



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, April 7, 2017 at 2:00 p.m.

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

### AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON APRIL 6, 2017.**

#### 1. CALL TO ORDER

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

#### 3. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code 54956.9(a): Keep Fort Ord Wild v. Fort Ord Reuse Authority, Monterey County Superior Court, Case No.:M114961

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

#### 5. ROLL CALL

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

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

#### 7. CONSENT AGENDA

#### INFORMATION/ACTION

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

- a. Approve March 10, 2017 Board Meeting Minutes ([p. 1](#))
- b. Administrative Committee ([p. 4](#))
- c. Veterans Issues Advisory Committee ([p. 5](#))
- d. Water/Wastewater Oversight Committee ([p. 12](#))
- e. Groundwater Sustainability Agency Report ([p. 15](#))
- f. Base Reuse Plan Post-Reassessment Category I Report ([p. 22](#))
- g. Environmental Services Cooperative Agreement-Quarterly Report ([p. 42](#))
- h. Building Removal Quarterly Report ([p. 46](#))
- i. Public Correspondence to the Board ([p. 47](#))
- j. Executive Officer Travel Report ([p. 48](#))
- k. General Engineering Service Work Order No. 1 ([p. 49](#))
- l. Legal Services Contract Amendment – Kutak Rock, LLP ([p. 51](#))

#### 8. BUSINESS ITEMS

#### ACTION

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

- a. Local Preference Policy: Amendment to Master Resolution ([p. 57](#))
- b. Economic Development Quarterly Status Update ([p. 59](#))
- c. 2nd Vote: Staff Benefit Adjustment ([p. 62](#))
- d. Resolution fixing the Employer Contribution under the Public Employees' Medical and Hospital Care Act ([p. 64](#))

**9. PUBLIC COMMENT PERIOD**

**INFORMATION**

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

**10. ITEMS FROM MEMBERS**

**INFORMATION**

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

**11. ADJOURNMENT**

**NEXT REGULAR BOARD MEETING: May 12, 2017**



**FORT ORD REUSE AUTHORITY**  
**BOARD OF DIRECTORS REGULAR MEETING MINUTES**  
**2:00 p.m., Friday, March 10, 2017 | Carpenters Union Hall**  
910 2<sup>nd</sup> Avenue, Marina, CA 93933

**1. CALL TO ORDER**

Chair Rubio called the meeting to order at 2:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Colonel Lawrence Brown.

**3. CLOSED SESSION**

a. Conference with Legal Counsel – Gov. Code 54956.9(a): Keep Fort Ord Wild v. FORA, Case No. M114961

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

Authority Counsel, Jon Giffen reported no action taken in closed session.

**5. ROLL CALL**

**Voting Members Present:**

Supervisor Jane Parker (Monterey County)

Supervisor John Phillips (Monterey County)

Supervisor Mary Adams (Monterey County)

Mayor Jerry Edelen (City of Del Rey Oaks)

Councilmember Frank O'Connell (City of Marina)

Councilmember Gail Morton (City of Marina)

Councilmember Alan Haffa (City of Monterey)

Mayor Ralph Rubio (City of Seaside)

Councilmember Dennis Alexander (City of Seaside)

Mayor David Pendergrass (City of Sand City)

Mayor Joe Gunter (City of Salinas)

Councilmember Cynthia Garfield (City of Pacific Grove)

Mayor Steve Dallas (City of Carmel-by-the-sea)

**Ex-officio (Non-Voting) Board Members Present:** Debbie Hale (TAMC), Dr. PK Diffenbaugh (MPUSD), Dr. Donna Blitzer (UCSC), Andre Lewis (CSUMB), Bill Collins (Ft Ord BRAC Office), Vicki Nakamura (MPC), Lisa Rheinheimer (MST), Dr. Thomas Moore (MCWD), Colonel Lawrence Brown (US Army)

**Absent:** Kathleen Lee (20<sup>th</sup> Congressional District), Nicole Charles (17<sup>th</sup> State District Senator Monning), Erica Parker (29<sup>th</sup> State Assembly member Stone)

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

Executive Officer, Michael Houlemard, acknowledged and introduced Veterans Transition Center Executive Director, Kurt Schake. Also, public correspondence regarding Cal-Am Slant well was made available to the Board.

