FORT ORD REUSE AUTHORITY

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

SPECIAL MEETING
FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Thursday, February 13, 2014 at 2:00 p.m.
910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

1. **CALL TO ORDER**

   Participating via Teleconference:
   Councilmember Morton - Hyatt Regency Hotel, 650 15th Street, Denver, Colorado

2. **PLEDGE OF ALLEGIANCE**

3. **CLOSED SESSION**
   a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – **2 Cases**
      i. Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961
      ii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856

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

5. **ROLL CALL**

6. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

7. **CONSENT AGENDA**
   a. Approve January 10, 2014 Board Meeting Minutes (pg. 1-4) ACTION
   b. Approve Executive Officer Contract Extension (pg. 5-10) ACTION
   c. Approve Veterans Issues Advisory Committee Extension and Revised Committee Charge (pg. 11-12) ACTION
   d. Confirm Chair's Legislative Advisory Committee and Finance Advisory Committee Appointments (pg. 13) ACTION

8. **OLD BUSINESS**
   a. Consistency Determination: Consider Certification, in Whole or in Part, of 2010 Monterey County General Plan as Consistent with the 1997 Fort Ord Reuse Plan (pg. 14-119) ACTION
      i. Noticed Public Hearing
      ii. Board Determination of Consistency
   b. Post Reassessment Items (pg. 120-130) INFORMATION/ACTION
      i. Approve Amended Post Reassessment Work-Plan
      ii. Approve Post Reassessment Advisory Committee Extension and Revised Committee Charge
      iii. Receive a Budget Report for the Fort Ord Reuse Authority/ California State University, Monterey Bay Colloquium Event

9. **NEW BUSINESS**
   a. FORA Master Resolution Amendments (pg. 131-133) 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. 134) INFORMATION
b. Habitat Conservation Plan Update (pg. 135-136) INFORMATION
c. Administrative Committee (pg. 137-140) INFORMATION
d. Travel Report (pg. 141-142) INFORMATION
e. Public Correspondence to the Board (pg. 143) INFORMATION

12. ITEMS FROM MEMBERS

13. ADJOURNMENT

NEXT REGULAR BOARD MEETING: MARCH 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.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY

BOARD OF DIRECTORS REGULAR MEETING MINUTES

2:00 p.m. - Friday, January 10, 2010
Carpenters Union Hall - 910 2nd Avenue, Suite A, Marina, CA 93933

1. **CALL TO ORDER**
Chair Edelen called the meeting to order at 2:03 p.m.

3. **PLEDGE OF ALLEGIANCE**
Mayor Pendergrass led the Pledge of Allegiance.

4. **CLOSED SESSION** - The Board adjourned into closed session at 2:05 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

5. **ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION**
The Board reconvened into open session at 2:33 p.m. Authority Counsel Jon Giffen announced no reportable action was taken on items ai-aiii. He noted that item aii would come off of the agenda and item b would be agendized for open session consideration at the next Board meeting.

6. **ROLL CALL**

Voting Members Present: *(*alternates)*

Chair/Mayor Edelen (City of Del Rey Oaks)	Mayor Pendergrass (City of Sand City)
Supervisor Calcagno (County of Monterey)	Supervisor Potter (County of Monterey)
Councilmember Beach (City of Carmel-by-the-Sea)	Mayor Pro-Tem Oglesby (City of Seaside)
Mayor Kampe (City of Pacific Grove)	Mayor Rubio (City of Seaside)
Councilmember Morton (City of Marina)	Councilmember Selfridge (City of Monterey)
Supervisor Parker (County of Monterey)	

Absent: Mayor Gunter (City of Salinas), Mayor ProTem O'Connell (City of Marina)

Ex-officio (Non-Voting) Board Members Present: Nicole Charles* (17th State Senate District), Erica Parker* (29th State Assembly District), Graham Bice* (University of California, Santa Cruz), Eduardo Ochoa (California State University, Monterey Bay), Walter Tribley (Monterey Peninsula College), Dan Albert, Jr. (Monterey Peninsula Unified School District), Debbie Hale (Transportation Agency for Monterey County), Pamela Von Ness (US Army), Bill Collins (Fort Ord BRAC Office), and Director Moore (Marina Coast Water District).

7. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
Executive Officer Michael Houlemard stated that representatives from the US Department of Veterans Affairs and the California Department of Veterans Affairs had been in town that week to conduct a site visit and discuss the schedule for the California Central Coast Veterans Cemetery. All indications were that construction would begin in fall.

8. CONSENT AGENDA

a. Approve December 13, 2013 Board Meeting Minutes

MOTION: Supervisor Potter moved, seconded by Mayor Pro-Tem Oglesby, to approve the December 13, 2013 Board meeting minutes with the following amendments: 1) add additional language to identify motions requiring a second vote for passage, and 2) amend the minutes to reflect that Mayor Pendergrass was not present.

MOTION PASSED: unanimous

9. OLD BUSINESS

a. 2nd Vote: Preston Park Management Agreement Extension with Alliance Communities, Inc.

ORIGINAL MOTION (from 12/13/13 1st Vote:): Mayor Rubio moved, seconded by Supervisor Parker, to authorize the Executive Officer to extend the Alliance/FORA Preston Park Management Agreement for one year.

2nd VOTE PASSED: *Ayes*: Beach, Calcagno, Edelen, Kampe, Oglesby, Parker, Pendergrass, Potter, Rubio, Selfridge. *Noes*: Morton.

b. Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination

Chair Edelen recommended the item be postponed due to outstanding questions regarding noticing procedures.

MOTION: Supervisor Calcagno moved, seconded by Mayor Rubio, to continue the item to the February 14, 2014 Board meeting.

MOTION PASSED: unanimous

c. Pollution Legal Liability (PLL) Insurance Policy

i. Presentation - Barry Steinberg (Kutak Rock LLP)/Kathy Gettys (Marsh)

ii. Consider Insurance Coverage Options

Mr. Houlemard provided a brief summary of the item and introduced Barry Steinberg and Kathy Gettys. Mr. Steinberg provided an overview of the existing PLL Insurance Policy and the need for jurisdiction/stakeholder input in selecting a new policy. Ms. Gettys discussed current market conditions and answered questions regarding different policy alternatives. Several Board members noted the quality of the presentation by Mr. Steinberg and Ms. Gettys.

MOTION: Mayor Rubio moved, seconded by Supervisor Parker, to authorize Insurance Broker Kathy Gettys, Marsh, to distribute a Request for Proposals for a new PLL Insurance Policy.

MOTION PASSED: unanimous

d. Environmental Services Cooperative Agreement (ESCA) Update

ESCA Program Manager Stan Cook provided a quarterly update on ESCA activities.

e. Multi-modal Transit Corridor - Presentation by Transportation Agency for Monterey County

Debbie Hale, Transportation Agency for Monterey County (TAMC), introduced the item. Ariana Green, TAMC, provided a history of the project and discussed current transit needs, the opportunities and constraints of the potentials routes, and the proposed project schedule. The Board heard from members of the public and provided input to TAMC. Chair Edelen deemed report received.

10. NEW BUSINESS

a. Accept Fiscal Year 12-13 FORA Annual Financial Report (Audit Report)

Mr. Houlemard stated that Moss, Levy & Hartzheim issued an unmodified opinion, finding that FORA staff had implemented all of the previous year's recommendations. There were no findings/questionable costs in the FY 12-13 financial audit concerning FORA internal control structure. Finance Committee Chair Mayor Kampe noted the Auditor's recommendation to change how FORA accounts for the Preston Park asset.

MOTION: Mayor Kampe Rubio moved, seconded by Mayor Rubio, to receive the Moss, Levy & Hartzheim Certified Public Accountants Fort Ord Reuse Authority Fiscal Year 12-13 Annual financial Report.

MOTION PASSED: unanimous

b. Elect 2014 FORA Board Officers

i. Receive Nominating Committee Report

Mayor Edelen stated that the FORA Nominating Committee, which had consisted of himself, Mayor Pendergrass, Mayor Rubio, Mayor Pro-Tem O'Connell, and Supervisor Parke, met on January 2, 2014. The Committee recommended, by a 4-1 vote (Parker dissenting), that the Board reelect the current Board Officers and Executive Committee members to one additional one year term, expiring in February 2015.

ii. Conduct Election

MOTION: Mayor Rubio moved, seconded by Mayor Pendergrass, to elect the following slate to serve until February 2015:

Chair:	Del Rey Oaks Mayor Jerry Edelen
1st Vice Chair:	Marina Mayor Pro-Tem Frank O'Connell
2nd 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

MOTION PASSED: *Ayes:* Calcagno, Rubio, Edelen, Pendergrass, Potter, Oglesby. *Noes:* Kampe, Selfridge, Beach, Morton, Parker.

Several members of the Board expressed a desire to reevaluate FORA election protocol and Executive Committee organization. Chair Edelen indicated that the Executive Committee would discuss the item at their next meeting and report back to the full Board in February.

11. PUBLIC COMMENT PERIOD

Members of the public addressed the Board.

12. EXECUTIVE OFFICER'S REPORT

a. Outstanding Receivables

b. Habitat Conservation Plan (HCP) Update

Mr. Houlemard stated that FORA was on schedule for public document review in 2014 and that jurisdiction staff had until January 24, 2014 to submit their comments. He noted that discussions will also begin in 2014 regarding the creation a Joint Powers Authority to oversee the implementation of the HCP.

c. Administrative Committee

d. Finance Committee

e. Post Reassessment Advisory Committee (PRAC)

f. Veterans Issues Advisory Committee (VIAC)
Mr. Houlemard stated that both the PRAC and VIAC are scheduled to expire in January 2014, but that Chair Edelen and Staff felt that outstanding issues under Committee purview warranted an extension. Mr. Houlemard indicated that Chair Edelen intended to submit a request to the Board at the next meeting to extend both the PRAC and the VIAC for an additional year.

g. Water/Wastewater Oversight Committee

h. Travel Report

i. Public Correspondence to the Board

The Board deemed the Executive Officer's report accepted.

8. ITEMS FROM MEMBERS
Councilmember Beach stated that she would like the PRAC to convene prior to the next Board meeting to discuss post-Colloquia items.

9. ADJOURNMENT
Chair Edelen adjourned the meeting at 4:32 p.m.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Approve Executive Officer Contract Extension	
Meeting Date:	February 13, 2014	**ACTION**
Agenda Number:	7b	

RECOMMENDATION(S):

Approve extension of existing Executive Officer Employment Agreement until June 30, 2020.

BACKGROUND/DISCUSSION:

Executive Officer Michael Houlemard's existing employment contract is comprised of a September 21, 2000 agreement, with numerous extensions and supplements. In order to provide ease of review by the Board, the Executive Committee directed Authority Counsel to prepare an employment agreement that incorporated into one document all of the existing agreement terms, as extended and supplemented. The attached agreement (**Attachment A**) has been prepared by Authority Counsel to mirror the existing agreement terms, except that it commences July 1, 2014 and ends on June 30, 2020. Executive Officer Houlemard's current employment agreement terminates June 30, 2014.

The FORA Board received and reviewed the proposed agreement, and provided direction to Authority Counsel to set this item for February 13, 2014 Board meeting action.

FISCAL IMPACT:

Reviewed by FORA Controller M.F. for 1/13.

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

COORDINATION:

FORA Board, FORA Executive Committee, Authority Counsel

Prepared by Lena Spilsen for Jon Giffen

Approved by D. Steven Endsley
Steve Endsley

EXECUTIVE OFFICER EMPLOYMENT AGREEMENT

This Executive Officer Employment Agreement (this "Agreement") is made and entered into effective July 1, 2014 (the "Commencement Date") by and between the Fort Ord Reuse Authority, a public corporation formed under the Fort Ord Reuse Authority Act, California Government Code sections 67650 *et seq.* (hereinafter "FORA") and Michael A. Houlemard, Jr., an individual (hereinafter "Houlemard").

1. RECITALS. This Agreement is made and entered into with respect to the following circumstances:

(a) Houlemard has served as the Executive Officer of FORA since March 1997. On or about September 21, 2000 FORA and Houlemard (each a "Party" and collectively, the "Parties") entered into an Executive Officer Employment Agreement for a term ending June 30, 2003 (the "Employment Agreement"). On or about July 11, 2003 the Parties entered into Extension #1 to the Employment Agreement by which the term of Houlemard's employment was extended through June 30, 2008. On or about June 13, 2008 the Parties entered into Extension #2 to the Employment Agreement by which the term of Houlemard's employment was extended through the then anticipated end of FORA's statutory authority (June 30, 2014). Subsequent amendment to the Fort Ord Reuse Authority Act has extended the term of FORA's statutory authority through June 30, 2020, but the term of the Employment Agreement as extended will expire on June 30, 2014.

(b) Houlemard has performed his duties as the Executive Officer of FORA to the satisfaction of FORA's governing Board of Directors (the "Board").

(c) The Parties desire that the term of Houlemard's employment as Executive Officer of FORA should be further extended on the terms and conditions set forth in this Agreement.

2. TERM. The term of this Agreement shall commence on the Commencement Date and shall end, unless sooner terminated or otherwise extended, no later June 30, 2020.

3. COMPENSATION.

(a) Salary, COLAs and Longevity Pay. During the term of this Agreement, as compensation for his services as FORA's Executive Officer, Houlemard shall be paid an annual salary of Two Hundred Seven Thousand Three Hundred Seventy-Four Dollars ($207,374.00) in installments in accordance with the FORA's general compensation program, prorated for any partial payroll period. If and when a Cost of Living Adjustment ("COLA") is awarded to FORA's other employees, Houlemard's salary shall be adjusted in like proportion. Houlemard has been receiving and during the term of this Agreement Houlemard shall continue to receive

longevity pay on the same basis and subject to the same terms and conditions as apply to FORA's other employees. Except as a consequence of a COLA or longevity pay, Houlemard's salary shall not be adjusted during the term of this Agreement, but an incentive bonus may be awarded to Houlemard from time to time as provided in Section 3(b) below.

(b) Incentive Bonus. The Board may award a bonus to Houlemard in recognition of exemplary performance beyond that required under this Agreement as an incentive to continue such performance. The bonus shall not be considered to be salary to which Houlemard is entitled or as any form of compensation for past performance. Rather, any bonus shall be an inducement for future performance. As such, in order to be eligible to receive any bonus Houlemard must be employed by FORA at the time any bonus is awarded. The Board has the sole and unbounded discretion to award or withhold a bonus, and to establish the amount of any such bonus. The Board may award any bonus in a lump sum or in installments. The award of a bonus should not be expected.

(c) Employee Taxes. Houlemard is subject to all applicable Federal and State income tax withholdings from his income.

(d) Retirement Contribution. Houlemard shall be entitled to participate in the retirement program made available by FORA through the Public Employees' Retirement System to FORA's other employees (currently 2% at 55), as the retirement program may from time to time be amended, and in the same manner, to the same extent, and subject to the same terms and conditions, including but not limited to contribution rates, as apply to FORA's other employees.

(e) Paid Leave. During the term of this Agreement, Houlemard shall be entitled to forty-nine (49) days per year as paid leave, which shall be allocated as follows:

Vacation	26 days
Sick Leave	18 days
Management Leave	5 days

Vacation, Sick Leave, and Management Leave may be collectively referred to as "Annual Leave." Annual Leave shall accrue, be subject to accrual limits, be converted to service credit on retirement, be cashed out, or may be used, each only in conformity with those policies regarding Annual Leave established by FORA as they may be amended from time to time. Houlemard shall not be required to keep time sheets, but shall inform FORA's Executive Committee in advance of his vacation plans and shall report to the Executive Committee his use of all categories of Annual Leave contemporaneously with taking leave.

(f) Car Allowance. During the term of this Agreement, FORA shall pay Houlemard Two Hundred Fifty Dollars ($250.00) per month as an allowance for use of his personal vehicle. Houlemard shall at all times during the term of this Agreement maintain liability insurance covering the business use of his personal vehicle meeting the reasonable satisfaction of FORA.

