) month, thereafter. Monthly rent for the initial lease term, as determined by a current, independent appraisal, shall be one dollar seventy cents (\$1.70) per square foot, per month, for a total of \$988,000 over the 57 month period. The transaction is part of an exchange agreement whereby the Authority is exchanging land, with a value of \$988,000, as determined by an independent appraisal, for rent and tenant improvements. The Authority is responsible for a pro-rata share of the common area maintenance. The office lease agreement is scheduled to terminate with the sunset provisions of the Authority.

**Note 19 – Prior Period Adjustments**

The accompanying financial statements include adjustments that resulted in the restatements of beginning net position. The following summarizes the effect of the prior period adjustments to beginning net position as of July 1, 2012:

	Government-wide Statement
Net position - beginning of fiscal year	\$ (6,404,048)
To adjust long term liabilities for PERS side fund	(289,379)
Net position - beginning of fiscal year, restated	\$ (6,693,427)

**Note 20 - Subsequent Events**

The Authority management has reviewed the results of operations for the period from June 30, 2013 through January 2, 2014, the date the financial statements were available to be issued, and have determined that no adjustments are necessary to the amounts reported in the accompanying financial statements nor have any subsequent events occurred, the nature of which would require disclosure.

The management, however, feels that it is important to disclose the following information as it may affect the Authority's financial position as of June 30, 2013, and cause prior period adjustments in its financial statements, as follows:

- Several significant receivables are under collection by the Authority. If not collected, year end fund balances may be reduced.
- The Preston Park appraisal value of the land and buildings as of September 20, 2013, was \$66,700,000.
- There are four pending litigations as of January 2, 2014:
  1. City of Marina v Fort Ord Reuse Authority regarding sale of Preston Park Housing Complex (liability unknown).
  2. Keep Fort Ord Wild v Fort Ord Reuse Authority concerning Eastside Parkway environmental review (limited financial liability).
  3. Keep Fort Ord Wild v Fort Ord Reuse Authority concerning Public Records Act Compliance Issues (limited financial liability).
  4. Keep Fort Ord Wild v Fort Ord Reuse Authority concerning Conflict of Interest (limited financial liability).

**REQUIRED SUPPLEMENTARY INFORMATION**

**FORT ORD REUSE AUTHORITY**  
**Budgetary Comparison Information**  
**Budget and Actual - All Funds**  
**For the Fiscal Year Ended June 30, 2013**

	Budgeted Amounts		Actual Amounts	Variance with Final Budget Positive (Negative)
	Original	Final		
<b>Resources (Inflows)</b>				
Membership dues	\$ 261,000	\$ 261,000	\$ 261,000	\$ -
Franchise fees	275,000	275,000	244,506	(30,494)
Property taxes		1,300,000	1,211,423	(88,577)
Federal grants	787,690	787,690	827,746	40,056
Developer fees	6,000,000	3,930,986	4,232,542	301,556
Planning reimbursements	7,000	7,000		(7,000)
Lease/Rental income	840,000	1,460,908	1,742,627	281,719
Real estate sales	28,450,279	500,000	28,296	(471,704)
CSU mitigation fees	326,795	326,795	326,795	
Investments/Interest earnings	135,000	100,000	142,130	42,130
Other revenue			10,817	10,817
Amounts available for appropriation	<u>37,082,764</u>	<u>8,949,379</u>	<u>9,027,882</u>	<u>78,503</u>
<b>Charges to Appropriations (Outflows)</b>				
Salaries and benefits	2,090,828	2,125,294	2,004,595	120,699
Supplies and services	193,050	185,050	136,795	48,255
Contractual services	1,417,500	1,826,500	1,718,892	107,608
Capital improvements	4,584,000	1,787,542	472,457	1,315,085
Debt service	19,124,340	1,480,880	1,480,918	(38)
Insurance amortization			600,000	(600,000)
Total charges to appropriations	<u>27,409,718</u>	<u>7,405,266</u>	<u>6,413,657</u>	<u>991,609</u>
<b>Surplus (Deficit)</b>	<u>\$ 9,673,046</u>	<u>\$ 1,544,113</u>	<u>\$ 2,614,225</u>	<u>\$ 1,070,112</u>



**FORT ORD REUSE AUTHORITY**  
**Schedule of Funding Progress**  
**Defined Benefit Pension Plan**  
**For the Fiscal Year Ended June 30, 2013**

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Pooled Report Format

Since the Authority has less than 100 active members, it is required by CalPERS to participate in a risk pool. The following valuation reports the activity of the risk pool as a whole, and not the specific activity of individual members such as the Authority.

Miscellaneous Plan - 2% at 55 Risk Pool	Actuarial Valuation Date - Year Ended		
	June 30, 2009	June 30, 2010	June 30, 2011
Accrued Liabilities (AL)	\$ 3,104,798,222	\$ 3,309,064,934	\$ 3,619,835,876
Actuarial Value of Assets (AVA)	\$ 2,758,511,101	\$ 2,946,408,106	\$ 3,203,214,899
Unfunded Liabilities (UL)	\$ 346,287,121	\$ 362,656,828	\$ 416,620,977
Funded Ratio (AVA/AL)	88.9%	89.0%	88.5%
Annual Covered Payroll	\$ 742,981,488	\$ 748,401,352	\$ 759,263,518
UL as a Percentage of Payroll	46.6%	48.5%	54.9%

*Note - Details of the defined benefit pension plan can be found in Note 5 of the basic financial statements. Information for the year ended June 30, 2013 has not been released by the Plan Actuary.*

FORT ORD REUSE AUTHORITY  
 Post Employment Benefit Plan Other than Pensions Trend Information  
 For the Fiscal Year Ended June 30, 2013

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Schedule of Funding Progress for  
Retiree Health Plan

<u>Actuarial</u> <u>Valuation Date</u>	<u>Projected Unit</u> <u>Credit Cost</u> <u>Accrued Liability</u>	<u>Actuarial Value</u> <u>of Assets</u>	<u>Unfunded</u> <u>Liability</u> <u>(Excess Assets)</u>	<u>Funded Ratio</u>	<u>Annual</u> <u>Covered</u> <u>Payroll</u>	<u>UAAL as of</u> <u>% of Payroll</u>
7/1/2012	\$ 986,915	\$ -	\$ 986,915	0%	\$ 1,274,140	77%

**FORT ORD REUSE AUTHORITY**

**SINGLE AUDIT REPORT**

**JUNE 30, 2013**



# MOSS, LEVY & HARTZHEIM LLP

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**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

Board of Directors  
Fort Ord Reuse Authority  
Marina, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, business type activities, and each major fund of the Fort Ord Reuse Authority (Authority) as of and for the fiscal year ended June 30, 2013, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements and have issued our report thereon dated January 2, 2014.