**7. CONSENT AGENDA**

- a. Approve January 26, 2017 Special Meeting Minutes
- b. Approve February 10, 2017 Meeting Minutes
- c. Administrative Committee
- d. Veterans Issues Advisory Committee

- e. Water/Wastewater Oversight Committee
- f. Habitat Conservation Plan Update
- g. Public Correspondence to the Board
- h. Executive Officer Travel Report
- i. Finance Committee
- j. Environmental Services Cooperative Agreement Grant
- k. Amendment Background Report

Board member Morton requested item 7g – Public Correspondence to the Board be pulled from the consent agenda for discussion. Comments from the Board and the public were received. Staff responded with information about the process for public correspondence to the Board.

***Motion:*** On motion by Board member Morton and second by Board member Parker and carried by the following vote, the Board approved consent agenda items 7a – 7g; 7h-7j.

**MOTION PASSED UNANIMOUSLY**

***Motion for item 7g:*** On motion by Board member Morton and second by Board member Parker and carried by the following vote, the Board approved consent agenda item 7g – Public Correspondence to the Board.

**MOTION PASSED UNANIMOUSLY**

**8. BUSINESS ITEMS**

- a. Fort Ord Reuse Authority Fiscal Year 2016-17 Mid-Year Budget

Mr. Houlemard presented the item and Helen Rodriguez, Controller assisted in answering questions from the Board. Comments from the public were received.

***Motion:*** On motion by Board Member Gunter and seconded by Board member Morton and carried by the following vote the Board to separate the vote from the Mid-Year Budget and healthcare cost.

**MOTION PASSED UNANIMOUSLY**

***Motion:*** On motion by Board Gunter and second by Board member Haffa and carried by the following vote the Board approved to pay the healthcare cost of \$4,939.

Noes: Parker, O'Connell, Morton, Adams, Phillips, Garfield

**SECOND VOTE REQUIRED AT APRIL 7, 2017 BOARD MEETING**

- b. Multi-Modal Corridor (MMC) Report
  - i. Approve Memorandum of Agreement to cooperate in integrating the new MMC alignment
  - ii. Approve Memorandum of Agreement to terminate the 2010 MMC Agreement

Jonathan Brinkmann, Principal Planner introduced the item and Mike Zeller, TAMC Principal Planner whom made the presentation. The staff recommendation to the Board included authorizing the termination of the 2010 agreement, authorize signing of New Alignment Agreement and make a finding that additional environmental analyses are not needed before entering the New Alignment Agreement due to lack of substantial project changes.

Comments were received from the Board and the public.

***MOTION:*** *On motion by Board member Morton and seconded by Board member Parker and carried by the following vote the Board approved the following:*

- i. Approve Memorandum of Agreement to cooperate in integrating the new MMC alignment.*
- ii. Approve Memorandum of Agreement to terminate the 2010 MMC Agreement.*
- iii. The resolution findings stated in the resolution.*

c. Local Preference Policy: Amendment to Master Resolution

Sheri Damon, Prevailing Wage/Risk Manager presented the item. The staff recommendation to the Board included amending the Master Resolution by deleting Section 3.03.040(d) – removes sunset; and add Section 3.02.130(c) regarding bid preference, proposal or qualifications preference and definitions/limitations.

The Board and public provided comments on the item details.

***MOTION:*** *On motion by Board member Morton and second by Board member Alexander and carried by the following vote, the Board moved to continue the amendments to the Master Resolution.*

**MOTION PASSED UNANIMOUSLY**

d. Calendar Year 2017 FORA Board Agenda Items/Work Program

Josh Metz, Economic Development Manager reviewed the 2017 work program schedule and color key. There was no action taken on this item.

**9. PUBLIC COMMENT**

Ron Cheshire provided comments on about prevailing wage.

**10. ADJOURNMENT** at 4:12 p.m.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Administrative Committee

**Meeting Date:** April 7, 2017

**Agenda Number:** 7b

**INFORMATION/ACTION**

### RECOMMENDATION:

Receive a report from the Administrative Committee.