(g) Deferred Compensation. During the term of this Agreement, FORA shall contribute Eight Hundred Thirty-Three Dollars ($833.00) per month into a deferred compensation plan mutually selected by the Parties.

(h) Insurance. Houlemard and his dependents shall be entitled to participate in any life or health insurance programs made available by FORA to FORA's other employees and their dependents, as such program(s) may from time to time be amended, and in the same manner, to the same extent, and subject to the same terms and conditions, including but not limited to contribution rates, as apply to FORA's other employees and their dependents.

(i) Professional Dues/Conferences. Houlemard shall be entitled to attend the conferences for which FORA budgets. If such conferences are budgeted, FORA shall also pay for Houlemard's reasonable expenses incurred in attending such conferences in conformity with those policies regarding reimbursements established by FORA as they may be amended from time to time.

(j) Holidays. Houlemard shall be entitled to the same paid holidays as are provided to FORA's other employees.

(k) Reimbursable Expenses. Houlemard shall be reimbursed for out-of-pocket expenses according to those policies regarding reimbursements established by FORA as they may be amended from time to time. In acknowledgment of the monthly car allowance described in Section 3(f), Houlemard shall not be reimbursed for mileage associated with the performance of his duties as Executive Officer.

4. EVALUATION. The Board intends to conduct a performance evaluation on or before June 1 of each year, at which time the Board may, but shall not be obligated to, consider awarding an incentive bonus as set forth in Section 3(b) above. Houlemard shall provide a timely reminder to FORA's Executive Committee to schedule the annual performance review. The Parties agree that any failure to conduct any performance review shall not be deemed a breach of this Agreement.

5. EXCLUSIVE EMPLOYMENT AND OUTSIDE WORK. Houlemard agrees to work exclusively for FORA as Executive Officer, with such duties and responsibilities as shall be set forth by the Board, and shall so serve faithfully and to the best of his ability under the direction and supervision of the Board. Houlemard may, without violating the exclusive services term in this Agreement, teach or write for publication without FORA's prior approval. With the prior written approval of the Board, Houlemard may also enter into consulting arrangements with public or private entities if such activities do not interfere with his duties as Executive Officer.

6. TERMINATION. Houlemard is an at-will employee and serves at the pleasure of the Board. Houlemard may be dismissed, and this Agreement terminated, at the discretion of the Board for any reason or for no reason at all, except that in the event of termination pursuant to Sections 6(c) or (d) below, FORA shall provide the notice and/or compensation as provided therein. This Agreement may be terminated prior to its scheduled expiration date as follows:

(a) By mutual agreement;

(b) By Houlemard providing FORA ninety (90) days advance written notice;

(c) By FORA through written notice to Houlemard of intent to terminate his employment for "Cause." For purposes of this Agreement, with respect to Houlemard the term "Cause" shall mean (i) breach of this Agreement; (ii) commission of an act of dishonesty, fraud, embezzlement or theft in connection with his duties or in the course of his employment; (iii) commission of damage to property or reputation of FORA; (iv) failure to perform satisfactorily the material duties of his position after receipt of a written or verbal warning from the Board; (v) conviction of a felony or a crime of moral turpitude; (vi) failure to adhere to or execute FORA's policies; or (vii) such other behavior detrimental to the interests of FORA as the Board determines. Cause shall be determined in the sole discretion of the Board. If the Board believes that FORA has Cause to terminate Houlemard's employment, FORA shall give appropriate written notice to Houlemard as provided in Government Code section 54957 of his right to have the complaints or charges heard in an open session rather than a closed session of a meeting of the Board. After written notice to Houlemard, if he does not request to have the complaints or charges heard in open session, he shall be provided the opportunity to meet with the Board in closed session regarding the specific complaints or charges stated in writing. Should the Board decide after meeting to terminate Houlemard, his employment shall be terminated immediately without rights to any appeal, severance pay or benefits other than compensation earned (including all benefits and reimbursements accrued and then due) up to the effective date of termination.

(d) By FORA through written notice to Houlemard of termination without Cause. In that event, the termination shall be effective upon delivery of the notice unless the notice provides otherwise. If terminated without Cause, Houlemard shall be entitled to severance pay equal to six (6) months salary, exclusive of benefits. At the election of the Board, severance pay may be paid in substantially equal installments over any period up to six (6) months.

7. NOTICES. Notices under this Agreement shall be by United States mail, postage prepaid, addressed as follows, or such other address as the Parties may establish and provide written notice thereof:

Chair of the Board of Directors
Fort Ord Reuse Authority
100 12th Street
Marina, CA 93933

Michael A. Houlemard, Jr.
2223 Albert Lane
Capitola, CA 95010

8. TERMINATION OF FORMER EMPLOYMENT AGREEMENT. Effective upon the Commencement Date, the Employment Agreement shall automatically, and without any need for further action by the Parties, be terminated and of no further force and effect. During the term of this Agreement, the employment relationship between the Parties shall be controlled by the terms and conditions of this Agreement and not by any terms or conditions of the former Employment Agreement. The foregoing provisions notwithstanding, any Annual Leave which Houlemard has accrued but which remains unused and has not been cashed out as of the day before the Commencement Date shall be carried over and added to the Annual Leave which accrues pursuant to this Agreement, subject to any applicable accrual limits as may be specified in those policies regarding Annual Leave established by FORA as they may be amended from time to time.

9. COMPLETE AGREEMENT. This Agreement is a full and complete statement of the Parties' understanding with respect to the matters set forth in this Agreement. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations, or understandings between the Parties relating to the subject matter of this Agreement, whether oral or written.

10. INTERPRETATION. This Agreement shall be construed as a whole and in accordance with its fair meaning. It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the Parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, in the event of any dispute regarding its interpretation, this Agreement shall not be construed against any Party as the drafter, and the Parties expressly waive any right to assert such a rule of interpretation.

11. PARTIAL INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties agree that the remaining provisions shall nonetheless continue in full force and effect.

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

_____

Michael A. Houlemard, Jr.

_____

Chair
Fort Ord Reuse Authority

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Approve Veterans Issues Advisory Committee Extension and Revised Committee Charge	
Meeting Date:	February 13, 2014	**ACTION**
Agenda Number:	7c	

RECOMMENDATION:

i. Approve extension of Veterans Issues Advisory Committee (VIAC) for a term of one year, expiring January 31, 2015.
ii. Approve revised committee charge.

BACKGROUND/DISCUSSION:

On January 11, 2013, the Fort Ord Reuse Authority (FORA) Board of Directors authorized the creation of the VIAC to advise the Board on former Fort Ord reuse issues that directly impact local area veterans. The VIAC met six times in 2013, discussing items related to the General William H. Gourley Federal Outpatient Clinic: A Joint DoD-VA Health Care Facility, former Fort Ord initiatives, and 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 to strengthen economic recovery and jobs generation language in planning the Fort Ord Base Reuse Implementation Colloquium.

The VIAC was originally authorized for one calendar year, expiring in January 2014. 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. Staff recommends extending the VIAC for the term of one year, expiring January 31, 2015. Attached is an updated/amended Committee charge, which outlines the Committee's objectives for 2014 (**Attachment A**).

The VIAC will continue to remain subject to Brown Act provisions.

FISCAL IMPACT:

Reviewed by FORA Controller M.F. for L.B.

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

COORDINATION:

VIAC

Prepared by C. Maras
Crissy Maras

Approved by Michael A. Houlemard
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~~ initial construction of the California Central Coast Veterans Cemetery and the Veterans Administration/ Department of Defense Clinic – both to be located on the former Fort Ord, and the establishment of a Veterans Drop-in Counseling Center. 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.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT

Subject:	Confirm Chair's Legislative Advisory Committee and Finance Advisory Committee Appointments	
Meeting Date:	February 13, 2014	**ACTION**
Agenda Number:	7d	

RECOMMENDATION:

Confirm Fort Ord Reuse Authority ("FORA") Board of Directors Chair Jerry Edelen's 2014 appointments to the Finance Advisory Committee (aka Finance Committee) and the Legislative Advisory Committee (aka Legislative Committee).

BACKGROUND/DISCUSSION:

Each year at the February Board meeting, the FORA Chair recommends appointees to FORA's Finance and Legislative Committees for Board confirmation. Appointees serve for a term of one year and must be chosen from among the ex-officio, voting, or alternate Board members.

Chair Edelen recommends the following to serve through February 2015:

Finance Committee:
Councilmember Ian Oglesby, City of Seaside (Committee Chair)
Nick Chiulos, County of Monterey
Graham Bice, UC MBEST
Gail Morton, City of Marina
Casey Lucius, City of Pacific Grove

Legislative Committee:
Supervisor Dave Potter, Monterey County (Committee Chair)
Councilmember Frank O'Connell, City of Marina (1st Vice-Chair)
Mayor Ralph Rubio, City of Seaside (2nd Vice-Chair)
Mayor Edelen, City of Sand City (Board Chair)
Mayor David Pendergrass, City of Sand City (Member-at-Large)

FISCAL IMPACT:
Reviewed by FORA Controller M.F. for 1/13.

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

COORDINATION:
FORA Chair, FORA Executive Committee

Prepared by _____
Lena Spilman

Approved by _____
Michael A. Houlemard, Jr.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Consistency Determination: Consider Certification, in Whole or in Part, of 2010 Monterey County General Plan as Consistent with the 1997 Fort Ord Reuse Plan	
Meeting Date:	February 13, 2014	**ACTION**
Agenda Number:	8a	

RECOMMENDATION(S):

Approve Resolution 14-XX (**Attachment A**), certifying that the 2010 Monterey County General Plan (General Plan) is consistent with the Fort Ord Base Reuse Plan (BRP).

BACKGROUND:

The County submitted the General Plan for consistency determination on September 24, 2013 (**Attachment B**). **Attachment B** 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. 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, 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 certification under strict timeframes. This item is included on the Board agenda because the General Plan is a legislative land use decision, requiring Board certification.

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 reviewed their own response letter 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 raised in the late arriving correspondence. The Administrative Committee asked that the issues be addressed by counsel and outlined for the FORA Board at its November 8th meeting.

FORA Special Counsel Alan Waltner's response memorandum is included in **Attachment C** 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 certify 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 February 13, 2014. In all consistency determinations, the following additional considerations are made, and summarized in table form (**Attachment D**).

Rationale for consistency determinations FORA staff finds that there are several defensible rationales for making an affirmative consistency determination and recognizes that the Board may wish to consider alternatives to the staff recommendation. Two such alternatives are outlined in this staff report and **Attachment E**. Sections 8.01.020(d) and 8.01.020(e) of the FORA Master Resolution describe procedures for the FORA Board to certify or refuse to certify a Legislative Land Use Decision as consistent with the BRP. **Attachment E** is a draft resolution that meets the provisions for refusing to certify the General Plan. This resolution provides suggested modifications to the 2010 Monterey County General Plan that, if implemented and confirmed by the Executive Officer, would result in the General Plan being certified as consistent with the BRP. The FORA Board can also refuse certification without prejudice, meaning they can resubmit at some future date.

The draft resolution under **Attachment E** includes an additional program, Recreation/Open Space Land Use Program B-2.1 within the list of policies and program to be addressed in resolution point #4. Other resolution changes include a complete quotation of Master Resolution section 8.02.010 subparagraphs 1-6 in recital L and clarification of the requested Board action, which is 'certification' that the General Plan is consistent with the BRP in lieu of 'concurrence' with the County's determination of consistency. The language change from 'concurrence' to 'certification' is supported by text found in the Authority Act under Government Code and Chapter 8 of the FORA Master Resolution.

Sometimes additional information is provided to buttress 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 (MOUT) 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. Copies and similar items were received by FORA. In summary, these individual letters requested that the Monterey County Board of Supervisors/FORA Board not adopt the consistency finding, citing instances of incomplete policies and programs and other issues. FORA staff agrees 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 and 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, member of the public Jane Haines, and others 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. Future projects within the County's jurisdiction on former Fort Ord must comply with FORA prevailing wage requirements.

FISCAL IMPACT:
Reviewed by FORA Controller M.F. for I.B.

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
Jonathan Garcia

Reviewed by D. Steven Endsley
Steve Endsley

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

Resolution 14-XX

Certification 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 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 requested that FORA certify that the County General Plan is consistent with the Reuse Plan pursuant to the Reuse Plan, FORA Master Resolution, and Fort Ord Reuse Authority Act.

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 certify 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. The January 10, 2014 hearing was continued to February 13, 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. FORA's review, evaluation, and determination of consistency is based on six criteria identified in section 8.02.010. Evaluation of these six criteria form a basis for the Board's decision to certify or to refuse to certify the legislative land use decision.

K. 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." This includes compliance with required procedures such as section 8.02.010 of the FORA Master Resolution.

L. Master Resolution, Chapter 8, Section 8.02.010(a)(1-6) reads: "(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 for 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."

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 requesting that the FORA Board certify 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 certifies 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 13th day of February, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

_____
Jerry Edelen, Chair

ATTEST:

_____
Michael A. Houlemard, Jr., Secretary

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY

Planning Department
Mike Novo, AICP, Director of Planning

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

September 24, 2013

Jonathan Garcia, Senior Planner
Fort Ord Reuse Authority
920 2nd 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 Garrision, 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

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

Attachments

LAW OFFICES OF ALAN WALTNER

Attachment C to Item 8a
FORA Board Meeting, 02/13/2014

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[1] 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."

[1] 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.[2] 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 surplussage (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.[3] 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.[4] The comment letters reflect several

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[2] 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.

[3] 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.

[4] 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.

---

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.

FORA Master Resolution Section	Finding of Consistency	Justification for finding
(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.

Resolution 14-XX

Refusal to certify 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 requested that FORA certify that the County General Plan is consistent with the Reuse Plan pursuant to the Reuse Plan, FORA Master Resolution, and Fort Ord Reuse Authority Act.

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 certify 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. The January 10, 2014 hearing was continued to February 13, 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. FORA's review, evaluation, and determination of consistency is based on six criteria identified in section 8.02.010. Evaluation of these six criteria form a basis for the Board's decision to certify or to refuse to certify the legislative land use decision.

K. 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." This includes compliance with required procedures such as section 8.02.010 of the FORA Master Resolution.

L. Master Resolution, Chapter 8, Section 8.02.010(a)(1-6) reads: "(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 for 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."

NOW THEREFORE be it resolved:

1. The FORA Board acknowledges the County's actions of August 27, 2013, September 17, 2013 and September 24, 2013, and the County's request that FORA certify that the County General Plan is consistent with the Reuse Plan pursuant to the Reuse Plan, FORA Master Resolution, and Fort Ord Reuse Authority Act.

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 refuses to certify 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 and worded in the Reuse Plan and Reuse Plan EIR: Recreation/Open Space Land Use (ROLU) Policy A-1, ROLU Program A-1.2, ROLU Program B-2.1, Hydrology and Water Quality (HWQ) Policy B-1, HWQ Programs B-1.1 through B-1.3, HWQ Programs B-2.4 through B-2.7, 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 13th day of February, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

_____
Jerry Edelen, Chair

ATTEST:

_____
Michael A. Houlemard, Jr., Secretary

601 OCEAN VIEW BLVD., APT. 1
TEL. 831 375-5913 EMAIL JA

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.