#### **Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Authority's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency or a combination of deficiencies in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified. We did identify certain deficiencies in internal control, described in the accompanying schedule of findings and questioned costs, as an item 2013-1 that we consider to be a significant deficiency.

#### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the Authority's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

- 40 -

OFFICES: BEVERLY HILLS · CULVER CITY · SANTA MARIA

**Fort Ord Reuse Authority's Response to Findings**

The Authority's responses to the findings identified in our audit are described in the accompanying schedule of findings and questioned costs. The Authority's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Moss, Levy & Hartzheim*

Moss, Levy & Hartzheim, LLP  
Culver City, California  
January 2, 2014



**MOSS, LEVY & HARTZHEIM LLP**

CERTIFIED PUBLIC ACCOUNTANTS

**PARTNERS**  
RONALD A. LEVY, CPA  
CRAIG A. HARTZHEIM, CPA  
HADLEY Y. HUI, CPA

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**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH  
MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE  
REQUIRED BY OMB CIRCULAR A-133**

Board of Directors  
Fort Ord Reuse Authority  
Marina, California

**Report on Compliance for Each Major Federal Program**

We have audited the Fort Ord Reuse Authority's (Authority) compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of the Authority's major federal programs for the fiscal year ended June 30, 2013. The Authority's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

**Management's Responsibility**

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal program.

**Auditors' Responsibility**

Our responsibility is to express an opinion on compliance for each of the Authority's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the Authority's compliance.

**Opinion on Each Major Federal Program**

In our opinion, the Authority complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the fiscal year ended June 30, 2013.

## Report on Internal Control

Management of the Authority is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit, we considered the Authority's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify and deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this report is not suitable for any other purpose.

*Moss, Levy & Hartzheim*

Moss, Levy & Hartzheim, LLP  
Culver City, California  
January 2, 2014

**FORT ORD REUSE AUTHORITY**  
**Schedule of Expenditures of Federal Awards**  
**For the Fiscal Year Ended June 30, 2013**

<u>Description and Program Title</u>	<u>Federal CFDA Number</u>	<u>Federal Expenditures</u>
<b>DEPARTMENT OF THE ARMY</b>		
Direct Program:		
U.S. Army Corp of Engineers, HTRW Center of Expertise, Project grant for Environmental Services Cooperative Agreement		
Project grant for clean up of munitions and explosives of concern Agreement No. W9128F-07-2-0162	12.000	<u>\$ 827,746</u>
Total Expenditures of Federal Awards		<u>\$ 827,746</u>

*The accompanying Note to Schedule of Expenditures of Federal Awards is an integral part of this schedule.*



**FORD ORD REUSE AUTHORITY**  
**Notes to Schedule of Expenditures of Federal Awards**  
**For the Fiscal Year Ended June 30, 2013**

**NOTE 1**      **BASIS OF PRESENTATION**

The accompanying schedule of expenditures of federal awards (the Schedule) includes the federal grant activity of the Fort Ord Reuse Authority (Authority) presented on the modified accrual basis of accounting. The information in this schedule is presented in accordance with the requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Therefore, some amounts presented in this schedule may differ from amounts presented in, or used in the preparation of, the Authority's basic financial statements.

**NOTE 2**      **SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

1. Expenditures reported on the Schedules are reported on the accrual basis of accounting. Such expenditures are recognized following the cost principles contained in OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*, wherein certain types of expenditures are not allowable or are limited as to reimbursement.
2. All federal grants were direct programs.
3. There were no subrecipients of federal awards.
4. The Catalog of Federal Domestic Assistance (CFDA) numbers included in the accompanying Schedule were determined based upon program name, review of grant contract information and the Office of Management and Budget's CFDA.

**FORD ORD REUSE AUTHORITY**  
**Schedule of Findings and Questioned Costs**  
**For the Fiscal Year Ended June 30, 2013**

**Section I – Summary of Auditor’s Results**

Financial Statements

Type of auditor’s report issued

**Unmodified – governmental activities and governmental funds**  
**Qualified – business-type activities and proprietary fund**

Internal control over financial reporting:

Material weakness(es) identified? \_\_\_\_\_ Yes   X   No

Significant deficiency(ies) identified not considered to be material weaknesses?   X   Yes \_\_\_\_\_ None Reported

Noncompliance material to financial statements noted? \_\_\_\_\_ Yes   X   No

Federal Awards

Internal control over major programs:

Material weakness(es) identified? \_\_\_\_\_ Yes   X   No

Significant deficiency(ies) identified not considered to be material weaknesses? \_\_\_\_\_ Yes   X   None Reported

Type of auditor’s report issued on compliance for major programs:

**Unmodified**

Any audit findings disclosed that are required to be reported in accordance with Circular A-133, Section 510 (a) \_\_\_\_\_ Yes   X   No

Identification of major programs:

**CFDA Number(s)**

**Name of Federal Program Cluster**

12.000

U.S. Army Corp of Engineers, HTRW Center of Expertise, Project Grant for Environmental Services Cooperative Agreement

Dollar threshold used to distinguish between Type A And Type B programs:

**\$300,000**

Auditee qualified as low-risk auditee:   X   Yes \_\_\_\_\_ No

**FORT ORD REUSE AUTHORITY**  
**Single Audit Report**  
**Schedule of Findings and Questioned Costs**  
**For the Fiscal Year Ended June 30, 2013**

**Section II – Findings – Financial Statement Audit**

**Significant Deficiencies**

2013-01 Finding – Deficiencies in internal control over Preston Park (Third Party Management Company):

During our audit, we noted the following issues:

1. There was a deposit that had already been deposited into the bank. However, it was not recorded in the general ledger.
2. Capital asset additions for the fiscal year 2012-2013 were not entered into the capital asset tracking module for depreciation, resulting in understatement of depreciation expense and accumulated depreciation.
3. There were many capital asset additions replacing older appliances and other equipment. However, we did not see any older assets removed from the asset listing. Thus, these assets may still be depreciating, if not already fully depreciated.
4. Lack of reconciliations between physical assets and capital asset listing.
5. The liability for tenant security deposits did not agree to the security deposit cash account.