### BACKGROUND/DISCUSSION:

The Administrative Committee met on March 15, 2017. The March 1, 2017 meeting minutes approved at this meeting are attached (**Attachment A**).

### FISCAL IMPACT:

Reviewed by the FORA Controller 

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

### COORDINATION:

Administrative Committee

Prepared by   
Dominique L. Jones

Approved by   
Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES**  
**8:30 a.m., Wednesday, March 1, 2017 | FORA Conference Room**  
920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

Co-Chair, City Manager Craig Malin called the meeting to order at 8:30 a.m.

The following members were present:

AR = After Roll Call; \* = voting member

Layne Long\* (City of Marina)

Craig Malin\* (City of Seaside)

Melanie Beretti\* (Monterey County)

Elizabeth Caraker\* (City of Monterey)

Jerry Edelen\* (City of Del Rey Oaks)

Anya Spear (CSUMB)

Steve Matarazzo (UCMBEST)

Michelle Overmeyer (MST)

Mike Zeller (TAMC)

Bill Collins (BRAC)

Vicki Nakamura (MPC)

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mr. Malin.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

Mayor Jerry Edelen, City of Del Rey Oaks advised the committee that he was attending to this meeting to represent his jurisdiction, but would abstain from voting due to his position on the Executive Committee. Mayor Edelen offered to provide any background information necessary to assist in the discussion of agenda items.

**4. PUBLIC COMMENT PERIOD**

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

There were no verbal comments received from the public.

**5. APPROVAL OF MEETING MINUTES**

**ACTION**

a. February 15, 2017 Regular Meeting Minutes

*MOTION: On motion by Committee member Long and second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the regular meeting minutes for February 15, 2017 with corrections to the roll call listing.*

**MOTION PASSED UNANIMOUSLY**

**6. March 10, 2017 FORA BOARD MEETING AGENDA REVIEW**

Jonathan Brinkmann, Principal Planner, provided an overview of the March 10, 2017 Board meeting. Mr. Brinkmann responded to an inquiry about the Habitat Conservation Plan status. There were no changes made to the draft March 10, 2017 Board Packet.

**7. BUSINESS ITEMS**

**INFORMATION**

- a. Capital Improvement Program (CIP)
  - i. Transportation Priority Ranking
  - ii. FY 2017-2018 CIP Schedule

Jonathan Brinkmann, Principal Planner, reviewed the Capital Improvement Program items. The draft FY 2016/17 evidence based method for priority ranking chart was reviewed. The Committee identified inconsistencies on the chart and staff answered questions to clarify the data provided. The item will return on March 15, 2017 for a vote.

Public comment was received on the item and staff answered questions from both the public and the Committee.

- b. Groundwater Sustainability

Mr. Brinkmann provided an update on the unresolved Groundwater Sustainability Agencies (GSA) dispute. Staff sought direction from the Committee on how to assist the agencies to resolve the dispute before June 30, 2017 when the Department of Water Resources will impose fees.

Steve Endsley, Assistant Executive Officer, provided information about the presentation regarding the GSA dispute that was made to the Water/Waste Water Oversight Committee on February 22, 2017.

Public comment was received on the item and staff answered questions from the public and the Committee. Staff was directed to return with more information about the annexation process at the March 15, 2017 meeting.

- c. 2017 FORA Fee Reallocation Study Update

Consultants Kimley-Horn provided an update on the fee reallocation study and provided a copy of the deficiency analysis and fee allocation study document. The Committee was briefed on the consultant's process of how they arrived at the numbers and how the data compares with the 2005 data. Staff and the consultants responded to public comment and questions from the Committee.



d. Local Preference Policy

Sheri Damon, Prevailing Wage Coordinator/Risk Manager provided an overview and background of the local preference item. The proposed changes in accordance with the Board's direction at the February 10, 2017 meeting were reviewed. Staff responded to questions and summarized the recommendations to take to the Executive Committee.

e. Jobs Survey

Josh Metz, Economic Development Manager, provided a status of the job survey. Mr. Metz reported that the process of updating the employer database is in progress and he will be going door to door in Seaside and Marina to gather the information necessary to proceed.