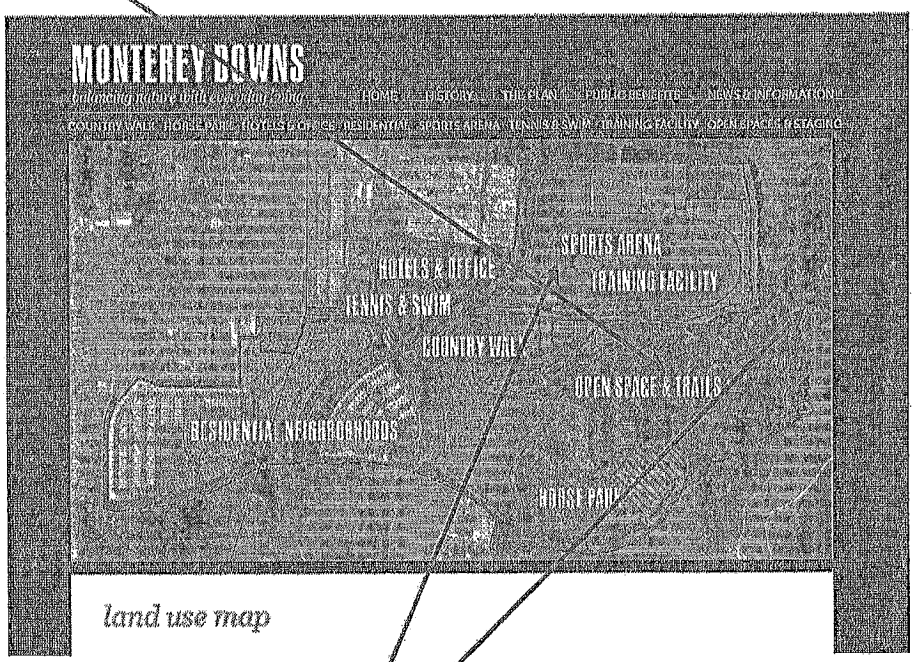
This letter will explain which BRP programs have been omitted from the 2010 General Plan and how omitting those programs will result in potentially significant environmental impacts.

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.[1] 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.

[1] 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.



land use map

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[2] 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*

---

[2] 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

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 bought 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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P.O. BOX 5667, CARMEL, CALIFORNIA 93921

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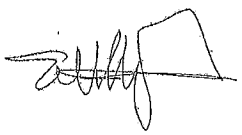
The points above are illustrations of apparent errors in the current version of the FOMP, but they likely do not exhaust the changes that would be required before a vote of consistency by the FORA Board would be merited. For instance, the header near the bottom of p. FO-4 reads "Design Principals" when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

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 ~~MOUT~~ 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.

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 MOUT 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

SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

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16 September 2013

Dear Monterey County Board of Supervisors:

The Fort Ord Master Plan (FOMP), Chapter 9.E of the 2010 Monterey County General Plan includes a number of significant errors, including mistaken map designations, misaligned land use descriptions, at least one misquoted policy, and the wholesale omission of a program that was described in both the Fort Ord Reuse Plan (FORP) and the FORP Reassessment report. The Sierra Club requests that the Board of Supervisors delay a vote on consistency with the FORP until the errors in the FOMP are corrected. The Sierra Club also requests that the County staff prepare a complete report, with substantiating evidence, regarding all discrepancies between the corrected FOMP and the FORP.

What follows is an identification of the more obvious errors in the publically posted web-version of the FOMP.

Map Concerns

Despite the fact that the text of the FOMP notes that: "...the Land Use Map contained in this plan is the County of Monterey Land Use Plan (Figure 6a) adopted by FORA into the Reuse Plan" (p. FO-4), there are a number of obvious discrepancies between Figure LU6a and FORP County of Monterey Land Use Concept Map 4.1-7/ FORP Land Use Concept Map 3.3-1, including the following:

> Although a boot-shaped parcel corresponding to Army Parcel # L.20.2.2 and L.20.2.3.1 is designated Public Facility/Institutional on the FORP Land Use Concept Map 3.3-1 and County of Monterey Land Use Concept Map 4.1-7, the same parcel in Figure LU6a Fort Ord Master Plan-Land Use Plan is labeled Habitat Management and Planned Development Mixed Use.
>
> The square-ish polygon west of Laguna Seca Recreation Area corresponding to Army Parcel # L.20.6 is designated as Open Space/Recreational on 3.3-1 and 4.1-7, but is labeled as Habitat Management in Figure LU6a.
>
> The strip of 7.2 acres that corresponds to Army Parcel # L20.18, acknowledged as Low Density Residential on 3.3-1 and 4.1-7 is represented as roadway in Figure LU6a.
>
> Although the parcel corresponding to Army Parcel # E11b.2 is wholly designated as Development on 3.3-1 and 4.1-7, Figure LU6a labels a significant strip along the west edge as Habitat Management.

These errors render FOMP Figure LU6a inconsistent with FORP maps 3.3-1 and 4.1-7.

The Board of Supervisors may also wish to consider amending the FOMP to take into account the designation of the National Monument, as this change in designation clearly impacts land use decisions.

Error in Land Use Description (or Mapping Designations)
Although the FORP maps 3.3-1 and 4.1-7 label the more general East Garrison land parcels as a Planned Development Mixed Use District, the HMP includes parcels within this general area as habitat reserve, specifically Army Parcels E11b.7.2, E11b.7.1.2, and E11b7.1.1. These three parcels are not distinguished as either Open Space/ Recreational or Habitat Management on either the aforementioned FORP maps or LU6a. However, the general language of the FORP addresses Planned Development/ Mixed Use concept as encompassing the juxtaposition of developed areas with habitat areas. The 2002 Assessment report authored by Zander Associates speaks rather clearly to this:

> The Base Reuse Plan designated East Garrison as a Planned Development Mixed-Use District. This designation is intended to encourage the development of pedestrian-oriented community centers that support a wide variety of commercial, residential, retail, professional service, cultural and entertainment activities. The Base Reuse Plan concept for East Garrison envisions central core village with *adjacent office and commercial uses transitioning (e.g. with equestrian staging areas, trailheads) from developed areas to HMP-designated habitat reserve lands.* (my emphasis)

This suggests that either the description of Planned Development/Mixed Use on p. FO-5 of the FOMP should clarify that habitat reserve is a key element in this concept of the associated Planned Development/Mixed Use District designation or that both the FORP maps (map3.3-1 and 4.1-7), as well as the FOMP map (LU6a), should be amended to reveal the habitat reserve designation of habitat parcels.

Misquoted Policy
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 altered language 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 is inconsistent with the FORP.

Policy Omission
The FOMP omits mention of the FORP Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction (FORP Volume 4, p. 270). Program A-1.2 states that "The County of Monterey shall cause to be recorded a Natural Ecosystem Easement restriction that will run with the land in perpetuity for *all identified open space lands*." (my italics

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to emphasize the breadth of this mandate). Recreation/Open Space Land Use Program A-1.2 is also clearly identified in the Reassessment report (p. 3-48: as an unfinished program).

Omission of an entire program identified in the FORP and the Reassessment report would clearly be inconsistent with the FORP.

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 by the Board of Supervisors 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)

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL. 831 375-5913 EMAIL. JANEHAINES@REDSHIFT.COM

Attachment F to Item 8a
FORA Board Meeting, 2/13/14

JANE HAINES

November 7, 2013

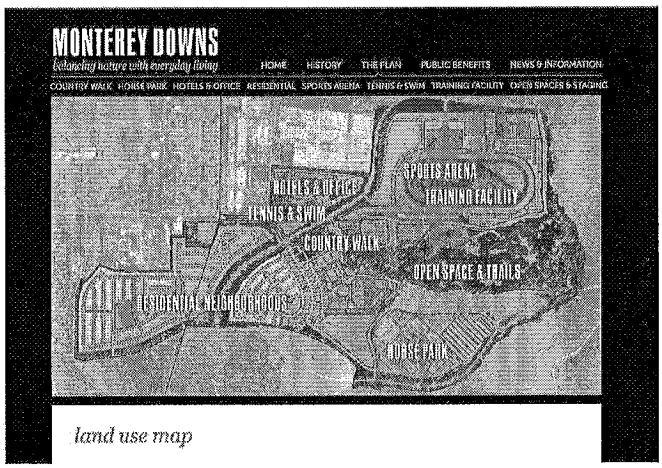
Fort Ord Reuse Board of Directors board@fora.org
920 2nd Avenue
Marina, CA 93933

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)



land use map

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,

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL 831 375-5913 EMAIL JANEHAINES@REDSHIFT.COM

Attachment F to Item 8a
FORA Board Meeting, 2/13/14

JANE HAINES

November 8, 2013

Fort Ord Reuse Board of Directors board@fora.org
920 2nd Avenue
Marina, CA 93933

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

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL 831 375-5913 EMAIL JANEHAINES@REDSHIFT.COM

Attachment F to Item 8a
FORA Board Meeting, 2/13/14

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.[1] (See 1997 FEIR pages 4-14 and 4-15 attached.)[2]

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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[1] 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.

[2] 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.

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

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

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

of FORA's or it members' agents, assigns, attorneys, executives, managers, officers, trustees, employees, successors-in-interest, including any and all employees of FORA, it's 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, it's 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

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: Gillian Taylor

Title: Chapter Chair

SETTLEMENT AGREEMENT AND GENERAL RELEASE

FORT ORD REUSE AUTHORITY

DATED: 12/6, 1998.

By: Michael Houlemard Jr.

Title: EXECUTIVE OFFICER

Approved as to Form and Content:

By: _____
Authority Counsel

By: _____
Attorney for Sierra Club

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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

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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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 ~~MOUT~~ 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.

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 MOUT 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 ~~919~~ 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).
>
> Progtam 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

Law Offices of
Thomas N. Lippe, APC

201 Mission Street
12th Floor
San Francisco, CA 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: lippelaw@sonic.net

January 8, 2014

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

Re: January 10, 2104 Meeting, Agenda Item # 8b: Certification of the 2010 Monterey County General Plan

Dear Chairperson Edelen and Members of the Board:

This office represents the Ventana Chapter of the Sierra Club with respect to the Fort Ord Reuse Authority's ("FORA") pending certification of the 2010 Monterey County General Plan pursuant to Government Code § 67675.3 and FORA Master Resolution sections 8.01.020 and 8.02.010.

I am writing to clarify, amplify, and add to several comments that the Sierra Club and others have previously submitted regarding inconsistencies between the 2010 County General Plan and the Base Reuse Plan. The Sierra Club objects to FORA certifying the 2010 County General Plan because the 2010 County General Plan is not "consistent" with the Base Reuse Plan for a number of reasons. This letter will explain both specific inconsistencies and the legal standard that governs FORA's determination of "consistency."

1. The 2010 County General Plan Is Inconsistent with the 1997 Base Reuse Plan Because it Weakens or Omits Applicable Base Reuse Plan Policies and Programs.

a. The County General Plan/Fort Ord Master Plan Weakens or Omits Three of the Reuse Plan's Recreation/Open Space Land Use Policies or Programs: Policy A-1, Program A-1 and Program B-2.1.

The Land Use Element of the Base Reuse Plan establishes Recreation/Open Space Land Use objectives, policies and programs that pertain to base land east of Highway 1 within Monterey County's jurisdiction. (Reuse Plan, pp. 213, 262-264, 270-272.) The Reuse Plan Recreation/Open Space Land Use objectives, policies and programs include four "objectives," seven "policies," and nineteen "programs." (Reuse Plan, pp. 270-272.)

The 2010 County General Plan contains a section entitled "Fort Ord Master Plan, Greater Monterey Peninsula Area Plan." (County General Plan/Fort Ord Master Plan, p. FO-1.) The Land Use Element of the County General Plan/Fort Ord Master Plan restates, with three notable exceptions, virtually all of the Reuse Plan's Recreation/Open Space Land Use objectives, policies and programs. (County General Plan/Fort Ord Master Plan, pp. FO-21 - FO-24.) The three exceptions are Policy A-1, Program A-1 and Program B-2.1.

Reuse Plan Recreation/Open Space Land Use Policy A-1 provides: "The County of Monterey *shall protect* irreplaceable natural resources and open space at former Fort Ord." (Reuse Plan, p. 270 (emphasis added).)[1] Corresponding Policy A-1 in the Land Use Element of the County General Plan/Fort Ord Master Plan reads: "The County of Monterey *shall encourage the conservation and preservation of* irreplaceable natural resources and open space at former Fort Ord.) (County General Plan/Fort Ord Master Plan, p. FO-21.) As a result, the County General Plan/Fort Ord Master Plan replaces the words "shall protect" with the words "shall encourage the conservation and preservation of."

Reuse Plan Recreation/Open Space Land Use Program A-1.2 provides: "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." (Reuse Plan, p. 270.) The Land Use Element of the County General Plan/Fort Ord Master Plan omits this program entirely.

Reuse Plan Recreation/Open Space Land Use Program B-2.1 provides:

> The County of Monterey shall review each future development projects for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into development plans 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.*

(Reuse Plan, p. 270 (emphasis added).)[2]

Corresponding Program B-2.1 in the Land Use Element of the County General Plan/Fort Ord Master Plan includes the first sentence of Reuse Plan Program B-2.1, but omits the second and third sentence, providing:

> The County of Monterey shall review each future development projects for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into development plans of incompatible land uses as a condition of project approval.

(County General Plan/Fort Ord Master Plan, p. FO-21.)

---

[1]Policy A-1, in turn, implements Objective A, which provides: "Encourage land uses that respect, preserve and enhance natural resources and open space at the former Fort Ord." (Reuse Plan, p. 270.)

[2]This program implements Policy B-2 ("The County of Monterey shall use open space as a buffer between various types of land use) and Objective B ("Use open space as a land use link and buffer.") (Reuse Plan, p. 270.)

Several members of the public previously commented to FORA that the County General Plan/Fort Ord Master Plan fails to include numerous specific Reuse Plan policies and programs, including Policy A-1, Program A-1.2 and Program B-2.1.[3] In response, Alan Waltner (FORA's legal consultant) argues that the County General Plan/Fort Ord Master Plan County General Plan "incorporate by reference" all Reuse Plan policies and programs, whether they are specifically identified in the County General Plan/Fort Ord Master Plan or not.[4]

With due respect to Mr. Waltner, he is incorrect on this point. I start my analysis by quoting the text of the County General Plan/Fort Ord Master Plan that is relevant to the issue of "incorporation by reference" of the Reuse Plan, as follows:

> **DESCRIPTION**
> 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. This plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area. In addition, this plan contains additional Design Objectives and land use description clarification to further the Design Principles contained in the adopted Reuse Plan.
>
> The Fort Ord Master Plan consists of this document, the Greater Monterey Peninsula Area Plan, and the Monterey County General Plan. Where there is a conflict or difference between a goal or policy of the Fort Ord Master Plan (FOMP) and the General Plan or Greater Monterey Peninsula Area Plan, the more restrictive policy will apply, except that land use designations will be governed by the FOMP in the Fort Ord area.
>
> **THE PLAN**
> *This plan incorporates the following Fort Ord Reuse Plan Elements, either directly or by reference to the adopted Reuse Plan*, specific to those portions of Fort Ord under County jurisdiction and located east of Highway 1:
> • Land Use Element
> • Circulation Element
> • Recreation and Open Space Element
> • Conservation Element
> • Noise Element
> • Safety Element

(Page FO-1 (emphasis added).)

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[3]See e..g., Jane Haines' letters to FORA dated October 10, 2013, November 7, 2013, and November 8, 2013, and Sierra Club's letter to FORA dated October 10, 2013.

[4] Memorandum from Alan Waltner to FORA dated December 26, 2013.

> LAND USE ELEMENT
>
> The Fort Ord Land Use Element is part of the Greater Monterey Peninsula Area Plan and the Monterey County General Plan and consists of those portions of the County of Monterey Land Use Plan - Fort Ord Master Plan (Figure LU-6a) that pertain to the areas of Fort Ord currently under the jurisdiction of the County and located east of Highway 1, and includes the following text. The Land Use Element contains land use designations specific to Fort Ord. These land use designations are consistent with the land use designations (as base designations) included in the adopted FORA Reuse Plan. For each of the Planning Districts, overlay designations are included that provide additional description and clarification of the intended land uses and additional design objectives for that specific Planning District. *The Fort Ord land use designations also include the applicable land use Goals, Objectives, Policies, and Programs directly from the Reuse Plan. These will constitute all the policies and programs to be applied to the Fort Ord Land Use Element. Background information, land use framework and context discussions, as they relate to the subject area, are hereby incorporated by reference into the Fort Ord Land Use Element from the FORA adopted Reuse Plan.* In addition, the Land Use Map contained in this plan is the County of Monterey Land Use Plan (Figure 6a) adopted by FORA into the Reuse Plan.