Effect:

1. The general ledger does not reflect the actual balance as of year-end.
2. Depreciation for current year capital asset additions is not reflected in depreciation expense and accumulated depreciation.
3. Preston Park does not have a current and accurate inventory of capital assets, which could result in overstatement or understatement of capital asset valuation.
4. If the liability does not agree to the security deposits received, the difference could lead to overstatement of revenue.

Recommendation:

We recommend that Preston Park implement procedures to accurately record and report cash, assets, and liabilities.

Third Party Management's Response:

1. The Deposit in question, Deposit #2469 in the amount of \$8,346 hit the bank on 6/28/13 but was not posted to Yardi until July. We understand the auditor finding and the journal entry made to correct at Year End. We will have the Senior Property Accountant and/or the Accounting Manager review on a monthly basis to make sure that any Unearned Revenue gets booked in the correct month.
2. Alliance uses FAS 50 Asset Accounting to calculate the Depreciation for Preston Park. Capital additions are uploaded from the General Ledger to FAS on a monthly basis. We are adding, as part of the monthly accounting review, a reconciliation to be done between the Capital Assets posted to the GL and the Expense Report produced by FAS. Since there were some differences at Year End, we will go back to July 2013 and make the necessary adjustments to make sure these reports tie out going forward.
3. The Accounting Manager will work with the Business Manager and Regional Manager to get a listing of capital assets that have been replace or have been recycled through MARS. After we identify them, and if applies, we'll proceed with removing them from the asset accounts and accumulated depreciations.
4. The amount transferred from the Operating Account to the Security Deposit account in June was made to tie to the \$463,347 Prior Receipts instead of Current Receipts. This was an error and was not caught until the following month. This has since been corrected and the Security Deposits amount in the reports now ties to the Bank Reconciliation. Please note that many times there is a timing difference due to the fact that the month end and the bank happen on the same date. For that reason we might not be able to wire the money on the day of close if the close happens after the cut off time. For example, in October you will notice that is a wire in transit in the amount of \$2,618.60. Alliance does a monthly reconciliation for these accounts as part of the month end process. I have attached a copy of the most recent one.

**FORT ORD REUSE AUTHORITY  
Single Audit Report  
Schedule of Findings and Questioned Costs  
For the Fiscal Year Ended June 30, 2013**

**Section III – Findings and Questioned Costs – Major Federal Awards Program Audit**

None

**FORT ORD REUSE AUTHORITY**  
**Single Audit Report**  
**Status of Prior Fiscal Year Findings**  
**For the Fiscal Year Ended June 30, 2013**

**Prior Fiscal Year's Findings – Financial Statement Audit**

2012-01 Finding – Bank reconciliations are not prepared on a monthly basis:

During our fieldwork, we noted that bank reconciliations are prepared quarterly instead of monthly.

Effect:

With the lack of frequency in preparing reconciliations, there is an increased risk of misappropriation of funds because management cannot determine as frequently if cash in the bank matches the general ledger.

Recommendation:

We recommend bank reconciliations are prepared on a monthly basis for the bank accounts that issue checks.

Status:

Implemented

2012-02 Finding – Deficiencies in expense authorization requests:

During our test of expenditures, we noted that the Executive Officer approves his/her own purchase authorization request.

Effect:

With the lack of review of expense authorization requests, there is a serious weakness of the system of internal controls and this opens the way for the possibility of not only unapproved but also fraudulent purchases.

Recommendation:

We recommend that all purchase authorization requests are approved by the proper authority.

Status:

Implemented

2012-03 Finding – Noncompliance with GASB 45:

During our audit, we noted that the Authority has not done the Governmental Accounting Standards Board (GASB 45) actuarial study.

Effect:

The liability of other post-employment benefits did not present in the basic financial statement.

Recommendation:

We recommend that the Authority conduct a GASB statement No. 45 actuarial study.

Status:

Implemented

**Prior Fiscal Year's Findings – Major Federal Award Programs Audit**

None

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

**Subject:** Elect 2014 FORA Board Officers

**Meeting Date:** January 10, 2014

**Agenda Number:** 9b

**ACTION**

### RECOMMENDATION:

1. Receive a report from the 2013/2014 Nominating Committee.
2. Approve the Nominating Committee's proposed slate or conduct elections for individual offices, as follows:
  - i. Elect three voting members of the Fort Ord Reuse Authority (FORA) Board to serve as Board officers (Chair, 1<sup>st</sup> Vice-Chair, 2<sup>nd</sup> Vice-Chair) and members of the Executive Committee for a term of one year.
  - ii. Elect one voting member of the FORA Board to serve as the member-at-large on the FORA Executive Committee for a term of one year.
  - iii. Elect a past Board Chair to serve on the Executive Committee for a term of one year.
  - iv. Elect one ex-officio Board member to serve as a non-voting member of the Executive Committee for a term of one year.

### BACKGROUND/DISCUSSION:

The FORA Master Resolution states that the three Board officers shall be elected annually at the end of the first regular Board meeting in January. The Board officers serve for a term of one year and may be reelected for no more than one consecutive, additional term in the same office. Under that policy, the current Board officers are eligible for reelection. The Master Resolution also establishes a Board policy of succession from 2<sup>nd</sup> Vice Chair to 1<sup>st</sup> Vice Chair to Chair. The Board may appoint other officers as deemed necessary.

Serving on the 2014 Nominating Committee were Chair Edelen, Mayor David Pendergrass, Mayor Rubio, Mayor Pro Tem Frank O'Connell, and Supervisor Parker. The Committee met on January 2, 2014 and recommended the following slate with a vote of 4-1 (Parker dissenting).

Chair: Del Rey Oaks Mayor Jerry Edelen  
1<sup>st</sup> Vice Chair: Marina Mayor Pro-Tem Frank O'Connell  
2<sup>nd</sup> Vice Chair: Seaside Mayor Ralph Rubio  
Past Chair: Monterey County Supervisor Dave Potter  
Member-at-Large: Sand City Mayor David Pendergrass  
Ex-Officio (Non-Voting) Member: CSUMB President Eduardo Ochoa

VOTING PROCEDURE: A summary nomination covering all offices may be offered by the Nominating Committee Chair or any board member before voting for the individual offices is commenced. In the absence of a summary nomination, the Chair will accept nominations for each office, starting with the Chair, and conduct an election as noted in **Attachment A**. A majority of votes cast confirms election.