**8. ITEMS FROM MEMBERS**

There were no items from Committee members.

**9. ADJOURNMENT** at 10:12 a.m.

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>	
<b>CONSENT AGENDA</b>	
<b>Subject:</b>	Veterans Issues Advisory Committee
<b>Meeting Date:</b>	April 7, 2017
<b>Agenda Number:</b>	7c
	<b>INFORMATION/ACTION</b>

**RECOMMENDATION:**

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

**BACKGROUND/DISCUSSION:**

The Veterans Issues Advisory Committee met on March 23, 2017. The February 23, 2017 meeting minutes approved at this meeting are attached (**Attachment A**).

**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**COORDINATION:**

VIAC

Prepared by   
 Dominique L. Jones

Approved by   
 Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY  
VETERANS ISSUES ADVISORY COMMITTEE (VIAC) MEETING MINUTES  
3:00 P.M. February 23, 2017 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A., Marina CA 93933**

**1. CALL TO ORDER**

Chair, Mayor Jerry Edelen called the meeting to order at 3:00 P.M.

**Committee Members:**

James Bogan, Disabled American Vets  
Col. Lawrence Brown, Presidio of Monterey  
CSM Roberto Marshall, Presidio of Monterey  
Mayor Jerry Edelen, City of Del Rey Oaks (Chair)  
Edith Johnsen, Veterans Families  
Jack Stewart, Fort Ord Veterans Cemetery Citizens Advisory Committee  
Sid Williams, Monterey County Military & Veterans Advisory Commission (VAC)  
Ian Oglesby, US Army Veteran  
Mary Estrada, United Veterans Council

**2. PLEDGE OF ALLEGIANCE** led by Jack Stewart

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

Mayor Edelen acknowledged former Seaside Mayor Pro-Tem, Ian Oglesby, who is also a US Army veteran, has recently joined this committee.

**4. PUBLIC COMMENT PERIOD**

There were no verbal comments from the public

**5. APPROVAL OF MEETING MINUTES**

a. January 26, 2016 Regular Meeting Minutes

*MOTION: On motion by Committee member Johnsen and second by Committee member Bogan and carried by the following vote, the VIAC moved to approve the January 23, 2017 meeting minutes.*

**MOTION: PASSED UNANIMOUSLY**

**6. BUSINESS ITEMS**

**a. California Central Coast Veterans Cemetery (CCCVC) Status Report**

- i. Cemetery Administrator's Status Report Robert Norris noted Daria Maher was expected to be in attendance, but had a scheduling conflict and reported that by

way of informal notice, Dan Fahey is no longer with CDVA and any communications should be directed to Angela Yamamoto.

ii. **Veterans Cemetery Land Use Status**

Update provided by Principal Analyst, Robert Norris

- Mr. Norris reported on Senator Monning's CCCVC Focus Group meeting as positive and the significant take-away was that the department is committed to submitting the expansion application by June 30, 2017 and have been permitted to use the master plan as the working document. There will be some revisions, such as reduction of number of columbarium, requesting the number to be about 2,500 in-ground crypts. Expectation is that the Department of Finance sign-off to be October, but unsure if it's 2017 or 2018. Jack Stewart suggested 2017 makes more sense for the process timeline. Mr. Norris continued his report by stating the state/local share to be about \$2-\$3M, which covers the EIR. Mr. Stewart added that role of Monning's focus group is to review memorial and monument suggestions, but the real effort should be placed on Phase II.
- Mr. Norris reported that the cemetery endowment parcel MOU would have been discussed at a Tuesday meeting, but that meeting was cancelled. There will be a working group of Monterey County staff, FORA staff and Foundation staff to go over the MOU document after receiving County comments. He added that the endowment parcel does not need to be settled to proceed with the cemetery planning application. Sid Williams reported he had a productive meeting with Supervisor Mary Adams on cemetery and VTC issue, adding that she was very receptive. Discussion followed and was agreed by all to invite Supervisor Adams and Supervisor Alejo to attend the next VIAC meeting.
- Mr. Norris commented on environmental mitigations by saying there are a few parcels identified, but there are no specific parcels selected yet and will eventually be required to "anchor" the EIR.