(Page FO-31 (emphasis added).)

As pertinent to Policy A-1, Program A-1.2 and Program B-2.1 of the Reuse Plan Recreation/Open Space Land Use Element, the County General Plan/Fort Ord Master Plan contains several directives. First, the introductory "Description" states the purpose of the 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" and that the "plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area." If that were the end of it, Mr. Waltner's argument would have some force. But there is much more to it.

The "Plan" portion of the introduction indicates that the plan "incorporates" listed elements of Reuse Plan "either directly or by reference." Then, in order to determine which portions of the listed elements are incorporated, and whether the incorporation is done "directly" or "by reference," the reader must turn from the general language in the introductory sections to the more specific language in the individual elements.

As quoted above, the introductory language of the Land Use Element of the County General Plan/Fort Ord Master Plan states:

> The Fort Ord land use designations also include the applicable land use Goals, Objectives, Policies, and Programs *directly* from the Reuse Plan. These will

> constitute *all the policies and programs* to be applied to the Fort Ord Land Use Element. Background information, land use framework and context discussions, as they relate to the subject area, *are hereby incorporated by reference* into the Fort Ord Land Use Element from the FORA adopted Reuse Plan.

(FO-31.)

This language tells the reader exactly which portions of the Reuse Plan Land Use Element are incorporated "directly" and which are incorporated "by reference." The "Goals, Objectives, Policies, and Programs" are incorporated "directly" and the "Background information, land use framework and context discussions" are incorporated "by reference."

True to its word, and as noted above, the Land Use Element of the County General Plan/Fort Ord Master Plan proceeds to "directly" incorporate - word for word - virtually all of the Reuse Plan Recreation/Open Space Land Use objectives, policies and programs except Policy A-1, Program A-1.2 and portion of Program B-2.1. (County General Plan/Fort Ord Master Plan, pp. FO-21 - FO-24.)

We now return to Mr. Waltner's argument. If the general language in the introductory "Description" of the County General Plan/Fort Ord Master Plan stating that "This plan incorporates all applicable policies and programs contained in the adopted Reuse Plan" were sufficient to incorporate the entire Reuse Plan "by reference" then virtually all of the remaining language of the Fort Ord Master Plan and its Land Use Element discussed above would be superfluous and meaningless.

Indeed, if Mr. Waltner were correct, there would be no need for the County General Plan/Fort Ord Master Plan, in its introductory "Plan" description on page FO-1 to distinguish between "direct" incorporation and incorporation "by reference." There would be no need for the more specific directives in the Land Use Element of the County General Plan/Fort Ord Master Plan to tell the reader exactly which portions of the Land Use Element of the Reuse Plan are "directly" incorporated and which are incorporated "by reference." And finally, there would be no reason for the Land Use Element of the County General Plan/Fort Ord Master Plan, its most specific statement on the topic, to recapitulate - word for word - virtually all of the Reuse Plan Recreation/Open Space Land Use objectives, policies and programs except Policy A-1, Program A-1.2, and Program B-2.1.

In short, Mr. Waltner's construction of the Fort Ord Master Plan with respect to Reuse Plan Recreation/Open Space Land Use Program A-1.2 must be rejected because it violates the fundamental rule of statutory construction is that "[c]ourts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155.)

It must also be rejected because it violates the rule of statutory construction that where general and specific provisions of a law address the same subject matter, the more specific provisions govern over the more general provisions. (*Elliott v. Workers' Compensation Appeals Bd.*

(2010) 182 Cal.App.4th 355, 365 ["We further point out that as a matter of statutory construction, a specific provision relating to a particular subject will govern that subject as against a general provision"]; Code of Civil Procedure § 1859.)

With respect to Program B-2.1 of the Reuse Plan, the evidence of the County's intent to exclude a portion of the Reuse Plan's Recreation/Open Space Land Use programs is even more specific, and therefore, more irrefutable, than it is with respect to Program A-1 because, rather than omitting the program entirely, the County finely parsed the program, keeping the first sentence of Program B-2.1, but omitting the second and third sentences.

Finally, and perhaps most importantly, the County's rewording of Policy A-1 to replace the words "shall protect" with the words "shall encourage the conservation and preservation of" cannot be considered meaningless, as Mr. Waltner would have it, because the new language deprives this policy of its legal "teeth." As Mr. Waltner concedes in his December 26, 2013, memorandum, under well-established case law applying the "vertical consistency" requirement of the state Planning and Zoning Law, courts usually defer to a local agency's determination that a land use entitlement is "consistent" with a local general plan where the agency must balance the achievement of many competing general plan goals and objectives. But where a general plan policy is stated in mandatory language, such as "shall protect," the courts will enforce such requirements without regard to the usual deference to agency discretion associated with the "substantial evidence standard of review. (See e.g., *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup"rs* (1998) 62 Cal.App.4th 1332, 1336, 1338, ,1342.)

In sum, the County's selective recapitulation of the Reuse Plan's Recreation/Open Space Land Use policies and programs is meaningful in the extreme, precisely because the clear intent and the clear legal effect of this effort is to transform the mandatory requirements of Policy A-1, Program A-1.2, and Program B-2.1 into discretionary standards that are difficult for the public to enforce.

b. The County General Plan/Fort Ord Master Plan Omits Reuse Plan Hydrology and Water Quality Programs B-1.3 and B-2.7.

The Conservation Element of the Base Reuse Plan includes a number of Hydrology and Water Quality goals, objectives, policies and programs that apply to base land within Monterey County's jurisdiction east of Highway 1. (Reuse Plan, pp. 353-3554.) Tthe County General Plan/Fort Ord Master Plan omits a number of these policies and programs, including Reuse Plan Hydrology and Water Quality Programs B-1.3, B-2.7, and B-6.1, all of which contain mandatory requirements.

Reuse Plan Hydrology and Water Quality Program B-1.3 provides: "The County shall adopt and enforce a water conservation ordinance for its jurisdiction within Fort Ord, which is at least as stringent as Regulation 13 of the MPWMD." (Reuse Plan, p. 353.)

Reuse Plan Hydrology and Water Quality Program B-2.7 provides:

> "The City/County, in order to promote FORA's DRMP, shall provide FORA with an annual summary of the following: 1) the number of new residential units, based on building permits and approved residential projects, within its former Fort Ord boundaries and estimate, on the basis of the unit count, the current and projected population. The report shall distinguish units served by water from FORA's allocation and water from other available sources; 2) estimate of existing and projected jobs within its Fort Ord boundaries based on development projects that are on-going, completed, and approved; and 3) approved projects to assist FORA's monitoring of water supply, use, quality, and yield."

(Reuse Plan, pp. 353, 347.)

> Reuse Plan Hydrology and Water Quality Program C-6.1 provides:
>
> The City shall work closely with other Fort Ord jurisdictions and the CDPR to develop and implement a plan for stormwater disposal that will allow for the removal of the ocean outfall structures and end the direct discharge of stormwater into the marine environment. The program must be consistent with State Park goals to maintain the open space character of the dunes, restore natural land forms, and restore habitat values.

(Reuse Plan, pp. 354, 347.)

These programs implement Hydrology and Water Quality Policy B-1 ("The County shall ensure additional water to critically deficient areas"), which implements Objective B ("Eliminate long-term groundwater overdrafting as soon as practicably possible").

In addition to the County General Plan/Fort Ord Master Plan's introductory language regarding incorporation by reference, the Conservation Element of the County General Plan/Fort Ord Master Plan contain additional relevant language, stating:

> Those relevant portions of the adopted Reuse Plan are hereby incorporated into the Monterey County Fort Ord Conservation Element by this reference. For convenience, relevant Goals, Objectives, Policies and Programs pertaining to the subject area are provided herein.

(County General Plan/Fort Ord Master Plan, p. FO-34.)

Any remaining doubt that Mr. Waltner's simple "'incorporation by reference" argument is incorrect is eliminated by considering the Hydrology and Water Quality sections of the Conservation Elements of the Reuse Plan and the County General Plan/Fort Ord Master Plan. The County General Plan/Fort Ord Master Plan liberally reorganizes, rewrites, add new programs to and omits programs from the comparable text in the Reuse plan. Most, importantly, the County General Plan/Fort Ord Master Plan omits Reuse Plan Hydrology and Water Quality Programs B-1.3, B-2.7,

and B-6.1, all of which contain mandatory requirements. In addition, the County General Plan/Fort Ord Master Plan adds new Programs A-1.1, A-1.2, and A-1.3, which are not found in the Reuse Plan. (See County General Plan/Fort Ord Master Plan, pp. FO-37 - FO-31.)

Once again, if Mr. Waltner's "'incorporation by reference" theory were correct, all of these changes would be both unnecessary and meaningless.

2. The Legal Standard Governing FORA's Determination of "Consistency."

The legal standard governing FORA's determination whether the County General Plan/Fort Ord Master Plan is "consistent" with the Base Reuse Plan is set forth in Master Resolution § 8.02.010, 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
>
> (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 for 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.

Mr. Waltner's December 26, 2013 memorandum makes several arguments regarding this standard.

First, Mr. Waltner sets out to rebut the notion that this standard requires the County General Plan/Fort Ord Master Plan to "strictly adhere" to the Base Reuse Plan. This "strict adherence" standard appears to be a rhetorical straw man, and therefore a distraction, because I have not seen any comment that urges such a position.

The Sierra Club's position is that because the standard set forth in section 8.02.010 uses the words "shall disapprove," it is mandatory. The Sierra Club's position is also that the way section 8.02.010 uses the concept of "substantial evidence" in conjunction with the words "shall

disapprove" requires that, if the record contains "substantial evidence" that any of the six criteria in section 8.02.010 are met, FORA must disapprove the County General Plan's "consistency" with the Reuse Plan even if there is also substantial evidence supporting a conclusion that none of the criteria are met.

Second, Mr. Waltner argues that the term "consistent" as used in the Military Base Reuse Authority Act and Master Resolution must have the same meaning as the term has in the state Planning and Zoning Law (and as construed by the case law applying that statute.) Assuming this is correct, it does not rebut Sierra Club's position. In fact, it supports it because, as discussed below, the case law applying the vertical consistency requirement of the state Planning and Zoning Law recognizes that the courts will enforce the mandatory procedural requirements of local general plans. Section 8.02.010 is a mandatory procedural requirement of the Master Resolution. Thus, Mr. Waltner's primary error is in construing FORA's "consistency" determination as identical to a county determination that a land use entitlement is consistent with the substantive standards of a general plan, but without regard to the specific, mandatory, procedural requirement in section 8.02.010.

In the Planning and Zoning case law, a local agency's determination that a land use entitlement is "consistent" with a local general plan will be upheld by the court's if there is substantial evidence in the record that the entitlement will not frustrate the achievement of the general plan's goals. except where the language of general plan is mandatory. The following is an excerpt from a leading case on this issue:

> A project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." [citation] A given project need not be in perfect conformity with each and every general plan policy. . . .
>
> The Board's determination that Cinnabar is consistent with the Draft General Plan carries a strong presumption of regularity. [citation] This determination can be overturned only if the Board abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. [citation] As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, "a reasonable person could not have reached the same conclusion."

Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs (1998) 62 Cal.App.4th 1332, 1336, 1338 ("*Families Unafraid*").

The Court in *Families Unafraid* also held that where a general plan policy is "mandatory" as opposed to a general statement of goals or objectives, then it must be followed, stating:

> There was also a question of density consistency in *Sequoyah*. (23 Cal.App.4th at p.

> 718.) But the general plan in *Sequoyah* afforded officials "some discretion" in this area, and their density allowances aligned with this discretionary standard. (*Ibid.*)
>
> By contrast, the land use policy at issue here is fundamental (a policy of contiguous development, and the Draft General Plan states that the "Land Use Element is directly related to all other elements contained within the General Plan"); the policy is also mandatory and anything but amorphous (LDR "shall be further restricted to those lands contiguous to Community Regions and Rural Centers" [both of which are specified 'town-by-town' in the Draft General Plan], and "shall not be assigned to lands which are separated from Community Regions or Rural Centers by the Rural Residential land use designation").
>
> Moreover, Cinnabar's inconsistency with this fundamental, mandatory and specific land use policy is clear-this is not an issue of conflicting evidence. (Cf. *Corona, supra,* 17 Cal.App.4th at p. 996 [in rejecting a challenge of general plan inconsistency, the court there stated: "In summary, the General Plan is not as specific as those in the cases on which the [challenger] relies and does not contain mandatory provisions similar to the ones in those cases."].)

Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs (1998) 62 Cal.App.4th 1332, 1341-42.

In the area of administrative law, the term "substantial evidence" is a "term of art" that has been defined, dissected, and construed in literally thousands of appellate decisions. The most common application of the "substantial evidence" standard results in courts giving deference to agency fact findings, because the court reviews the record to determine if it contains "substantial evidence" supporting the agency's determination; and if it finds such "substantial evidence," the court must uphold the agency's determination even if there is "substantial evidence" supporting the opposite conclusion.

For example, when reviewing a legal challenge to an EIR under CEQA, courts review the record to determine if it contains "substantial evidence" supporting the EIR's factual conclusions. If it does, any challenge to those factual conclusions must be rejected, even if there is also substantial evidence supporting the opposite factual conclusion. This is the usual application where the "substantial evidence" standard results in the courts giving deference to agencies' factual conclusions. (See e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 ["In applying the substantial evidence standard, 'the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." [citation] The Guidelines define 'substantial evidence' as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' (Guidelines, § 15384, subd. (a).)"

There are exceptions, however, to the usual application of the "substantial evidence" test. For instance, when reviewing a legal challenge to a Negative Declaration under CEQA, the courts

look at the record to see if its contains "substantial evidence" supporting the challenger's contention that the project may have a significant adverse effect on the environment. If it does, the challenge to the Negative Declaration's factual conclusions that the project will not have significant adverse effect must be sustained and the Negative Declaration overturned.

> [W]hen the reviewing court: "perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.' " [citation] More recently, the First District Court of Appeal summarized this standard of review, stating: "A court reviewing an agency's decision not to prepare an EIR in the first instance must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact; in such a case, the agency has not proceeded as required by law. [Citation.] Stated another way, the question is one of law, i.e., 'the sufficiency of the evidence to support a fair argument.' [Citation.] Under this standard, *deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.* [Citation.]" (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317–1318, 8 Cal.Rptr.2d 473, italics added.) Thus, the applicable standard of review appears to involve a question of law requiring a certain degree of independent review of the record, rather than the typical substantial evidence standard which usually results in great deference being given to the factual determinations of an agency. We agree with and adopt the First District's *Sierra Club* standard of review as quoted above.

Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1602; CEQA Guideline § 15064(f)(1) ["[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."])

This application of the "substantial evidence" standard results in the courts giving no deference to agencies' factual conclusions. Instead, the courts give deference to the purposes and policies of the law that requires applying the substantial evidence standard. Under CEQA, the policy of the law is to favor preparation of an EIR, and the courts employ the substantial evidence standard toward that end. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, supplemented, (1975) 13 Cal.3d 486 ["[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact].)

Here, the policy of the Master Resolution is to require "disapproval"of the County General Plan if the record contains "substantial evidence" that any of the six criteria in section 8.02.010 are met. If there is such "substantial evidence," FORA must disapprove the County General Plan

"consistency" with the Reuse Plan even if there is also substantial evidence supporting a conclusion that none of these criteria are met. Thus, this language in section 8.02.010 uses the term "substantial evidence" in a way that is markedly different than the way the term "substantial evidence" is used in the case law applying the "consistency" requirement of the Planning and Zoning Law.

Finally, Mr. Waltner's analysis ignores the important fact that the FORA agreed to the the specific procedural requirements in section 8.02.010 as part of an agreement to settle litigation. This new language would be unnecessary and meaningless if it did not alter the FORA's obligations when making consistency determinations regarding local general plans.

3. Application of the Legal Standard Governing FORA's Determination of "Consistency" to the County General Plan's Inconsistencies.