### FISCAL IMPACT:

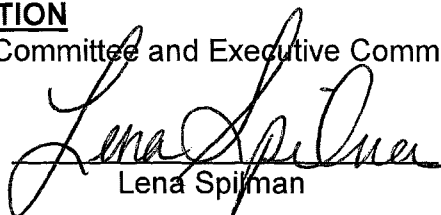
Reviewed by FORA Controller 

None

### COORDINATION

Nominating Committee and Executive Committee

Prepared by

  
Lena Spilman

Approved by

  
Michael A. Houlemard, Jr.

## FORA VOTING PROCEDURES

### Election of Officers

1. The Chair (or Acting Chair) opens the election of officers by requesting that the Chair, or other member, of the Nominating Committee present the committee's recommended slate of officers.
2. The Board may elect the three officers and the "At-Large" Executive Committee Members by a summary nomination, wherein a motion to elect all three is made, (typically by the Nominating Committee Chair) seconded and carries. In the absence of a summary nomination, the Chair will request nominations for each board position in turn. The order of the election shall be the Chair first and then the First Vice-Chair followed by the Second Vice-Chair. Each position, if voted individually, is voted on before the next position is voted on. The two appointed representatives to the Executive Committee (a representative-at-large and a past board chair or, if there is none, another voting board member) may be elected, appointed, or simply confirmed by acclamation by the Board.
3. If only one nomination is received for a position, a voice vote to elect by acclamation may be accepted by the Chair.
4. If more than one nomination for any position is received, the procedure shall be as follows:
  - Nominees for each position are given the opportunity to make a short statement.
  - Ballots are distributed, voted and then collected by the Deputy Clerk.
  - Ballots are tallied by the Executive Officer and the Authority Counsel.
  - Voting results are announced by the Executive Officer before election of the other officers takes place.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Outstanding Receivables

**Meeting Date:** January 10, 2014

**Agenda Number:** 11a

**INFORMATION**

### RECOMMENDATIONS:

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update for December 2013.

### BACKGROUND/DISCUSSION:

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

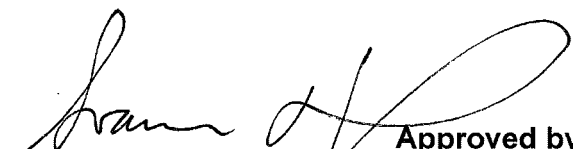
The FORA Board enacted a basewide Development Fee Schedule in 1999. Preston Park is subject to FORA's Development Fee Schedule overlay. In March 2009, the FORA Board approved the MOU between FORA and Marina whereby a portion of the Preston Park Development Fee was paid by the project. In 2009, Marina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

### FISCAL IMPACT:

All former Fort Ord projects are subject to either the developer fee overlay or the Community Development District fees to pay individual share of the California Environmental Quality Act required mitigation measures. If any projects fail to pay their fair share it adds a financial burden to other reoccupied or development projects to compensate.

### COORDINATION:

Executive Committee

Prepared by   
Ivana Bednarik

Approved by  for  
Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY BOARD REPORT**

**EXECUTIVE OFFICER'S REPORT**

<b>Subject:</b> Habitat Conservation Plan Update	<b>INFORMATION</b>
<b>Meeting Date:</b> January 10, 2014	
<b>Agenda Number:</b> 11b	

**RECOMMENDATION(S):**

Receive a Habitat Conservation Plan (HCP) and State of California 2081 Incidental Take Permit (2081 permit) preparation process status report.

**BACKGROUND/DISCUSSION:**

The Fort Ord Reuse Authority (FORA), with the support of its member jurisdictions and ICF International (formerly Jones & Stokes), FORA's HCP consultant, is on a path to receive approval of a completed basewide HCP and 2081 permit in 2015, concluding with US Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) (formerly known as California Department of Fish and Game) issuing federal and state permits.

Most recently, FORA received comments on the Administrative Draft HCP from USFWS in July 2012 and CDFW staff in August 2012, and held recent in-person meetings on April 10, June 19, and November 19, 2013 to discuss outstanding issues; however, a legal review by these wildlife agencies is not yet complete and several policy-level issues must be resolved between CDFW and BLM, CDFW and State Parks/UC. After meeting with CDFW Chief Deputy Director Kevin Hunting on January 30, 2013, FORA was told that CDFW and BLM issues require a Memorandum of Understanding (MOU) between CDFW and BLM, outlining certain assurances between the parties, resulting in additional time. Also, according to CDFW, final approval of an endowment holder no longer rests with CDFW (due to passage of SB 1094 [Kehoe]), which delineates specified rules for wildlife endowments. However, CDFW must review the funding structure and anticipated payout rate of the HCP endowment holder to verify if the assumptions are feasible. CDFW has outlined a process for FORA and the other permit applicants to expedite compliance with endowment funding requirements. FORA has engaged Economic and Planning Systems (EPS) to help in this process. Other policy issues and completion of the screen check draft HCP should be completed in the next few months. If the current schedule is maintained, FORA staff expects a Public Draft HCP available for public review by August 2014.

**Update: On December 6, 2014, FORA staff requested review of the HCP governing documents (Implementing Agreement, Joint Powers Agreement, HCP ordinance/policy) from FORA Administrative Committee members by January 24, 2014.**

**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**COORDINATION:**

Administrative Committee, Executive Committee, ICF, Denise Duffy and Associates

Prepared by   
Jonathan Garcia

Reviewed by   
Steve Endsley

Approved by  for  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Administrative Committee Report

**Meeting Date:** January 10, 2014

**Agenda Number:** 11c

**INFORMATION**

### RECOMMENDATION:

Receive a report from the Administrative Committee and Joint Administrative and Water/Wastewater Oversight Committee (WWOC).

### BACKGROUND/DISCUSSION:

The approved December 4, 2013 Administrative Committee minutes and the approved October 30, 2013 Joint Administrative/WWOC minutes are attached for review (**Attachment A and Attachment B**). The draft minutes from the December 18, 2013 Joint Administrative/WWOC will be considered at the next Joint Committee meeting.

### FISCAL IMPACT:

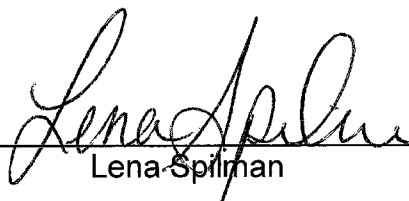
Reviewed by the FORA Controller 

Staff time for these committees is included in the approved annual budget.