**b. Fundraising Status**

i. **CCVCF Status Report**

Candy Ingram – Reported: contributions are not at a high level at this time, usually about \$1000 per month; meeting with Community Foundation will be made within the next two weeks to request help with reaching out to other community foundations in other counties; invitation was made to attend the Scottish American Military Society's annual meeting in Sacramento. Ms. Ingram and Supervisor Parker will be attending; the American Legion Riders planned cross-country ride has garnered a lot of public attention already while a national ad will be going out shortly and asked if PayPal could be set up for this. Mr. J. Fagan reported they are finalizing the donor page and noted that this campaign has been the most polished strategy he's ever seen and is glad the foundation is partnering on this. Ms. Ingram added that information on this will be sent out to all. In terms of grant writing, Ms. Ingram reported it is not very encouraging and said the foundation is in need of an intern to help with grant research/writing. Mr. J. Fagan suggested contacting CSUMB for intern assistance.

**c. VA/DoD Veterans Clinic Status Report**

- i. **Historic Flag Pole Variance Update**  
Sid Williams reported an engineer's survey of the flag pole was made, with the estimated cost of repair and reducing the height to 80 feet is about \$4,000.
- ii. **Operational Schedule**  
Mr. Norris reported the clinic's estimated opening will be summer of 2017.

**d. Veterans Transition Center (VTC) Housing Construction**

Mr. Jack Murphy reported a ribbon cutting ceremony will be held March 31. He added a correction needs to be made on the previous meeting minutes that an application to Home Depot for \$500,000 donation was made, not funds received.

Kurt Schake has been selected as the new Executive Director.

**e. Historical Preservation Project**

The project is still in search of grants for funding. Suggestion was made to seek out education related grant possibilities.

**7. ITEMS FROM MEMBERS**

Sgt. Major Roberto Marshall announced there will be a Bronze Star presentation made to two surviving service members who were at the Battle of the Bulge and asked that any known service members serving after World War II submit their names for Bronze Star consideration to the HRC. Sgt. Marshall added that there will be a Vietnam Memorial pin presented to service members on May 12 and that any known person who served in Vietnam submit their name to HRC as well.

Col. Larry Brown asked committee members if there is any interest in moving the drill sergeant statute to the cemetery. Discussion followed on the history of this idea and the possibility of it being place at the "triangle" parcel in front of the cemetery entrance at the very least.

Mr. Michael Houlemard brought up the issue of wayfinding for members of the public who are given incorrect directional information. Discussion followed on the importance of permanent and visible directional/location signs, in addition to providing correct Google Maps information. Mr. Fagan offered to work with Daria Maher on correcting the Google Maps issue.

**8. ADJOURNMENT at 3:55 P.M.**

**NEXT SCHEDULED MEETING: March 23, 2017**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Water/Wastewater Oversight Committee

**Meeting Date:** April 7, 2017

**Agenda Number:** 7d

**INFORMATION/ACTION**

### RECOMMENDATION:

Receive an update from the Water/Wastewater Oversight Committee (WWOC).

### BACKGROUND/DISCUSSION:

The WWOC met on March 15, 2017 and approved the minutes from its February 22, 2017 meeting (**Attachment A**). The agenda included review of the Draft 2017-2018 MCWD Proposed Budget, 5 year Capital Improvement Program, and preliminary 2018-2019 Budget Summary. The committee then reviewed the draft Frequently Asked Questions (F.A.Q) on Local Water Supply, continuing the topic to the April meeting.

### FISCAL IMPACT:

Reviewed by FORA Controller 

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

### COORDINATION:

WWOC, Marina Coast Water District

Prepared by

  
Peter Said

Approved by

  
Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY  
WATER/WASTEWATER OVERSIGHT COMMITTEE  
MEETING MINUTES**

920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933 | FORA Conference Room  
9:30 a.m., Wednesday, February 22, 2017

**1. CALL TO ORDER**

Confirming quorum, Peter Said called the meeting to order at 9:34 a.m. The following were present:

**Committee Members:**

Nick Nichols, Monterey County  
Mike Lerch, CSUMB  
Brian McMinn, City of Marina  
Steve Matarazzo UCSC