In footnote 4 of his December 26, 2013, memorandum, Mr. Waltner suggests that the use of the word "and" to connect paragraphs (5) and (6) of subdivision (a) of section 8.02.010 of the Master Resolution may require the Board to find that all six criteria are met before it may disapprove the County General Plan. This suggestion is incorrect.

It is well-settled that the word "and" may have a disjunctive meaning where the context indicates that is the legislative intent. (See e.g., *People v. Skinner* (1985) 39 Cal.3d 765, 769 ["It is apparent from the language of section 25(b) that it was designed to eliminate the *Drew* test and to reinstate the prongs of the *M'Naghten* test. However, the section uses the conjunctive "and" instead of the disjunctive "or" to connect the two prongs. Read literally, therefore, section 25(b) would do more than reinstate the *M'Naghten* test. It would strip the insanity defense from an accused who, by reason of mental disease, is incapable of knowing that the act he was doing was wrong"].)

The courts will not enforce the literal language of a law where doing so would achieve an absurd result. (*Hooper v. Deukmejian* (1981) 122 Cal.App.3d 987, 1003 ["The plain meaning of a statute has been disregarded when the plain meaning "would have inevitably resulted in 'absurd consequences' or frustrated the 'manifest purposes' of the legislation as a whole"]; *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688 ["The apparent purpose of a statute will not be sacrificed to a literal construction"].)

A quick review of the six criteria in section 8.02.010 reveals that construing the word "and" as conjunctive rather than disjunctive would be the absurd. For example, construing the word "and" as conjunctive would allow local agencies to draft their general plan to comply with criteria (6) (i.e., "require or otherwise provide for implementation of the Fort Ord Habitat Management Plan") but fail entirely to comply with all of the other criteria (which relate to fundamental policies and programs of the Reuse Plan such as density and intensity of land uses and which land uses are allowable) but the Board would be powerless to disapprove a local general plan's consistency with the Reuse Plan.

Finally, the discussions in sections 1 and 2 above demonstrate that the inconsistencies between the County General Plan/Fort Ord Master Plan and the Reuse Plan are legally meaningful.

Therefore, there is "substantial evidence" that the County General Plan/Fort Ord Master Plan "is not in substantial conformance with applicable programs specified in the Reuse Plan."

4. The Issues Raised in Footnote 3 of Mr. Waltner's December 26, 2013 Memorandum Are Not "Substantial Questions."

Footnote 3 of Mr. Waltner's December 26, 2013, memorandum states:

> 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.

For the reasons discussed in this section, these issues do not affect the Board's consistency determination.

a. "Whether the 1997 FORA Board could adopt provisions in the Master Resolution that conflict with the FORA Act"

This rhetorical question posed by Mr. Waltner assumes that 1997 FORA Board adopted provisions in the Master Resolution that conflict with the FORA Act. It did not. Therefore, the question posed is irrelevant.

The Board has broad discretion to adopt quasi-legislative rules to carry out its mandate to implement the Fort Ord Reuse Authority Act (Gov't Code § 67650 et seq.). The Mater Resolution is such a rule.

The California Supreme Court has stated the fundamental rule governing this question as follows:

> It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind — quasi-legislative rules — represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. (See, e.g., 1 Davis & Pierce, Administrative Law, *supra,* § 6.3, at pp. 233–248; 1 Cooper, State Administrative Law (1965) Rule Making: Procedures, pp. 173–176; Bonfield, State Administrative Rulemaking (1986) Interpretive Rules, § 6.9.1, pp. 279–283; 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 116, p. 1160 [collecting cases].) Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the

> lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.
>
> We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204 (*Wallace Berrie*): " '[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is "within the scope of the authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].' [Citation.] 'These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' (*Culligan, supra,* 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593 [citations].)"

Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 10-11.

Here, no one has suggested how the Master Resolution might arguably conflict with the Fort Ord Reuse Authority Act. The procedures and standards for determining consistency set forth in Mater Resolution sections 8.01.020 and 8.02.010 are "within the scope of the authority conferred" and "reasonably necessary to effectuate the purpose of the statute."

The only exception to the highly deferential standard of review that courts use to review the validity of agency-adopted quasi-legislative rules is where the agency has allegedly adopted regulations that "alter or amend the statute or enlarge or impair its scope;" in which case "the standard of review is one of respectful nondeference." *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022. The Board's adoption, in 1997, of the mandatory procedural requirements in Master Resolution section 8.02.010 does not "alter or amend the statute or enlarge or impair its scope."

This is especially true if one agrees with Mr. Waltner that "consistent" in section 67675.3 has the same meaning it has in the Planning and Zoning Law . This is because, as discussed above, under that statute agencies have broad discretion to craft their general plans in ways that either maximize their discretion or, by using mandatory language, to severely restrict their own discretion when determining "consistency." (See e.g., *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1341-42.) Here, the FORA Board in 1997 merely adopted mandatory requirements for determining the consistency of local general plans with the Base Reuse Plan.

As shown by the court in *Families Unafraid*, the courts will enforce these mandatory requirements. And as noted by the California Supreme Court in *Yamaha*, "quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law,' [ ] if authorized by the enabling legislation, bind this and other courts as firmly as statutes

themselves." *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.

b. "Whether the 1997 FORA Board could establish review standards binding on a reviewing Court."

This question is fully answered, in the affirmative, by the last two paragraph in the preceding section.

c. "Whether the 1997 FORA Board could limit the police power discretion of subsequent FORA Boards."

All legislation and quasi-legislative regulations limit the discretion of subsequent legislative bodies. That is their purpose. That is why we have a "government of laws, not men." The process for subsequent Boards to change the limits on their discretion is simple: amend the regulations.

5. Conclusion.

As described above, in drafting its new General Plan, the County altered or omitted many important, mandatory policies and programs of the Base Reuse Plan. These specific, targeted changes cannot be swept under the rug by pretending that the County General Plan incorporates the entire Base Reuse Plan "by reference." The incorporation language of the County General Plan/Fort Ord Master Plan is very specific in this regard, and leaves no doubt that the County intended to, and did, alter or omit these Reuse Plan policies and programs.

These alterations and omissions fundamentally change the County's legal obligations when it reviews future development entitlements, because the changes transform mandatory requirements of the Reuse Plan into discretionary decisions by the County.

As a result, there is substantial evidence that the County General Plan/Fort Ord Master Plan "is not in substantial conformance with applicable programs specified in the Reuse Plan" and must be disapproved under the mandatory procedural requirements of Master Resolution section 8.02.010.

Thank you for your attention to this matter.

Very truly yours,

Tom Lippe

Thomas N. Lippe

C001f 010814 to FORA.wpd

m | r | wolfe
& associates, p.c.
attorneys-at-law

January 9, 2014

Attachment F to Item 8a
FORA Board Meeting, 2/13/14

Via E-mail

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

Re: Consistency of 2010 General with Fort Ord Reuse Plan

Dear Members of the Board:

On behalf of LandWatch Monterey County, we write to object to the proposed resolution finding the 2010 General Plan to be consistent with FORA's Fort Ord Reuse Plan. As you know, the FORA Act requires that FORA certify consistency with the Fort Ord Reuse Plan before the County's 2010 General Plan's and its Fort Ord Master Plan becomes effective in the Fort Ord area. Government Code, § 67675.7. The proposed resolution finding consistency employs the wrong standard of review for FORA's determination of consistency, and it fails to acknowledge substantial evidence of inconsistencies between the Reuse Plan and the 2010 General Plan. FORA should decline to find the General Plan consistent and direct the County to make necessary revisions before resubmitting the General Plan for consistency review.

A. FORA Must Disapprove A General Plan If There Is Substantial Evidence That It Is Not In Substantial Conformance With Applicable Programs Specified In the Reuse Plan And Section 8.02.020 of the Master Resolution

LandWatch concurs with the arguments regarding the plain meaning of section 8.02.010 of the Master Resolution set out in letters by Jane Haines dated October 10, 2013, November 7, 2013, November 8, 2013 and December 30, 2013. That provision provides that FORA "shall disapprove" the County's General Plan if there is substantial evidence that the General Plan is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of the Master Resolution. As Ms. Haines explains, this language calls for a particular standard of review for FORA's adjudication of consistency. Under this standard of review, FORA must disapprove the General Plan if there is some substantial evidence of inconsistency, regardless whether FORA believes there is also some substantial evidence of consistency.

This standard is appropriate for at least two reasons. First, as Ms. Haines points out, FORA itself expressly adopted this standard of review for its consistency determinations in a settlement agreement with the Sierra Club in order to ensure the faithful implementation of the Reuse Plan. The FORA Act clearly gives FORA the discretion to adopt such regulations. Gov. Code, § 67664. Accordingly, Mr. Waltner is incorrect in his December 26, 2013 letter in implying that the FORA Board did not have the authority to adopt this standard of review.

In fact, as Mr. Waltner points out, there is no case law authority that would require FORA to uncritically apply the substantial evidence standard of review used in General Plan consistency determinations under the California Planning and Zoning Law. Accordingly, FORA's adoption of the standard of review in Master Resolution section 8.02.010 is not an "implied modification of the applicable standard of review" as Mr. Walter contends, because FORA has reasonably decided to adopt this standard of review to guide its consistency determinations and because nothing in the statute or case law bars it from doing so. If the current FORA Board wishes to establish a different regulation to guide its consistency review, it may do so, consistent with its obligations under the settlement agreement. But until it does revise its regulation, it must abide by it.[1]

Second, the Master Resolution expressly mandates that the County actually include all applicable open space and conservation policies and programs in its General Plan:

> "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." Master Resolution, § 8.02.020(a), emphasis added.

Again, this regulation was adopted by FORA to ensure faithful implementation of the Reuse Plan. In effect, § 8.02.020(a) requires each agency faithfully to identify and incorporate into its General Plan each applicable open space and conservation policy and program in the Reuse Plan.

The policy rationale for the requirement to incorporate each applicable policy or program is clear. Issuance of development entitlements is guided in the first instance by a determination whether those entitlements are consistent with member agencies' general plans. Gov. Code, § 67675.6; Master Resolution § 8.01.030(a). Indeed, FORA has shown extraordinary deference to member agency general plans in its past consistency determinations. This deference is only warranted if the member agency general plan faithfully incorporates each applicable open space and conservation policy and program. Master Resolution sections 8.02.010 and 8.02.020(a), adopted in the Sierra Club settlement agreement, were intended to require that general plans provide a blueprint that ensures that projects consistent with those general plans are also consistent with the Reuse Plan.

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[1] Mr. Waltner also suggests that FORA's adoption of the "strict adherence" standard of review would somehow trespass on the judicial standard of review. Not so. FORA's consistency determination is not a judicial review, it is an administrative adjudication. Courts are comfortable reviewing agency adjudications under a variety of standards of review. For example, depending on the context, courts review agency CEQA determinations under a "fair argument" standard, which is analogous to the "strict adherence" standard advocated by Ms. Haines, and, alternatively, under a substantial evidence standard when warranted.

Thus, contrary to Mr. Waltner's December 26 letter, it is not sufficient that the County's general plan purports generally to incorporate the Reuse Plan. If that were all that is required, the recitation of applicable polies and programs in the member agency general plans would not be required at all. Indeed, the language on which Mr. Walter apparently relies, "[t]his plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area," could be interpreted as a finding that the omitted and misstated policies are not applicable. Thus, instead of a guarantee that the misstated and omitted policies will be honored, this provision could be interpreted as a promise to ignore them.

Again, as Ms. Haines has pointed out, the proposed FORA resolution finding consistency sets forth the wrong standard of review for the FORA Board's adjudication. In particular, recital "L" is incorrect in implying that that consistency may be found merely on a finding that there is substantial evidence of consistency. The correct standard should be articulated with reference to Master Resolution section 8.02.010, which requires a finding of inconsistency if there is substantial evidence that the General Plan does not include all applicable open space and conservation policies and programs.

B. There Is Substantial Evidence That The 2010 General Plan is Not In Substantial Conformance With Applicable Programs Specified In the Reuse Plan and Section 8.02.020 of the Master Resolution

The relevant question in FORA's consistency review of the County's General Plan is not whether some future development project will or will not comply with applicable open space and conservation policies and programs, but whether the General Plan document meets the mandate of Master Resolution section 8.02.020 to include those policies and programs. Ms. Haines and the Sierra Club have clearly presented substantial evidence that the 2010 General Plan fails adequately to reflect critical policies and programs in the Reuse Plan.

- The General Plan fails to include the Reuse Plan's applicable Recreation/Open Space Land Use Program A-1.2 requiring recordation of a Natural Ecosystem Easement deed restriction. See Haines letters of October 10, 2013 and November 7, 2013; Sierra Club letter of October 10, 2013. LandWatch appreciates the County's statement that it is "committed to complying" with the Reuse Plans Ecosystem Easement Deeds Program 1-1.2. See Benny Young letter, October 23, 2013. If so, the County should not object to memorialize that commitment through inclusion of the applicable language in the 2010 General Plan. However, a commitment made outside the General Plan that applicable policies will be honored in the future is not relevant to whether the General Plan itself properly reflects the Reuse Plan

- The General Plan omits the applicable Reuse Plan Noise Program B-1.2 requiring segregation of noise generating uses from sensitive receptors. See Haines letters

of October 10, 2013 and November 7, 2013. The County has not addressed this omission. The program is clearly intended to protect sensitive users from significant noise impacts.

- The General Plan omits a material portion of Recreation/Open Space Land Use Program B-2.1 requiring habitat buffers to be at least 150 feet and requiring that the buffers not contain roadways. See Haines letters of October 10, 2013, and November 7, 2013; Sierra Club letter of October 10, 2013. The County has not addressed this omission. The policy is clearly intended to protect habitat from development impacts.

- General Plan Recreation/Open Space Policy Land Use Policy A-1 misquotes the applicable Reuse Plan policy by changing "shall protect" to "shall encourage the conservation and preservation. . ." See Sierra Club letter of October 10, 2013. The County claims that this word change was only intended to protect resources on three particular sites that have already been protected "through implementation" affecting these three sites. It is not clear that the intent of the language was so limited. In any event, there may yet be future implementation actions affecting these sites and there is no reason that the County should object to using the specific language that was adopted in the Reuse Plan CEQA review.

In sum, because the issue at hand is whether the General Plan contains applicable policies and programs, the relevant evidence here is simply the evidence that one document includes the applicable policy or program and the other does not. Therefore Mr. Waltner is incorrect that Ms. Haines has not identified the substantial evidence upon which she is relying.

Again, the issue before FORA is not the consistency of a specific development project but the consistency of two planning documents. However, it is foreseeable that the failure to attain consistency between these documents will have real world impacts. The Reuse Plan policies at issue were specifically adopted to address environmental impacts of future development, and the provisions and specific wording of these policies were salient in FORA's CEQA conclusions about the Reuse Plan. As noted, Sierra Club points out that the Reuse Plan's language for Recreation/Open Space land Use Policy A-1 was crafted in the Final EIR for the Reuse Plan in order to mitigate impacts. The County admits in its October 23rd letter that it incorrectly adopted the Reuse Plan language identified at the time of the Draft EIR for the Reuse Plan. If FORA approves language that is inconsistent with the Reuse Plan provisions, it cannot assume that the changes have no environmental consequence, and must undertake a new CEQA review.

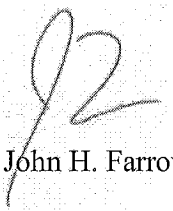
C. Conclusion

LandWatch joins the Sierra Club and Ms. Haines in opposing the proposed consistency determination. The County must modify its General Plan so that it faithfully reflects all applicable open space and conservation policies and programs.

Thank you for the opportunity to provide these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John H. Farrow

JHF: am
cc: Amy White

MEMORANDUM

OFFICE OF THE COUNTY COUNSEL
COUNTY OF MONTEREY

Memorandum of Law 2014-1

DATE: January 10, 2014

TO: Honorable Chair and Members of the Board of Supervisors

FROM: Leslie J. Girard, Chief Assistant County Counsel

SUBJECT: Referral No. 2013.6 Re: General Plan and Fort Ord Reuse Plan Consistency

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INTRODUCTION

By Referral No. 2013.6, dated November 5, 2013, Supervisor Parker requested our opinion with respect to a number of issues regarding the Fort Ord Reuse Authority's proposed consistency determination between the County's 2010 General Plan and the Fort Ord Reuse Plan. This memorandum responds to the Referral.