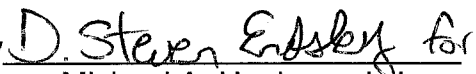
### COORDINATION:

Administrative Committee, WWOC

Prepared by

  
Lena Spilman

Approved by

  
Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES**  
8:25 a.m., Wednesday, December 4, 2013 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933

**1. CALL TO ORDER AND ROLL CALL**

Chair Dawson called the meeting to order at 8:15 a.m. The following were present:

Carl Holm, County of Monterey\*  
Elizabeth Caraker, City of Monterey\*  
John Dunn, City of Seaside\*  
Layne Long, City of Marina\*  
Anya Spear, CSUMB  
Vicki Nakamura, MPC  
Graham Bice, UC MBEST

Patrick Breen, MCWD  
Kathleen Lee, Sup. Potter's Office  
Lyle Shurtleff, BRAC  
Don Hofer, MCP  
Bob Schaffer  
Doug Yount  
Chuck Lande, Marina Heights

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

\* Voting Members

**2. PLEDGE OF ALLEGIANCE**

Graham Bice led the Pledge of Allegiance.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

None.

**4. PUBLIC COMMENT PERIOD**

None.

**5. AGENDA REVIEW - DECEMBER 13, 2013 BOARD MEETING**

Senior Planner Jonathan Garcia led a review of the items included in the draft Board packet, noting that the meeting would begin at 4:30 p.m. at the California State University, Monterey Bay (CSUMB) University Center. The Administrative Committee recommended the Board approve the 2014 Administrative Committee meeting schedule, provided the December 31<sup>st</sup> meeting was rescheduled for January 2<sup>nd</sup>.

**6. OLD BUSINESS**

**a. Review CSUMB/FORA Base Reuse Implementation Colloquium Program**

Executive Officer Michael Houlemard reviewed the event program and strongly encouraged Committee members to attend and urge their elected representatives to attend the 2-day event.

**b. Review Habitat Conservation Plan (HCP) Document Review Schedule**

Mr. Garcia discussed the Habitat Conservation Plan status and reviewed the calendars provided in the packet. Mr. Houlemard noted there was a collective effort underway to resolve all outstanding issues by January 2014, which could require a trip to Sacramento. Mr. Garcia announced that the HCP documents would be distributed in the next few days, and that the review period would conclude at the end of January 2014.

**7. ITEMS FROM MEMBERS**

None

**8. ADJOURNMENT**

The Committee adjourned at 9:21 a.m.



# FORT ORD REUSE AUTHORITY

## JOINT ADMINISTRATIVE AND WATER/WASTEWATER OVERSIGHT COMMITTEE

Wednesday, October 30, 2013

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

### MINUTES

#### 1. CALL TO ORDER

FORA Executive Officer Michael A. Houlemard, Jr. called the meeting to order at 8:20 AM. The following were present, as indicated by signatures on the roll sheet:

##### Committee Members:

John Dunn, City of Seaside  
Elizabeth Caraker, City of Monterey  
Benny Young, County of Monterey  
Graham Bice, UCMBEST  
Mike Lerch, CSUMB  
Tim O'Halloran, City of Seaside  
Anya Spear, CSUMB  
Diana Ingersoll, City of Seaside

##### Staff:

Michael Houlemard, FORA  
Steve Endsley, FORA  
Jim Arnold, FORA  
Crissy Maras, FORA  
Brian Lee, MCWD  
Kelly Cadiente, MCWD  
Patrick Breen, MCWD

##### Others:

Bob Schaffer  
Crisand Giles  
Don Hofer  
John Ford  
Chuck Lande  
Patrick Kelly  
Vicki Nakamura  
Beth Palmer  
Rick Riedl

#### 2. PLEDGE OF ALLEGIANCE

Josh Metz led the Pledge of Allegiance.

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Executive Officer Houlemard announced that he and FORA Principal Analyst Robert Norris both recently had their fifth grandchildren born within two hours of each other, and that FORA Associate Planner Josh Metz welcomed his first child earlier in the month.

#### 4. APPROVAL OF MEETING MINUTES

a. October 16, 2013 Joint Administrative/WWOC Minutes

There were no objections to approving the October 16, 2013 minutes as presented.

#### 5. PUBLIC COMMENT PERIOD

None

#### 6. AGENDA REVIEW - NOVEMBER 8, 2013 BOARD MEETING

a. Consistency Determination: 2010 Monterey County General Plan

Monterey County staff member John Ford introduced the item and explained that the Consistency Determination was on the October FORA Board agenda, but the Board received late comment letters from the Sierra Club and Jane Haines which prompted the request for additional Administrative Committee review. County staff attempted to address all questions or concerns raised in the letters. Mr. Ford additionally noted that the language at issue was adopted in their 2001 General Plan and that nothing in the 2010 update had been questioned in the comment letters.

FORA Assistant Executive Officer Steve Endsley noted that the Board would have options in November, including: concurring with the FORA staff finding of consistency as currently presented, concurring with the FORA staff finding of consistency with specific changes, or, not concurring with the

FORA staff finding. Mr. Ford explained that if the Board requested specific changes, those would have to also be approved by the Board of Supervisors. If the FORA Board does not find the 2010 plan consistent, the County would revert to the 2001 plan already in place.

Concerns were raised about the applicability of comments received less than 24 hours before a Board meeting. Executive Officer Houlemard explained that the FORA Executive Committee would be reviewing their policies on comment submittal at their meeting later in the afternoon. The Executive Committee will also review the policy on distribution of lengthy documents.

MOTION: Graham Bice moved to maintain the prior Administrative Committee recommendation to concur with the FORA staff finding that the 2010 Monterey County General Plan was consistent with the Base Reuse Plan and additionally requested that FORA counsel be prepared to address any questions, specifically those raised by the Sierra Club and Jane Haines.

MOTION PASSED: Unanimous

**7. OLD BUSINESS**

a. FY 2013/14 Ord Community Budget

i. Marina Coast Water District Financial Plan and Rate and Fee Study

MCWD Interim General Manager Brian Lee apologized that answers to committee member questions were not ready for distribution. He noted that their questions had raised his own questions to rate study consultant Carollo Engineers, prompting MCWD to defer FORA Board review of the Ord Community budget.