**FORA Staff:**

Steve Endsley  
Jonathan Brinkmann  
Peter Said

**Other Attendees:**

Mike Wegley, MCWD  
Kelly Cadiente, MCWD  
Keith Van Der Maaten, MCWD  
Patrick Breen, MCWD  
Bob Schaffer  
Ken Nishi  
Sean Kranyak, M.P.P.  
Andy Sterbenz, Schaaf & Wheeler

**2. PLEDGE OF ALLEGIANCE** led by Brian McMinn.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

Mr. Endsley announced FORA has seen an increase in unsubstantiated/ non-contextual information presented publically, and suggested correspondence by an impartial WWOC may be beneficial.

**4. PUBLIC COMMENT PERIOD**

None.

**5. APPROVAL OF MEETING MINUTES**

a. **MOTION:** Nick Nichols, moved to appoint Peter Said Chair pro-tem in the absence of Rick Riedl, Seconded by Brian McMinn.

**MOTION PASSED:** UNANIMOUSLY.

b. December 14, 2016 Minutes

**MOTION:** Committee member Nick Nichols moved to approve the December 14, 2016 Water/Wastewater Oversight Committee (WWOC) minutes with the addition of Brian McMinn on the Attendees list.

**MOTION PASSED:** UNANIMOUSLY.

## **6. BUSINESS ITEMS**

### **a. Q2 Quarterly Report**

Ms. Kelly Cadiante of Marina Coast Water District (MCWD) provided the committee with the Quarter 2 (Q2) Quarterly Report. She reported that MCWD secured an agreement with the ARMY to replace 450+ meters for their Ord Community housing. Mr. Mike Wegley of MCWD provided the committee with the Capital Improvement Program updates. Mr. Wegley noted the re-prioritization of the Hatten lift Station and Ord Village Force Main due to issues exposed by the recent heavy rains. Mr. Said inquired about the status of the State Revolving Fund Loan for the RUWAP 'Pipeline'. Mr. Wegley and Mr. Van Der Maaten reported the design process is continuing as further communication with the State and Monterey Regional Water Pollution Control Agency (MRWPCA) will determine the path forward. Ms. Cadiante affirmed Mr. Nishi's questions concerning MCWD's ability to fulfill the bond covenant.

### **b. Review Fiscal Year (FY) 2017-2018 Draft Budget**

Ms. Cadiante presented the updated Budget Approval Calendar. Mr. Endsley reminded the committee of the purposeful approach used to review the data and move the budget towards recommendation to the FORA Board in May.

### **c. Capital Improvement Program**

Mr. Wegley reviewed the upcoming 5 year Capital Improvements Program and requested jurisdictional input to coordinate various projects such as the Intergarrison road water line to support E. Garrison. Mr. Wegley reported on the Master Planning process and speculated the WWOC review of the Master Plan in the first part of FY 2017-2018. Mr. Said requested MCWD advance the South Boundary Road Project to coincide with FORA's CIP.

## **7. ITEMS FROM MCWD**

Mr. Van Der Maaten reported on the Ground Water Sustainability application and the overlap with Monterey County's application. He noted the State Water Board would charge up to \$40 per acre foot pumped per month to mediate overlapping GSA areas.

## **8. ITEMS FROM MEMBERS**

None.

## **9. ADJOURNMENT**

Chair Riedl adjourned the meeting at 10:45 a.m.

**NEXT MEETING: March 15, 2017**



# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Groundwater Sustainability Agency Report

**Meeting Date:** April 7, 2017

**Agenda Number:** 7e

**INFORMATION**

### RECOMMENDATION(S):

Receive a report regarding Groundwater Sustainability Agency (GSA) formation.

### BACKGROUND:

In 2014, the California legislature adopted, and the Governor signed into law, three bills (SB 1168, AB 1739, and SB 1319) collectively referred to as the "Sustainable Groundwater Management Act" (SGMA) that initially became effective on January 1, 2015, and have been subsequently amended. The stated purpose of the SGMA is to provide for the sustainable management of groundwater basins, to enhance local management of groundwater to the greatest extent feasible, and to provide local groundwater agencies with the authority, and technical and financial assistance necessary to manage groundwater sustainably.