QUESTIONS PRESENTED

1. Are any differences between the language of the policies set forth in the County's 2010 General Plan ("General Plan"), and specifically the Fort Ord Master Plan ("Master Plan"), and the language of the mitigation policies in Volume 4 of the adopted Fort Ord Reuse Plan ("Reuse Plan") significant such that the Master Plan policies must be revised in order for the Fort Ord Reuse Authority ("FORA") to certify the Master Plan as consistent with the Reuse Plan?

2. Does the County face liability to a developer for reliance on policies in the General Plan where the County has made a determination of consistency but FORA imposes additional requirements not set forth in the County's policies?

3. Do the oak woodland protection policies in the General Plan, state law, and County Code provide protection equivalent to those in Biological Resources Policy C-2 of the Reuse Plan?

SHORT ANSWERS

1. No. While the printed language set forth in the Master Plan policies does not match word-for-word the language of the adopted Reuse Plan, the Master Plan incorporates the policies and programs of the Reuse Plan, and the language of

the Reuse Plan must therefore be considered in the interpretation and application of the Master Plan, and in the consistency determination process. The Fort Ord Reuse Authority Act ("Act"), and FORA's Master Resolution, allow FORA some flexibility in determining consistency based upon substantial compliance or substantial conformance supported by substantial evidence in the record. In our opinion substantial evidence currently in the record would support a consistency certification by FORA without revision of the Master Plan policies.

2. Generally, no. County liability in any given situation will depend on the specific facts of each case, and we will not speculate on liability in hypothetical scenarios. Generally, however, a developer will be on notice that the Reuse Plan applies to property within FORA's jurisdiction and, if a consistency determination is made by FORA, the County will have a number of defenses to any litigation concerning development requirements and should not face any liability.

3. Probably. The Act and Master Resolution only require "consistency" not "equivalency," and as more fully addressed in response to Question 1, above, we conclude that substantial evidence currently exits to support a determination that the Master Plan and Reuse Plan are consistent. The question of equivalency is different. The incorporation of the Reuse Plan into the Master Plan requires that, in the interpretation and application of the Master Plan the language of each be considered and harmonized to give effect. Accordingly the Master Plan, and other General Plan policies, should be applied to provide protection for oak woodlands consistent with that envisioned by the Reuse Plan, although County policies may provide greater protection.

BACKGROUND

On June 13, 1997, FORA certified a Final Environmental Impact Report (FEIR) for and adopted the Reuse Plan. The FEIR included some revisions to proposed policies and programs that serve as mitigation measures to reduce the impacts of the Reuse Plan.

On November 20, 2001, the County Board of Supervisors ("Board") amended the County's 1982 General Plan to include the "Monterey County Fort Ord General Plan Amendment" consisting of Reuse Plan policies applicable to Fort Ord territory within Monterey County. Pursuant to the requirement of state law, on January 18, 2002, FORA certified this amendment as consistent with the Reuse Plan and the Act, Government Code section 67650 - 67700.

On October 26, 2010, the Board adopted the General Plan which includes the Master Plan. By its terms, the Master Plan consists not only of the Master Plan set forth in Chapter 9-E of the General Plan but also incorporates the Greater Monterey Peninsula Area Plan and other generally applicable policies of the General Plan. Of special significance is that the Master Plan "incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area." The Master Plan also incorporates six specific elements of the Reuse Plan: Land Use, Circulation, Recreation and Open Space, Conservation, Noise and Safety. *See* Master Plan at

pages FO-1 and 2. Copies of those pages are enclosed as Attachment 1. The Master Plan was based on and supplanted the 2001 Monterey County Fort Ord General Plan Amendment but included updates to reflect relevant actions since 2001 such as the East Garrison Specific Plan and certain land swap agreements, but also minor text changes in consultation with FORA staff.

On September 17, 2013, by the adoption of Resolution No. 13-307, the Board certified that the General Plan (including the Master Plan) was consistent with the Reuse Plan and would be implemented in conformity with the Act, and directed staff to submit the General Plan to FORA for its certification. The County's request for certification was originally scheduled to be heard in November of 2013, but was continued to the FORA's January 10, 2014 meeting. FORA staff has recommended that the FORA Board of Directors concur in the County's determination that the General Plan is consistent with the Reuse Plan. *See generally,* January 10, 2014, FORA agenda packet, Item 8b ("Agenda Packet"). Relevant excerpts of the Agenda Packet, specifically the staff report and attachments A – E, are enclosed as Attachment 2. Several comments have been received by FORA contending that the General Plan is not consistent with the Reuse Plan.

The Referral, a copy of which is enclosed as Attachment 3, was assigned on November 5, 2013. The Referral Description, included in an attachment, states:

> It has been determined that the County General Plan policies for Fort Ord do not match the mitigation policies set forth in Volume 4 of the [Reuse Plan] because staff relied upon a draft of the [Reuse Plan] instead of the final version which was never printed and distributed by FORA. RMA staff have issued an opinion that, for a variety of reasons, the lack of consistency in the language is not significant and therefore does not need to be fixed.

While the Referral does not specifically identify who has made the referenced determination, a review of the Agenda Packet reveals that it is generally accepted that the printed language of the Master Plan does not match word-for-word the language of the Reuse Plan.[1]

[1] We are informed by RMA staff that these differences date to the County's 2001 General Plan amendment, and FORA certification of that amendment in 2002, notwithstanding the differences. The Master Plan carried forward the previously certified language. We have not investigated nor have any comment on the question of whether the Reuse Plan was properly printed or distributed by FORA, as described in the Referral. That issue is not relevant to the analysis herein.

ANALYSIS

I. Applicable Legal Principles

A. Statutory Construction

This matter largely involves the interpretation and application of statutes and other legislative actions (state law, the General and Master Plans, and FORA's "Master Resolution"). With respect to the interpretation of statutes, the analysis "starts from the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. . . . In determining intent [a court should] look first to the words themselves. . . . When the language is clear and unambiguous, there is no need for construction. . . . When the language is susceptible of more than one reasonable interpretation, however, [the court will] look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." "The provisions must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity." *Golden State Homebuilding Associates v. City of Modesto*, 26 Cal. App. 4th 601, 608 (1994) (quoting *People v. Woodhead*, 43 Cal. 3d 1002, 1007-1008 (1987) and *DeYoung v. City of San Diego*, 147 Cal. App. 3d 11, 18 (1983)). "Significance, if possible, should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, as 'the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory frameworks as a whole.' [Citation]." *Id.*

We are not to insert what has been omitted nor omit what has been inserted. Code of Civil Procedure § 1858. A specific intent controls a general intent if the two conflict. Code of Civil Procedure § 1859; Civil Code § 3534. Statutes should be construed so as to harmonize rather than raise conflicts. *Woodward v. Southern California Permanente Medical Group*, 171 Cal. App. 3d 656, 664 (1985). "Interpretation which gives effect is preferred to one which makes void." Civil Code § 3541.

Finally, "[a]n agency's interpretation of its governing statutes is entitled to great weight." *Ross v. California Coastal Commission*, 199 Cal. App. 4th 900, 922-923 (2011).

B. Consistency Determination

A determination that the General Plan is consistent with the Reuse Plan is a requirement of the Act, which established FORA and sets forth its powers and duties. Section 67675.2 of the Act requires a local agency with territory within Fort Ord to submit its general plan to FORA. The submittal is to be carried out by the adoption of a resolution certifying that the general plan "is intended to be carried out in a manner fully in conformity with [the Act]." As mentioned above, the County took such action by the

adoption of Resolution No. 13-307.[2]

Section 67675.3 of the Act addresses FORA's process for review of the General Plan; within 90 days after submittal of a request for certification FORA is to hold a noticed public meeting and either "certify" or refuse to certify that portion of the General Plan applicable to the Fort Ord territory (in this case the Master Plan). The FORA board "shall approve and certify" the Master Plan if it finds that it "meets the requirements of [the Act] and is consistent with the [Reuse Plan]." There is no elaboration on the phrase "consistent with" the Reuse Plan.

In 1997 FORA adopted, and has amended from time-to-time a "Master Resolution" generally setting forth its organization and the manner in which its duties are to be discharged. In relevant part, Chapter 8 addresses the process and standards for consistency determinations. A copy of Chapter 8 is enclosed as Attachment 4. Section 8.01.020 (f) of the Master Resolution (at page 43 of Attachment 4) makes clear that land use decisions based on the Master Plan may not be implemented if FORA has not or refused to certify that the Master Plan is consistent with the Reuse Plan.

Special counsel to FORA has provided several opinions regarding the interpretation of the consistency determination provisions of the Act and the Master Resolution; first briefly in a memorandum to the FORA board in July of 2013, and more substantively in memoranda dated September 3, 2013 and December 26, 2013. The September 2013 memorandum is enclosed as Attachment 5, and the December 2013 memorandum is included in the Agenda Packet (Attachment 2) at pages 51 – 53 of 190.

FORA's interpretation of its governing statutes is entitled to great weight (*Ross v. California Coastal Commission*, *supra,* 199 Cal. App. 4th at 922-923). In addition, we have independently reviewed the memoranda and concur in their conclusions. In relevant part, the memoranda conclude that the plain language of the Act, and the standards set forth in Chapter 8 of the Master Resolution, provide FORA with flexibility in determining consistency, and that the standard FORA may apply is one of "substantial compliance" or "substantial conformance" with respect to six enumerated factors. The FORA board is to make this determination on the basis of substantial evidence in the record.

[2] As part of the action, the County determined that the General Plan was consistent with the Reuse Plan. That determination was not required by the Act, only the commitment that the General Plan would be carried out in full conformity with the Act. Due to the passage of time, it is too late for a legal challenge to the County's action in adopting Resolution 13-307, and the Referral does not directly ask for our opinion regarding its validity. Rather, the Referral essentially inquires of the ability of FORA to make a consistency determination in light of the differences in the language of the Master Plan and the Reuse Plan. We therefore do not specifically address or analyze the County's action, although for the same reasons set forth herein we believe the action to be valid.

II. Any Differences In The Language Of The Master Plan And Reuse Plan Policies Are Not Significant Such That The Master Plan Policies Need To Be Revised In Order For FORA To Make A Consistency Determination

As described above, the printed language of the Master Plan does not track, word-for-word, the language of the Reuse Plan; however, the Master Plan specifically incorporates the programs and policies of the Reuse Plan. We note that in the hierarchy of legislative authority, it is clear that the Reuse Plan controls the application of the Master Plan, thus the requirement for a consistency determination and the prohibition on implementing Master Plan policies if found inconsistent with the Reuse Plan.

We concur with FORA special counsel that differences in language are not necessarily a basis to find inconsistency. If the legislature had intended to require identical language it could have directed that FORA determine that the Master Plan was "identical to" the Reuse Plan; however, the legislature chose to use the phrase "consistent with" which does not imply or require identicalness.

Discrepancies in the wording of a few policies, especially when viewed in the context of the rest of the Master Plan and its stated intent to be consistent with the Reuse Plan, are unlikely to cause a court to invalidate a consistency certification. In evaluating a project's consistency with a general plan, courts interpret consistency to mean that a project is "in agreement or harmony with the terms of the applicable plan, not in rigid conformity with every detail thereof." *San Francisco Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal. App. 4th 656, 678 (2002). "A project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy." *Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 238 (2011). *See also Sequoyah Hills Homeowners' Association v. City of Oakland*, 23 Cal. App. 4th 704 (1993). The critical factors in evaluating consistency are "the nature of the policy and the nature of the inconsistency," with the outer limit being that general consistency cannot overcome specific, mandatory and fundamental inconsistencies with plan policies." *Clover Valley*, 197 Cal. App. 4th at 239. The differences in wording between the Master Plan and Reuse Plan are unlikely to be viewed as so fundamentally inconsistent as to justify a finding of inconsistency, especially because the Master Plan itself states that it incorporates the policies of the Reuse Plan.

We also note that a court is likely to defer to FORA's findings. An agency's determination of consistency "carries a strong presumption of regularity" and can be overturned by a court only if the agency abused its discretion. *Clover Valley*, 197 Cal App. 4th at 238. In evaluating abuse of discretion, the court must give a finding of consistency "great deference." *San Francisco Upholding the Downtown Plan*, 102 Cal. App. 4th at 679. A court can reverse a finding of consistency "only if, based on the evidence before the local governing body, . . . a reasonable person could not have reached the same conclusion." *Clover Valley*, 197 Cal. App. 4th at 238.

Harmonizing all the legislative enactments, with a view to effectuating the legislative intent, and giving significance to the incorporation into the Master Plan of the policies and programs of the Reuse Plan, it is our opinion that the language of the Master Plan need not be revised in order for FORA to make a consistency determination. Because the standard to be applied by FORA in making the determination is one of substantial compliance or conformance, based upon substantial evidence in the record, the differences in the language may be determined to be immaterial (or rather "not significant" as described in the Referral). That is clearly the opinion of County and FORA staff (as reflected in the FORA staff report included in Attachment 2), and in our view there is substantial evidence currently in the record, as well as the interpretation provided by special counsel to FORA, to support a consistency finding.[3]

We note that FORA has not yet acted on the request to certify, and the record is therefore not yet complete. Additional evidence may be submitted into the record which may bear on the question of substantial evidence. We do not presume to prejudge FORA's actions, but merely observe that, in our opinion, substantial evidence currently exists upon which a consistency determination may be made.[4]

III. The County Has Very Little Risk Of Liability Exposure Due To Language Differences If FORA Makes The Consistency Certification

As set forth in the summary above, County liability in any given situation will depend upon specific facts, and we will generally not speculate on hypothetical situations. We note, however, that the Master Resolution requires that a notice be recorded on every property within Fort Ord putting an owner on notice that the Reuse Plan applies and any development will be subject to its terms, and by other restrictions imposed by the Master Resolution or other enactments by FORA. Section 8.01.010 (j), at page 42 of Attachment 4. Significantly, this notice will refer solely to the application of the Reuse Plan and other FORA enactments, and not a local agency's general plan or other land use policies.

In addition, if FORA makes the consistency certification, the County will have a variety of defenses to any action concerning the imposition of additional development requirements by FORA based on the Reuse Plan. In light of these considerations we believe the County has little or no exposure to liability should FORA make a consistency certification in light of any language differences.

[3] The substantial evidence is more fully described in the FORA staff report and its attachments (Attachment 2).
[4] We also render no opinion on whether substantial evidence exists to support a denial of certification.

IV. The Oak Woodland Policies Of The Master Plan Should Provide Equivalent Protection As The Policies Of The Reuse Plan

The Referral requests "specific assessment of whether oak woodland policies in the County's General Plan, state law, and County Code provide equivalent protection as Biological Resources Policy C-2 of the Reuse Plan, as represented by RMA staff."

The Reuse Plan Biological Resources Policy C-2 has five subsidiary policies, but by way of example, the introduction to the policy provides: "The County shall preserve and enhance the woodland elements in the natural and built environments." Biological Resources Policy C-2 of the Master Plan provides: "The County shall encourage the preservation and enhancement of native oak woodland elements in the natural and built environments."

The Board referral correctly observes that the Master Plan policy wording is identical to the draft Reuse Plan policy language, whereas the final adopted Reuse Plan policy incorporates revisions from the Reuse Plan Final EIR. The five subsidiary policies under Master Plan Biological Resources Policy C-2 also reflect the draft Reuse Plan wording rather than the wording of the Reuse Plan Final EIR.

Similar to the analysis in Part II, above, we conclude that the Master Plan policy language must be interpreted and applied consistent with the Reuse Plan policy, and substantial evidence currently exists in the record that would support a consistency certification by FORA. The question of equivalency is different; however, and does not bear upon the ability of FORA to make a consistency certification.