The committees discussed MCWD Proposition 218 requirements. MCWD held a protest hearing on October 21<sup>st</sup>. 569 parcels in the Ord Community receive service. 285 protests (50% of total customers, plus one) from Ord Community customers are required to block the proposed rate increase; MCWD received 246 valid protests.

MCWD is unsure whether the answers will be prepared in time for the next meeting packet, however, staff did commit to timely distribution prior to a future meeting.

**8. NEW BUSINESS (ITEMS FROM MARINA COAST WATER DISTRICT)**

a. Utilization of Unused Water Allocation

An MCWD Board member requested these items be placed on the FORA Board agenda, however, protocol requires Water/Wastewater Oversight or Administrative Committee and Executive Committee review first. MCWD staff noted that the MCWD Board as a whole did not authorize the request. For the next meeting, MCWD staff will prepare a table outlining the current status of water allocation.

b. Regional Urban Water Augmentation Program

MCWD staff is reviewing alternatives, including groundwater recharge and a request to Monterey County Water Resources Agency for Salinas River water.

**9. ITEMS FROM MEMBERS**

None

**10. ADJOURNMENT**

Executive Officer Houlemard adjourned the meeting at 10:47 a.m.

Minutes prepared by Crissy Maras, Grants and Contracts Coordinator

Approved by: \_\_\_\_\_

Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Finance Committee	
<b>Meeting Date:</b> January 10, 2014 <b>Agenda Number:</b> 11d	<b>INFORMATION</b>

### RECOMMENDATION(S):

Receive minutes from the December 17, 2013 Finance Committee (FC) meeting.

### BACKGROUND/DISCUSSION:

The FC met on December 17, 2013 to discuss the FY 12-13 draft Audit Report and other items. Please refer to the attached minutes (**Attachment A**) for more details and the FC recommendations.

### FISCAL IMPACT:

Reviewed by FORA Controller 

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

### COORDINATION:

Finance Committee

Prepared by   
Marcela Fridrich

Approved by   
Michael A. Houlemard, Jr.



# FORT ORD REUSE AUTHORITY

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**Finance Committee Meeting**  
Tuesday, December 17, 2013 at 3:00 pm

**Attachment A to Item 11d**  
FORA Board Meeting, 01/10/2014

## ACTION MINUTES

Present: Chair Bill Kampe, Members: Graham Bice, Ian Oglesby, Gail Morton  
Absent: Nick Chiulos (excused)  
Staff: Michael A. Houlemard, Jr., Ivana Bednarik, Steve Endsley, Robert Norris, Marcela Fridrich  
Guests: Hadley Hui, CPA, Moss, Levy & Hartzheim LLP

### AGENDA

The Fort Ord Reuse Authority (FORA) Finance Committee (FC) discussed the following agenda items:

1. Roll Call  
A quorum was achieved at 3:00 PM. Member Morton joined meeting at 3:20 PM.
2. Acknowledgements, Announcements, and Correspondence  
Executive Officer Houlemard mentioned the success of the Fort Ord Reuse Colloquium and also noted the comments by speakers that mentioned the funding for blight removal and the impact on future budget matters. Mr. Houlemard also commented about the CA Department of Public Works approval of the property transfer agreement with the Department of General Services for the Central Coast Veterans Cemetery.
3. Public Comment Period  
None
4. November 7, 2013 Minutes  
Motion to approve Bice, Second Oglesby. Approved 3-0.
5. FORA policies: Leave Donation  
This item was continued from the November 7, 2013 meeting in order to respond to questions by FC Member Morton. Controller Bednarik summarized Leave Donation Policy guidelines and explained the neutral fiscal impact to FORA. FC Members reviewed and supported staff recommendation to establish this policy. FC members concurred in support of Board action.
6. FY 12-13 Annual Financial Statements (Audit Report)  
FC Members received the draft Audit Report prior to the meeting. FORA Auditor, Hadley Hui, partner at Moss, Levy & Hartzheim LLP, was present and provided a detailed page-by page presentation of the Audit Report and Management's Discussion Analysis. The Auditor explained that in addition to conducting the FORA financial audit, his firm also audited Preston Park and explained that FORA's financial statements now include the Preston Park property. Preston Park is managed by a third party Management Company (Alliance), was previously independently audited and issued a separate audit report. Since FORA is holding title to Preston Park, the Auditor included this capital asset in the FORA audit report. As a result, the Auditor issued a qualified opinion because FORA (thru Alliance) has not yet recorded the value of Preston Park land and buildings and depreciation. FC Members acknowledged and discussed in length this issue and asked staff to coordinate with Alliance to secure this valuation for next year's audit report. The auditor also reported several third-party (Alliance) findings in respect to the Preston Park operations. Alliance management provided response and corrective actions, which the Auditor accepted. In respect to the FORA operations, the Auditor issued an unmodified opinion (formerly unqualified) and complimented FORA staff for implementing previous year's recommendations.

There were no findings/questionable costs in the FY 12-13 financial audit in respect to FORA operations. FC received the Audit Report and recommended acceptance of the FY 12-13 Audit Report by the FORA Board with typographical and other grammatical corrections and asked staff to prepare/add footnotes to indicate designation for all revenue sources. Motion Bice, second Oglesby. Approved 4-0. The FC then voted to support the Auditor's recommendation of including/adding the Preston Park asset value in future audit reports. Motion Bice, second Oglesby. Approved 4-0.

7. Next meeting date

FC Members agreed to a meeting on January 14, 2014 at 3:30 PM.

8. Adjournment

Meeting adjourned at 4:40 pm.

*Minutes prepared by Marcela Fridrich.*

DRAFT



# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Post Reassessment Advisory Committee

**Meeting Date:** January 10, 2014

**Agenda Number:** 11e

**INFORMATION**

### RECOMMENDATION(S):

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

### BACKGROUND/DISCUSSION:

At its March 22, 2013 Fort Ord Reuse Authority (FORA) Board meeting workshop, the Board concurred in the Chair's appointment of the PRAC to identify near-term and short-term (through fiscal year 2013-14) Category IV work plan priority recommendations for full Board review at a subsequent Board meeting. The PRAC's charge is included in **Attachment A**.

At its July meeting, the FORA Board provided direction to proceed with a four-topic Colloquium hosted by/at CSUMB. Since that action, the PRAC met twice in August, twice in September, three times in October, and three times in November to coordinate event program planning with CSUMB. Staff provided brief comments at the December 13, 2013 FORA Board meeting regarding the two-day colloquium. Staff anticipate providing a Board report on Post Reassessment-related items at the February Board meeting.