In an October 23, 2013 letter from the County to FORA, County staff responded to public comments concerning the differences in the Biological Resources policy by noting that the policies would be implemented in a manner consistent with the Reuse Plan and that oak woodlands are also protected under other General Plan policies (e.g., LU Policies 1.6 and 1.7, OS Policies 5.3, 5.4, 5.10, 5.11, and 5.23), state law, and the County Code. A copy of that letter is included in the FORA Agenda Packet and enclosed as Attachment 6.

The referral questions whether the policies cited by staff provide equivalent protection as the Reuse Plan Biological Resources Policy C-2. We note that, on the one hand, it is obvious from the plain language that "shall preserve" is a stronger mandate than "shall encourage the preservation." On the other hand, one could argue that the explicit reference to "oak woodlands" in the County's plan is stronger protection for oak woodlands than the more vague reference to "woodland" in the final Reuse Plan language. We also have noted that the Master Plan incorporates all applicable policies and programs contained in the Reuse Plan. This language provides a basis for the County to interpret and apply the Master Plan policy as having the same meaning as the Reuse Plan's "shall preserve" language.

The Master Plan also explicitly incorporates General Plan policies and directs that the more restrictive policy will apply in case of a conflict or difference between a policy of

the Master Plan and General Plan. *See* Attachment 1 at page FO-1. For example, General Plan Policy OS 5.3 provides that "[d]evelopment shall be carefully planned to provide for the conservation and maintenance of critical habitat," which could be construed as being as restrictive as Reuse Plan Biological Resources Policy C-2. State law (Public Resources Code section 21083.4) and General Plan policy OS-5.23 require feasible mitigation for loss of oak woodlands; arguably, mitigating loss of oak woodlands might be considered less protective than preserving them in the first place, but to the extent mitigation might consist of conservation easements and direct replacement at more than 1:1 ratio, the mitigation requirements may be quite protective.

Finally, the overall thrust of general plan goals, objectives, and policies is often more determinative of consistency than the exact words in a particular policy. Even if the County plan were to use the exact language of the Reuse Plan (e.g., "shall preserve"), the County would legally have some flexibility in interpretation and application of the policy within the context of the overall objectives and policies of the Master Plan and General Plan. As discussed earlier, case law holds that "a project is consistent with the general plan if considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy." *Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th at 238. For example, in *Clover Valley*, the city of Rocklin's general plan required all land within 50 feet from the banks of streams to be in an open space designation. The city approved a road which made two limited encroachments into the 50-foot buffer. The general plan policy was clear and specific, yet the city found that the road's intrusion into the buffer was consistent with the policy based on the city's historical practice and its determination that moving the road outside the buffer would result in additional hillside grading and loss of oak trees. Notwithstanding the specific mandate of the city's general plan, the court upheld the city's finding of general plan consistency, reasoning that allowing the encroachment into the open space buffer furthered the general plan's policies, whereas "strictly enforcing the buffer" would "defeat[ ] its purposes and likely conflict[ ] with other general plan policies." *Id.* at 239. As this case illustrates, the application of general plan policy to a particular project depends on the facts and circumstances of the project, interpretation of policy by the decision-maker, and application of the policy within the overall context of the goals, objectives, and policies of the applicable plan.

CONCLUSION

The differences in language between the Master Plan and Reuse Plan do not preclude FORA from certifying the Master Plan as consistent with the Reuse Plan, and substantial evidence currently exists in the record to support a certification. The County faces minimal or no liability if FORA certifies consistency. Finally, although equivalency is not required, the Master Plan and other County policies relating to the preservation of oak woodlands, and state law, should provide the same or more protection for such woodlands as described in the Reuse Plan.

LESLIE J. GIRARD
Chief Assistant County Counsel

LJG:WSS:ljg
Attachments:

1. Fort Ord Master Plan pages FO-1, FO-2
2. FORA Agenda Pack excerpts, January 10, 2013
3. Referral 2013.16
4. FORA Master Resolution Chapter 8
5. FORA Special Counsel opinion, September 9, 2013
6. Benny Young letter to FORA, October 23, 2013

cc: Lew Bauman, CAO
Benny Young, RMA Director
Carl Holm, RMA Deputy Director
Mike Novo, Planning Director

Link to large attachments - Item 8a Attachment F

Link to attachments 1-6 to Chief Assistant County Counsel Leslie Girard's January 10, 2014 memorandum addressed to the Monterey County Board of Supervisors

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http://fora.org/Board/2014/Packet/Additional/021314Item8a-Attach1-6.pdf

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL 831 375-5913 EMAIL JANEHAINES@REDSHIFT.COM

**Attachment F to Item 8a
FORA Board Meeting, 2/13/14**

JANE HAINES

February 10, 2014

Michael Houlemard, Director
Fort Ord Reuse Authority
920 Second Avenue
Marina, CA 93933

via email to michael@fora.org

Re: Board packet for February 13, 2014

Dear Michael:

This is my third communication to FORA pertaining to the confusing manner in which FORA is presenting the public's letters on the topic of consistency between the Monterey County 2010 General Plan and the 1997 Base Reuse Plan. I respect FORA's integrity, so I don't think FORA is deliberately attempting to confuse the issues. However, FORA has presented the letters in a disordered way at least five times in the past month, so I suggest that FORA place a higher priority on fairly presenting the public's comments:

- On Tuesday, Feb. 4, I left a voice message for a FORA staff member explaining that the packet for the Feb. 5 Administrative and Executive Committees misplaced the attachment to my Dec. 30 letter. Rather than having my attachment follow my letter, my attachment was made the attachment for another, unrelated letter. I requested correction of the error.
- On Thursday, Feb. 6, I called FORA again and asked whether my request had been taken care of. I was told that my request had been forwarded to the staff person in charge of placing letters into the packet.
- I am sending this Feb. 10 letter because when I reviewed the packet that FORA posted on Feb. 7, I found more errors. Specifically, the attachment to my Dec. 30 letter is now separated from my Dec.30 letter by an attachment that should follow Sierra Club's Oct. 10 letter. Additionally, a second attachment to Sierra Club's Oct. 10 letter is wholly missing from the packet.
- After seeing the confusing presentation of my and Sierra Club's letters in both the Feb. 5 Administrative Committee packet and the Feb. 7 Board packet, I reviewed the Jan. 2 Administrative Committee packet and discovered that it wholly omits two attachments to the Sierra Club's Oct. 10 letter. Thereafter, I reviewed the Jan. 10 Board packet and discovered

that my Dec. 30 letter has an erroneous attachment and Sierra Club's Oct. 10 letter lacks the same attachment that incorrectly follows my Dec. 30 letter.

FORA's skewed presentation of our letters distorts our letters' arguments. As FORA has presented them, our letters refer to attachments that are not attached and have attachments that are irrelevant to our arguments.

I request that FORA correct the errors and promptly notify Board members, the public and any staff members who might have already concluded that my letters and letters from the Sierra Club don't make sense. Please explain that the manner in which FORA presented our letters over the past month is not the way we submitted those letters. I request the following corrections:

1. Move pages 48 and 49 in the Feb. 7 packet to follow page 39.
2. Insert into the packet the important Sept. 16 letter from the Sierra Club to Monterey County which is referenced in Sierra Club's letter on page 37 of the Feb. 7 packet. That letter is wholly missing from the Feb. 7 packet.
3. Move pages 48 and 49 so that they do not follow my Dec. 30 letter which ends on page 47; that letter's only attachment begins on page 50. Pages 48 and 49 have nothing to do with my Dec. 30 letter. The attachment that begins at page 50 should follow my letter which ends on page 47 in order for the reader to understand my Dec. 30 letter.
4. The Jan. 10 memorandum from Asst. County Counsel Leslie Girard to the Bd. of Supervisors was distributed by FORA at the Jan. 10 FORA meeting. It is therefore part of the administrative record and should be included in the revised packet.
5. I request that this (my) Feb. 10 letter also be included in the revised packet.

I am emailing this request to you prior to 8 a.m. on Monday, Feb. 10. I request that the above 5 steps be completed as early as possible today to give FORA Board members and the public sufficient time to read correct versions of my and Sierra Club's letters prior to the Feb. 13 Board meeting. I further request that an explanation accompany the corrected version, explaining to anyone who would otherwise rely on the Feb. 7 or earlier versions of our letters, that those letters and their attachments were mis-assembled by FORA, not by me and not by Sierra Club. I am making this request on behalf of myself, not on behalf of Sierra Club. I make it on my own behalf as a member of the public who values accurately informed public decision-making.

Sincerely,

Jane Haines

copy: swaltz@csumb.org, awhite@mclw.org, lippelaw@sonic.net, jfarrow@mrwolfeassociates.com

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, 2nd Floor
Salinas, CA 93901
http://www.co.monterey.ca.us/rma

October 23, 2013

Fort Ord Reuse Authority
Jonathan Garcia, Senior Planner
920 2nd 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 polices 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 Garrision. 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[1], 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.

[1] 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

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Post Reassessment Items	
Meeting Date:	February 13, 2014	**INFORMATION/ACTION**
Agenda Number:	8b	

RECOMMENDATION(S):

I. Approve Amended Post Reassessment Work-Plan
II. Approve Post Reassessment Advisory Committee (PRAC) Extension and Revised Committee Charge
III. Receive a budget report for the Fort Ord Reuse Authority (FORA)/ California State University Monterey Bay (CSUMB) Colloquium Event

BACKGROUND/DISCUSSION:

The following summarizes work on Post Reassessment items including 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 are proposed to be referred by FORA Board to the PRAC for discussion and recommendations during calendar year 2014. A draft Post Reassessment Work Plan is included as **Attachment A** summarizing the overarching approach and providing a detailed timeline.

At its March 22, 2013 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 proposed revised charge is included in **Attachment B**. Additionally, Mayor Pro-Tem Ian Oglesby will be moving off the PRAC. Incoming FORA Board Member, Councilmember Casey Lucius is proposed to fill the vacancy.

At its July 12, 2013 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.

At its September 13, 2013 meeting, the Board authorized expenditures up to $56,725 for the Colloquium Budget. The attached budget table (**Attachment C**) shows that FORA expenditures for the event are significantly less than approved. Cost savings are primarily from lower than estimated event advertisement, honoraria, and workshop facilitator costs. However, there were increased CSUMB cost items for event catering and parking, which were considered and supported by the PRAC Committee prior to the event. CSUMB's colloquium reimbursement request is included as **Attachment D**.

FISCAL IMPACT:

Reviewed by FORA Controller M.F. for 1.B.

Staff time for this item is included in the approved FORA budget. The $36,080 in revised Colloquium Budget is within the approved FY 13-14 budget (approximately $20,000 less than approved limit) for the Base Reuse Plan Post Reassessment.

COORDINATION:

Administrative and Executive Committees.

Prepared by _____ Reviewed by _____
Josh Metz Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

Proposed Post Reassessment 2014 Work Plan

Fort Ord Reuse Authority

Completion Items	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Regional Urban Design Guidelines (RUDG)	Staff prepares scopes, secures list of potential consultants, and initiates preliminary analysis on Cat 1-5 Items	• Present 2014 Work Plan & Calendar • Board Extend PRAC to work on **CAT 4**		**RUDG** Orientation workshop		Progress report on **RUDG - *Trails***	Progress report on **RUDG – *Gateways***	Progress report on **RUDG – *Regional Circulation Corridors***	Progress report on **RUDG – *Town & Village Centers***	DRAFT v1.0 **RUDG**		Final **RUDG**
CAT 1-2 BRP Corrections & Updates					Public review draft **CAT 1-2 CEQA**		Approval of **CAT 1-2 CEQA**					
CAT 3 Implementation of Yet-to-be Completed BRP Policies & Programs			Admin reviews FORA Staff recs re: **CAT 3** Items			Board acceptance of Admin recs to finish w/**CAT 3** items						
CAT 4 Policy & Program Modifications			*PRAC* Review **CAT 4** Items	*PRAC* Prioritizes **CAT 4** Items	*PRAC* Finalizes **CAT 4** Items	*Board* Review of **CAT 4** Items						
Cat 5 FORA Procedures & Operations					Present Board **CAT 5** Work Plan							
Blight Removal Program Development			Staff presents draft scope to Admin re: 1. Surplus II/CSUMB 2. Revolving loan fund/Best Practices									

Category		Status
1	**BRP Corrections & Updates**	
	Text Corrections	PRAC Reviewed & Approved 5/10/2013
	Figure Corrections	
2	**Prior Board Actions & Regional Plan Consistency**	
	Land Use Concept Map modifications based on prior FORA Board Consistency Determinations (map "re-publication" based on prior approvals)	Waltner memo recommends CEQA process
	Land Use Concept Map modifications based on other actions	
	Modify circulation related maps and text in the BRP and modify Capital Improvement Program (CIP)	2014-15 CIP
	BRP Modifications regarding consistency with Regional and Local Plans	Subject to analysis & consultation with other Regional Planning Agencies
3	**Implementation of Yet-to-be-completed BRP Policies & Programs**	
	Land Use, Circulation, Recreation & Open Space, Conservation, Noise and Safety BRP Elements	Admin 2014
	Jurisdictional implementation responsibilities	
	FORA implementation responsibilities	

Category		Status
4*	**A. Economic Development & Jobs**	
	1. Reversal of the loss of middle class job & housing opportunities	PRAC 2014: ***Local Job Creation***
	2. Constraints & uncertainties for development of Fort Ord	
	3. Promotion of economic development through outdoor recreational tourism/ecotourism	PRAC 2014: ***Job Creation Through Ecotourism***
	4. Capitalization on existing regional strengths to promote expansion of office & research sectors	PRAC 2014: ***Local Job Creation***
	5. Establishment & marketing of a brand for Fort Ord	
	B. Urban Blight & Cleanup	
	1. Prioritization of funding for removal of blight	**Board** 2014
	2. Evaluation of base clean-up efforts & methods	
	C. Aesthetics	
	1. Prioritization of design guidelines	**Board** 2014

**PRAC priority items that became focus for Fort Ord Colloquium, December 2013*

Category		Status
4 *(cont.)*	**D. Fort Ord National Monument**	
	1. Potential for the National Monument & Tourism to be catalyst for regional economic growth	PRAC 2014: ***Job Creation Through Ecotourism***
	2. Policy on land use adjacent to National Monument	PRAC 2014
	3. Integrated Trails Plan	PRAC 2014: ***Trails Project***
	4. Fort Ord National Monument - Fort Ord Dunes State Park Trail Connection	
	5. Access points & trailhead development for the Fort Ord national Monument	
5	**FORA Procedures & Operations**	***Board 2014***
	FORA Board Composition, representation & voting process	
	Oversight of the land use/development implementation decisions of local jurisdictions	
	Regularly track & report on status of BRP policy & program implementation	
	Clarify methodology for making consistency determinations	
	Provide regular updates on modifications to BRP land Use Concept Map	
	Regularly monitor, update & report on status of BRP build-out constraint variables	
	Improve access to & disclosure of FORA Board decisions & data regarding base reuse	
	Periodically Assess the BRP; Assess Infrastructure Maintenance Cost Issues	
	Prepare a FORA Phase-out Plan	

Suggested 2014 PRAC Projects

- Local Job Creation
- Job Creation Through Ecotourism
- Land Use Policies Adjacent to National Monument
- Trails Project

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 calendar year 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 Category 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. The PRAC effort is anticipated to have a limited duration, with a goal of forwarding priority recommendations to the Board in May or June 2014.

Attachment C to Item 8b
FORA Board Meeting, 2/13/14

DRAFT

Fort Ord Reuse Issues Colloquia Budget

Expense Item Description	9-13-13 budget estimate	Revised	Note
Event Advertisement	$ 5,000	$ -	CSUMB covered event advertisement costs.
Experts			
Travel	$ 12,500	$ 9,665	
Lodging and meals	$ 9,225	$ 8,838	
Honoraria	$ 15,000	$ -	PRAC recruited speakers without use of honraria.
Workshop Facilitator	$ 10,000	$ -	PRAC supported event without use of facilitator.
Additional CSUMB expenses			
Catering		$ 11,999	PRAC supported meals/ catering for event.
Parking		$ 1,346	PRAC supported free parking for event attendees.
Other event services, AV, custodial, supplies, etc.	$ 5,000	$ 4,232	CSUMB covered venue and venue set-up costs.
Subtotal	$ 5,000	$ 17,577	
Total Budget	**$ 56,725**	**$ 36,080**	

CALIFORNIA STATE UNIVERSITY
Monterey Bay
OFFICE OF THE PRESIDENT

Attachment D to Item 8b
FORA Board Meeting, 2/13/14

831-582-3532
Fax 831-582-3540
csumb.edu

February 4, 2014

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

Dear Michael:

I wish to take this opportunity to again thank for your participation in the CSUMB/FORA Colloquium. I have received a lot of positive feedback from the community.

Additionally, I would like to thank you for the financial support FORA offered in support of this event. In support of the CSUMB/FORA Colloquium, the PRAC Committee met and discussed the expenditures with the following outcomes:

10-09-2013
PRAC members unanimously agreed to support the catering cost for Colloquium event, which amounted to $11,999.45

11-25-2013
PRAC members unanimously agreed to support the parking costs for Colloquium event, which amounted to $1,346.00

Additional costs in support of the event include:
- AV Media Services in the amount of $2,602.50
- Miscellaneous Other Services in the amount of $1,629.00
  Total additional costs: $4,231.50

Total CSUMB-requested colloquium reimbursement: $17,576.95

Should you have any questions related to these expenses, please feel free to contact my office. I look forward to our next co-sponsored event.

Sincerely,

Andre W. Lewis
Associate Vice President ~ University Affairs

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject:	FORA Master Resolution Amendments	
Meeting Date: **Agenda Number:**	February 13, 2014 9a	**ACTION**

RECOMMENDATION:

Approve the Fort Ord Reuse Authority (FORA) Master Resolution amendments as described in **Attachment A**.

BACKGROUND/DISCUSSION:

Following January Board elections, several Board members expressed a desire to re-evaluate the Board Officer and Executive Committee selection protocol. At the February 5, 2014 Executive Committee meeting, Chair Edelen proposed FORA Master Resolution amendments which would address those procedures, including eliminating the 2nd Vice Chair position and allowing an additional rotating "member-at-large" on the Executive Committee. Committee members unanimously recommended Board approval of these amendments.

FISCAL IMPACT:

Reviewed by FORA Controller M. F. for I. B.

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

COORDINATION:

Executive Committee

Prepared by C. Maras
Crissy Maras

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

DEFINITIONS: **"Ex-Officio Members"** means the persons or entities designated in the Authority Act as ex-officio members or such persons or entities as the FORA Board may designate as ex-officio members. Ex-Officio Members include the Monterey Peninsula Community College District, the Monterey Peninsula Unified School District, the Member of Congress from the ~~17th~~ 20th Congressional District, the Senator from the ~~15th~~ 17th Senate District, the Assembly Member from the ~~27th~~ 29th District, the United States Army, the Chancellor of the California State University, the President of the University of California, the Transportation Agency of Monterey County, the Monterey-Salinas Transit Authority and Marina Coast Water District.

2.01.040 SELECTION OF OFFICERS.

(a) The Authority officers will be a Chair and a Vice-Chair. ~~The Authority's officers~~ and will ~~will~~to serve a term of one year. Officers ~~and~~ may be reelected for no more than one consecutive additional term in the same office. Officer Election ~~of officers~~ takes place at the close of the Authority's first regular January meeting.

(b) It is the policy of the Board that the officers of the Authority rotate on a regular basis among the members of the Board with the ~~First~~ Vice-Chair succeeding the Chair ~~and the Second Vice-Chair succeeding the First Vice-Chair as vacancies occur~~. Such other officers as may be deemed necessary may be appointed by the Authority Board.

2.01.050. AUTHORITY OF CHAIR AND VICE-CHAIR~~S~~.

The Chair presides at all meetings of the Authority Board and may make or second any motion and present and discuss any matter as a member of the Board. If the Chair is absent or unable to act, the ~~First~~ Vice-Chair will serve until the Chair returns or is able to act and has all of the powers and duties of the Chair. If both the Chair and ~~First~~ Vice-Chair are absent or unable to act, the ~~Second Vice-Chair will serve until the Chair or First Vice-Chair returns or is able to act and has all of the powers and duties of the Chair. If the Chair, First Vice-Chair, and Second Vice-Chair are absent or unable to act,~~ Board will choose ~~one of its number~~ a member of the Executive Committee to serve as the presiding officer.

2.02.040 QUORUM AND VOTING.

(c) A majority of the voting members of the Authority constitutes a quorum for the transaction of business, but a lesser number may convene from time to time.

(b) A resolution, ordinance, or other action of the Board will not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration. Except as otherwise provided in this section, any action taken by the Board requires the affirmative vote of a majority of the appointed members of the Board.

(c) A roll call vote may be requested by any member on any item before the Authority. ~~Voting on all formal resolutions, matters relating to any federal, state, county or city and on such other matters as may be requested by the majority of members of the Authority, will be by roll call and the ayes and noes will be read in the minutes of the meeting.~~

2.03.010 EXECUTIVE COMMITTEE.

The Executive Committee is comprised of not more than five (5) members of the Board. The Committee is comprised of the Chair, ~~First Vice~~ the Vice-Chair, ~~Second Vice-Chair, a~~ the immediate Past Chair, and ~~one~~ two representative members appointed by the Board. If the Past Chair position is vacant, the Board may appoint another past chair or representative. In addition, the Executive Committee shall include an ex-officio non-voting member appointed from among the ex-officio Board members by the Board Chair on an annual basis. The non-voting ex-officio member shall be permitted to attend closed session Executive Committee meetings. The Executive Committee will provide such duties as the Board may assign. If any designated representative is unable to serve on the Executive Committee, the Board may fill such vacancy with another member of the Board.

2.03.020 EXECUTIVE COMMITTEE DUTIES.

The Executive Committee meets on a date and time the Committee determines is convenient or necessary. The Executive Officer and Authority Counsel will attend ~~and~~ the meetings.

2.03.040. LEGISLATIVE ADVISORY COMMITTEE.

The Legislative Advisory Committee shall not exceed a total of eight (8) members. The committee members will be appointed by the Chair of the Authority, subject to confirmation by the Board of Directors, and is comprised of up to five (5) voting members and three (3) ex-officio members, to be the ~~17th~~ 20th Congressional District member, the ~~15th~~ 17th California State Senate District member, and the ~~27th~~ 29th California State Assembly District member or their respective representatives. Committee members serve for a period of one year.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Outstanding Receivables	
Meeting Date: **Agenda Number:**	February 13, 2014 11a	**INFORMATION**

RECOMMENDATIONS:

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

BACKGROUND/DISCUSSION:

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 by state law each shared 50% of the net operating income from Preston Park.

The FORA Board enacted a base-wide Development Fee Schedule in 1999. Preston Park is subject to FORA's Development Fee Schedule overlay. In March 2009, the FORA Board approved the MOU between FORA and Marina whereby a portion of the Preston Park Development Fee was paid by the project. In 2009, Marina transferred $321,285 from Preston Park, making an initial Development Fee payment for the project. The remaining balance is outstanding and is the subject of current litigation.

FISCAL IMPACT:

All former Fort Ord projects are subject to either the developer fee overlay or the Community Facilities District fees to pay fair share of the California Environmental Quality Act required mitigation measures. In addition the outstanding balance is a component of the Basewide Mitigation Measures Fair Share Obligations described in Section 6 a.b. & c. etc. of the FORA Implementation Agreements. If any projects fail to pay their fair share it adds a financial burden to other reoccupied or development projects to compensate.

COORDINATION:

Executive Committee

Prepared by Marcela Fridrich for
Ivana Bednarik

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

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Habitat Conservation Plan Update	
Meeting Date: **Agenda Number:**	February 13, 2014 11b	**INFORMATION**

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 February 5, 2014, the Administrative Committee discussed an HCP Agreements approval schedule (**Attachment A**).

FISCAL IMPACT:
Reviewed by FORA Controller M. F. for 1.3.

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

COORDINATION:

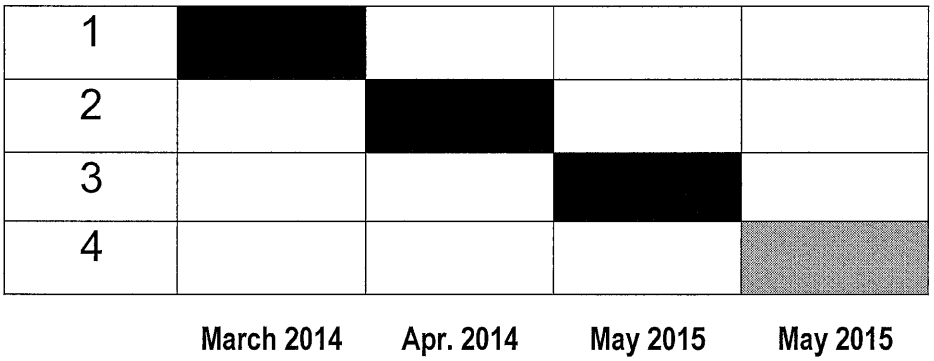
Administrative Committee, Executive Committee, ICF, Denise Duffy and Associates

Prepared by Jonathan Garcia
Jonathan Garcia

Reviewed by D. Steven Endsley
Steve Endsley

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

Fort Ord Habitat Conservation Plan Agreements – Approval Schedule



1. Parties execute the Joint Powers Authority (JPA) Agreement establishing the Fort Ord Regional Habitat Cooperative.
2. Parties execute the Habitat Conservation Plan (HCP) Endowment Agreement.
3. Parties execute the HCP Implementing Agreement.
4. Parties adopt HCP Implementing Ordinance/Policy

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Administrative Committee Report	
Meeting Date: **Agenda Number:**	February 13, 2014 11c	**INFORMATION**

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The approved December 4, 2013 and January 2, 2014 Administrative Committee minutes are attached for Board review (**Attachment A** and **B**). The draft minutes from the December 18, 2013 Joint Administrative/Water Wastewater Advisory Committee will be considered at the next Joint Committee meeting, and will be included in a future Board packet.

FISCAL IMPACT:

Reviewed by the FORA Controller M.F. for 1.B.

Staff time for the Administrative Committee is included in the approved annual budget.

COORDINATION:

Administrative Committee

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 2nd 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

* Voting Members

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

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 31st meeting was rescheduled for January 2nd.

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

ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:15 a.m., Wednesday, January 2, 2014 | FORA Conference Room
920 2nd Avenue, Suite A, Marina CA 93933

1. CALL TO ORDER AND ROLL CALL

Co-Chair Houlemard called the meeting to order at 8:34 a.m. The following were present:

John Ford, County of Monterey*
Elizabeth Caraker, City of Monterey*
Diana Ingersoll, City of Seaside*
Vicki Nakamura, MPC
Graham Bice, UC MBEST
Todd Muck, TAMC
Ariana Green, TAMC

* Voting Members

Patrick Breen, MCWD
Lyle Shurtleff, BRAC
Bob Schaffer
Doug Yount
Jane Haines
Wendy Elliot, MCP

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

2. PLEDGE OF ALLEGIANCE

Elizabeth Caraker led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Senior Planner Jonathan Garcia discussed a previously distributed request for jurisdiction development forecasts to be submitted to FORA by February 5, 2014.

Co-Chair Houlemard stated that US and California Departments of Veterans Affairs and the California Department of General Services representatives would be in the area the following week to tour the California Central Coast Veterans Cemetery site.

4. APPROVAL OF MEETING MINUTES

a. December 4, 2013 Administrative Committee meeting minutes
Diana Ingersoll stated she had not been present for the December 4th meeting and would abstain from voting on the item. As two of the voting Committee members were absent, approval of the minutes was postponed to the next meeting.

5. PUBLIC COMMENT PERIOD

None.

6. AGENDA REVIEW – JANUARY 10, 2014 BOARD MEETING

Co-Chair Houlemard led a review of the draft Board packet, noting that a Pollution Legal Liability (PLL) Insurance Policy meeting had been scheduled for 1:30 p.m. Thursday, January 9th to allow jurisdictional staff to discuss their insurance needs prior to the Board presentation on the item.

7. OLD BUSINESS

a. Transportation Agency for Monterey County (TAMC) Multi-Modal Transit Corridor Update
Ariana Green, TAMC Project Manager, provided a presentation on TAMC's plans for the multi-modal transit corridor. She reviewed the project goals, potential route options, and projected timeline.

b. Review 2010 Monterey County General Plan Consistency Determination

Co-Chair Houlemard stated that the Committee had previously considered this item and had unanimously recommended Board concurrence in the County's consistency determination. Since that time, FORA had received numerous written comments from members of the public and had distributed a written response by special consultant Alan Waltner. The question currently before the Committee was whether those materials altered their previous Board recommendation. Mr. Garcia reviewed the draft Board report on the item and the Committee received comments from members of the public. John Ford, County of Monterey, responded to questions from the Board and public.

MOTION: Diana Ingersoll moved, seconded by Elizabeth Caraker, to sustain the Committee's previous Board recommendation for concurrence in the County's finding of consistency.

MOTION PASSED: unanimous

b. Discuss Habitat Conservation Plan (HCP) Document Review Schedule

Mr. Garcia explained that the review period for HCP documents, which were available on the FORA website, would close on January 24, 2014. Staff requested updates from each of the jurisdictions as to the status of their comments.

8. ITEMS FROM MEMBERS

Associate Planner Josh Metz stated that several of the Fort Ord Base Reuse Implementation Colloquium speakers had requested the audience comments for their panels and were responding on twitter at #fortordcolloquium.

9. ADJOURNMENT

Co-Chair Houlemard adjourned the meeting at 9:56 a.m.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Travel Report	
Meeting Date: **Agenda Number:**	February 13, 2014 11d	**INFORMATION**

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.

Cancelled Travel

ADC Installation Innovation Forum
Destination: San Antonio, TX
Date: February 9-12, 2014
Traveler/s: Executive Officer
The Committee approved this trip at their January meeting with the understanding that the Executive Officer would be participating in one of the panels. Subsequently, the Executive Officer cancelled his participation, as the speaking engagement was no longer required.

Upcoming Travel

Habitat Conservation Plan/Veterans Cemetery Coordination
Destination: Sacramento, CA
Date: February 2014 (Tentative)
Traveler/s: Executive Officer (additional staff and one Executive Committee Member)
This trip was tentatively anticipated to take place in late January, but has been postponed (likely for February). The trip will include meetings with the CA Department of Fish and Wildlife and the CA Department of Veterans Affairs.

2014 Legislative Mission to Washington, D.C.
Destination: Washington D.C.
Date: March 9-12, 2014
Traveler/s: Chair Edelen, Mayor Rubio, Supervisor Potter, Michael Houlemard, (potential for one additional staff member)
FORA's 2014 Annual Legislative Mission is anticipated to include meetings with the US Environmental Protection Agency, US Department of Veterans Affairs, Army Base Realignment and Closure Office, US Office of Economic Adjustment, Bureau of Land Management, and Congressman Farr. The delegation has obtained hotel accommodations in Crystal City for the IRS rate and the Executive Committee has approved a maximum of $650/person for airfare reimbursement.

FISCAL IMPACT:

Reviewed by FORA Controller M. F. for L. B.

Staff time for this item was included in the approved annual budget. Travel expenses are reimbursed according to the FORA Travel Policy.

COORDINATION:

Legislative/Executive Committee

Prepared by _____
Lena Spilman

Approved by _____
Michael A. Houlemard, Jr.

RETURN TO AGENDA

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Public Correspondence to the Board	
Meeting Date: **Agenda Number:**	February 13, 2014 11e	**INFORMATION**

Public correspondence submitted to the Board is posted to FORA's website on a monthly basis and is available to view at http://www.fora.org/board.html.

Correspondence may be submitted to the Board via email to board@fora.org or mailed to the address below:

FORA Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933