To summarize work on the various categories identified in the December 2012 Base Reuse Plan Reassessment Report, Category 1 and 2 items are referenced in Special Counsel Alan Waltner's July 3, 2013 and September 3, 2013 memos as prior actions that may be deemed complete provided appropriate California Environmental Quality Act (CEQA) actions are processed through the FORA Board. Category 3 items have been referred by the Board to the Administrative Committee for proposed recommendation back to the FORA Board. Category 4 items would be referred by FORA Board to the PRAC for discussion and recommendations during calendar year 2014.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff and consultant time to initiate this item is included in the approved FORA budget.

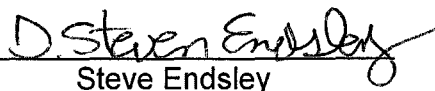
### COORDINATION:

PRAC, CSUMB, Administrative Committee, and Executive Committee.

Prepared by

  
Josh Metz

Reviewed by

  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.

# **Base Reuse Plan Post-Reassessment Advisory Committee**

## **Committee Charge**

The Post-Reassessment Advisory Committee (“PRAC”) is charged with advising the FORA Board regarding action items to be prioritized in the near term (approximately through the end of fiscal year 2013-2014), as a follow-up to the Base Reuse Plan reassessment effort completed in 2012. The primary issues that are to be reviewed are the topics and options identified in Categories I and IV of the final Reassessment Report, with additional consideration of the Reassessment Report’s other subject areas as the FORA Board may deem necessary. FORA staff will provide technical and administrative support to the PRAC, with meeting facilitation services provided by CONCUR, Inc. The PRAC effort is anticipated to have a limited duration, with a goal of forwarding priority recommendations to the Board in May or June 2013.

**FORT ORD REUSE AUTHORITY BOARD REPORT**

**EXECUTIVE OFFICER'S REPORT**

<b>Subject:</b>	Veterans Issues Advisory Committee	
<b>Meeting Date:</b>	January 10, 2014	<b>INFORMATION</b>
<b>Agenda Number:</b>	11f	

**RECOMMENDATION:**

Receive a status report on Veterans Issues Advisory Committee (VIAC) activities.

**BACKGROUND/DISCUSSION:**

At their meeting held January 11, 2013, the Fort Ord Reuse Authority (FORA) Board of Directors authorized the VIAC on an ad-hoc basis to advise the Board on former Fort Ord redevelopment issues that directly impact local area veterans (VIAC Charge is included as **Attachment A**). The VIAC met six times over the course of the year, discussing items related to the Veterans Affairs (VA)/Department of Defense (DoD) medical facility, former Fort Ord initiatives, California Central Coast Veterans Cemetery (CCCVC) fundraising, property transfer, planning/construction contract, burial claim reimbursements, phasing and legislation. They advised the Board to promote emphasis on the three E's and strengthen economic recovery and jobs generation language when planning the colloquium.

The VIAC was authorized for one calendar year and expires this month. Outstanding issues under VIAC purview could benefit from extending the Committee's term, including VA/DoD clinic and CCCVC water needs, Phase II CCCVC fundraising, and a possible veteran's drop-in center. In February, the FORA Board Chair will announce 2014 Committee appointments. The Board may consider extending the VIAC at that time.

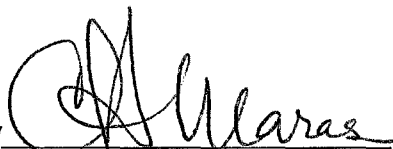
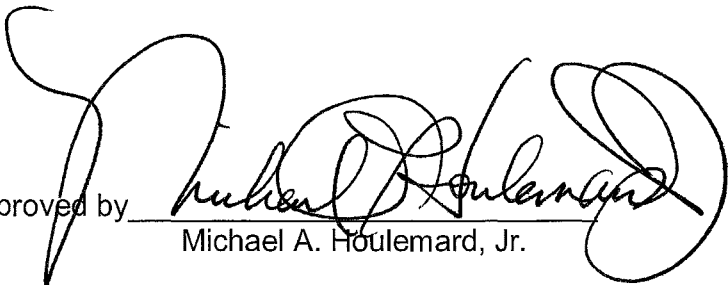
**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**COORDINATION:**

VIAC

Prepared by  Approved by 

Crissy Maras Michael A. Houlemard, Jr.

# **Veterans Issues Advisory Committee**

## **Committee Charge**

The Veterans Issues Advisory Committee (VIAC) will identify, discuss, evaluate, and advise regarding the development of former Fort Ord issues that directly impact Monterey Bay Area veterans. The primary issues that are to be monitored are the creation of the California Central Coast Veterans Cemetery and the Veterans Administration/ Department of Defense Clinic – both to be located on the former Fort Ord.

The VIAC is charged with reviewing resources necessary for the successful implementation of both of these projects and will review data or recommendations that may come from the Fort Ord Reuse Authority Administrative Committee, Executive Committee, and Board of Directors as well as other Monterey County jurisdictions, and provide input regarding organizational, policy, financial, and technical elements in processing these projects and others related to veterans or military issues as may be assigned by the FORA Chair (on behalf of the Board of Directors).

FORA staff will provide technical and administrative support to the VIAC.

**FORT ORD REUSE AUTHORITY BOARD REPORT**

**EXECUTIVE OFFICER'S REPORT**

**Subject:** Water/Wastewater Oversight Committee

**Meeting Date:** January 10, 2014  
**Agenda Number:** 11g

**INFORMATION**

**RECOMMENDATION:**

Receive a status report on Water/Wastewater Oversight Committee (WWOC) and Marina Coast Water District (MCWD) FY 2013/14 Ord Community budgets and rates progress.

**BACKGROUND:**

The Fort Ord Reuse Authority (FORA) and MCWD entered into a Water and Wastewater Facilities Agreement in March 1998 (online at [www.fora.org](http://www.fora.org)). That agreement outlines FORA and MCWD responsibilities regarding MCWD ownership and operation of the former Fort Ord water and wastewater collection systems, generally including the design/construction of new/additional facilities, conservation, management and protection of groundwater resources, and Ord Community operating and capital improvement budgets.

During FORA Board Ord Community budget review over the last several years, Board Members have expressed four main concerns: 1) Ord Community service area annexation and MCWD Board representation, 2) contractual obligation to provide a water augmentation program, 3) rate payer financed infrastructure required for full reuse of the system, and 4) low income customer rate program.

MCWD staff has initiated the annexation process with LAFCO and LAFCO is completing a municipal services review. Additionally, MCWD staff is researching augmented water needs to determine which project should move forward to design and environmental review. FORA staff has requested a chronology and a path forward on all of these concerns for an informational presentation at a future FORA Board meeting.

**DISCUSSION:**

Beginning May 2013, MCWD staff has worked with FORA staff, WWOC, Administrative Committee and others reviewing the FY 2013/14 Ord Community budget and MCWD 5-year rate study. In October, MCWD staff and consultants presented the rate study to the FORA Board, anticipating rate increase and budget approval consideration at a later date. The Board had several questions/concerns and directed FORA staff to work with the WWOC and Administrative Committee to address those issues. The WWOC and Administrative Committee continued to meet jointly for further rate study review through December 2013.

At their December 18, 2013 meeting, the joint WWOC and Administrative Committee agreed that the outstanding issues would not likely be resolved in time to get FORA Board approval of the FY 2013/14 budget. Per the facilities agreement section 7.1.3.4, the currently approved budget shall remain in place until a new budget is adopted. Therefore, the FY 2012/13 Ord Community budget currently in place (approved by the FORA Board September 2012) remains in place. There is no need for a formal action by the FORA Board to continue the current Ord Community rates, fees and charges. This results in the effect of a "continuing resolution" for the current budget year while work on next year's budget commences. MCWD staff has begun preparing the subsequent FY 2014/15 budget for presentation to the WWOC by March 30 (facilities agreement section 7.1.3.1). All FORA Board stipulations in the FY 2012/13 budget approval would also remain in effect until a new Ord Community budget is approved by the

FORA Board - specifically that all references to the Regional Water Project would be removed, 2% allocation toward potential wage increases are eliminated and the 5% proposed rate increase would be avoided by implementing other cost saving measures. This would not hinder MCWD from furthering a future mutually acceptable water augmentation project as long as it remains within the parameters of the FY 2012/13 FORA Board action.

To resolve the outstanding issues concerning the 5-year rate study and its effect on the budget, rates, surcharges and capacity charges, the joint committees and FORA staff will continue to meet with MCWD staff over the next several months prior to recommending any rate increase or Ord Community budget to the FORA Board. A series of question and answer meetings are being scheduled so interested parties (rate payers, development community and their consultants, WWOC members, California State University Monterey Bay, etc.) can have their questions answered. A synopsis of frequently asked questions is being prepared and will be shared with the public and FORA Board.

**FISCAL IMPACT:**

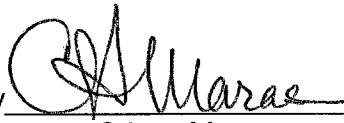
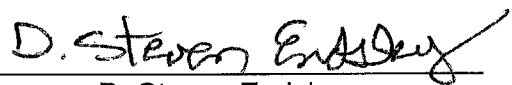
Reviewed by FORA Controller 

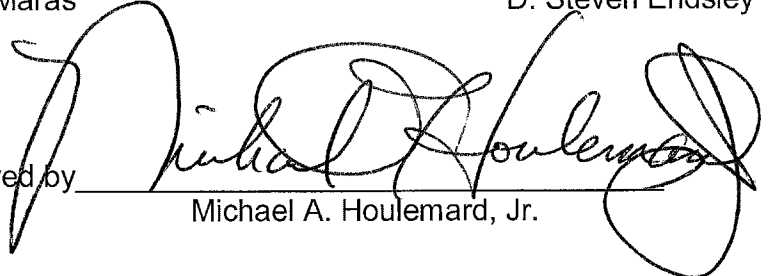
Staff time for this item is included in the approved FORA budget.

**COORDINATION:**

MCWD, WWOC, Administrative Committee

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Prepared by  Crissy Maras      Reviewed by  D. Steven Endsley  
D. Steven Endsley

Approved by  Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Travel Report	
<b>Meeting Date:</b> January 10, 2013	<b>INFORMATION</b>
<b>Agenda Number:</b> 11h	

### RECOMMENDATION(S):

Receive an informational travel report from the Executive Officer.

### BACKGROUND/DISCUSSION:

The Executive Officer regularly submits reports to the Executive Committee providing details of his travel requests, including those by the Fort Ord Reuse Authority ("FORA") staff and Board members. Travel expenses may be paid or reimbursed by FORA, outside agencies/ jurisdictions/ organizations, or a combination of these sources. The Executive Committee reviews and approves these requests, and the travel information is reported to the Board as an informational item.

### UPCOMING TRAVEL:

#### **Association of Defense Communities (ADC) Installation Innovation Forum**

**Destination:** San Antonio, Texas

**Date:** February 9-12, 2014

**Traveler/s:** Michael Houlemard

**Purpose:** Executive Officer Michael Houlemard has been asked to speak about military community partnerships at the ADC Installation Innovation forum in San Antonio, Texas. Mr. Houlemard will arrive the night of Sunday, February 9<sup>th</sup> in order to participate in the first two days of the Forum and will return on February 12<sup>th</sup>.

#### **Habitat Conservation Plan (HCP) Coordination Meeting**

**Destination:** Sacramento, CA

**Date:** January 2014 (Date TBD)

**Traveler/s:** Michael Houlemard (likely also one staff and Leg. Cmte. member)

**Purpose:** The 2013 federal government shut-down delayed review of the draft HCP by the wildlife agencies and negatively impacted the document's progress. In order to keep the momentum, staff has participated in numerous conference calls with the various agencies to resolve outstanding issues. This coordination effort could require a trip to Sacramento sometime in January to meet with the CA Department of Fish and Wildlife on policy-level issues. While in Sacramento, travelers may also use the opportunity to meet with the CA Department of Veterans Affairs.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item was included in the approved annual budget. Travel expenses are reimbursed according to the FORA Travel Policy.

### COORDINATION:

Executive Committee

Prepared by

  
Lena Spilman

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b>	Public Correspondence to the Board	
<b>Meeting Date:</b>	January 10, 2014	<b>INFORMATION</b>
<b>Agenda Number:</b>	11i	

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

Correspondence may be submitted to the Board via email to [board@fora.org](mailto:board@fora.org) or mailed to the address below:

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