The SGMA requires the designation of Groundwater Sustainability Agencies (GSAs) to achieve groundwater sustainability through the adoption and implementation of Groundwater Sustainability Plans (GSPs) or alternative plans, for all medium and high priority basins/sub-basins as designated by the California Department of Water Resources (DWR). The Salinas Valley Groundwater Basin is a high priority basin, and the 180/400 foot aquifer sub-basin is designated in critical overdraft. The SGMA also requires that basins and sub-basins have a designated GSA by no later than June 30, 2017, and high or medium priority basins in critical overdraft have an adopted GSP by no later than January 31, 2020.

### DISCUSSION:

Marina Coast Water District (MCWD) and the County of Monterey Water Resources Agency (MCWRA) have each submitted Notices of Intents (NOIs) to DWR to be GSA's over the Monterey sub-basin of the Salinas Valley basin (a large portion of former Fort Ord). This creates a circumstance of service area overlap (**Attachment A**), which must be resolved before a GSA can be recognized for the sub-basin.

If an entire basin is not covered by an exclusive GSA(s) by June 30, 2017, according to Water Code section 10735.2(a), the State Board, after notice and a public hearing, may designate a high- or medium-priority basin as a probationary basin, if a local agency or a collection of local agencies has not decided to become a GSA(s) and develop GSP(s) for the entire basin – or if a local agency has not submitted an Alternative Plan for the entire basin. If multiple local agencies have decided to become GSAs in a basin, but those decisions have not taken effect due to unresolved service area overlap, then those disputed areas would be considered unmanaged areas for the purposes of groundwater extraction reporting, as no exclusive GSA(s) for the entire basin has/have been established. The local agencies involved in the GSA formation dispute need to reach agreement to allow prompt designation of a GSA. Otherwise, the State Board could intervene if necessary.

The groundwater extraction reporting requirements for unmanaged areas of a basin will begin on July 1, 2017, and are described in Part 5.2 of Division 2 of the Water Code, commencing with section 5200. The State Board's fee schedule to recover costs associated with its intervention role is described in Water Code section 1529.5. Water Code References: section 1529.5, section 5200 et seq., section 10723 et seq., section 10724. The proposed SGMA Fee Schedule is provided under **Attachment B**.

The proposed SGMA Fee Schedule includes different tiers ranging from \$10 per acre-foot per year pumped to \$55 per acre-foot per year pumped. Also, if the state intervention requires special studies and the fees are insufficient to cover these costs, the state will assess groundwater extractors for these costs as well. If the GSA overlap dispute for the Monterey sub-basin of the Salinas Valley basin (Fort Ord) continues past the June 30, 2017 deadline and the State assesses fees for its intervention, MCWD, serving as the water purveyor under contract with FORA, would be assessed the fees. MCWD would most likely be required to recover these additional costs from its former Fort Ord ratepayers until MCWD and MCWRA resolve the GSA formation dispute.

In summary, prompt resolution to the GSA formation dispute before June 30, 2017 would benefit local agencies and avoid state intervention and fees. The FORA Administrative Committee as an advisory committee to the Board is reviewing this item regularly. Staff will report committee recommendations to the Board.

**FISCAL IMPACT:**

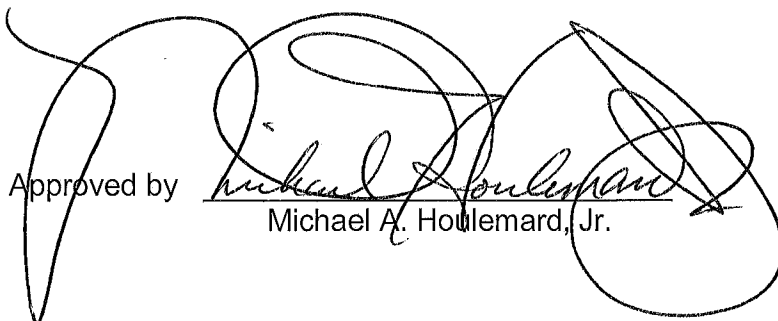
Reviewed by FORA Controller 

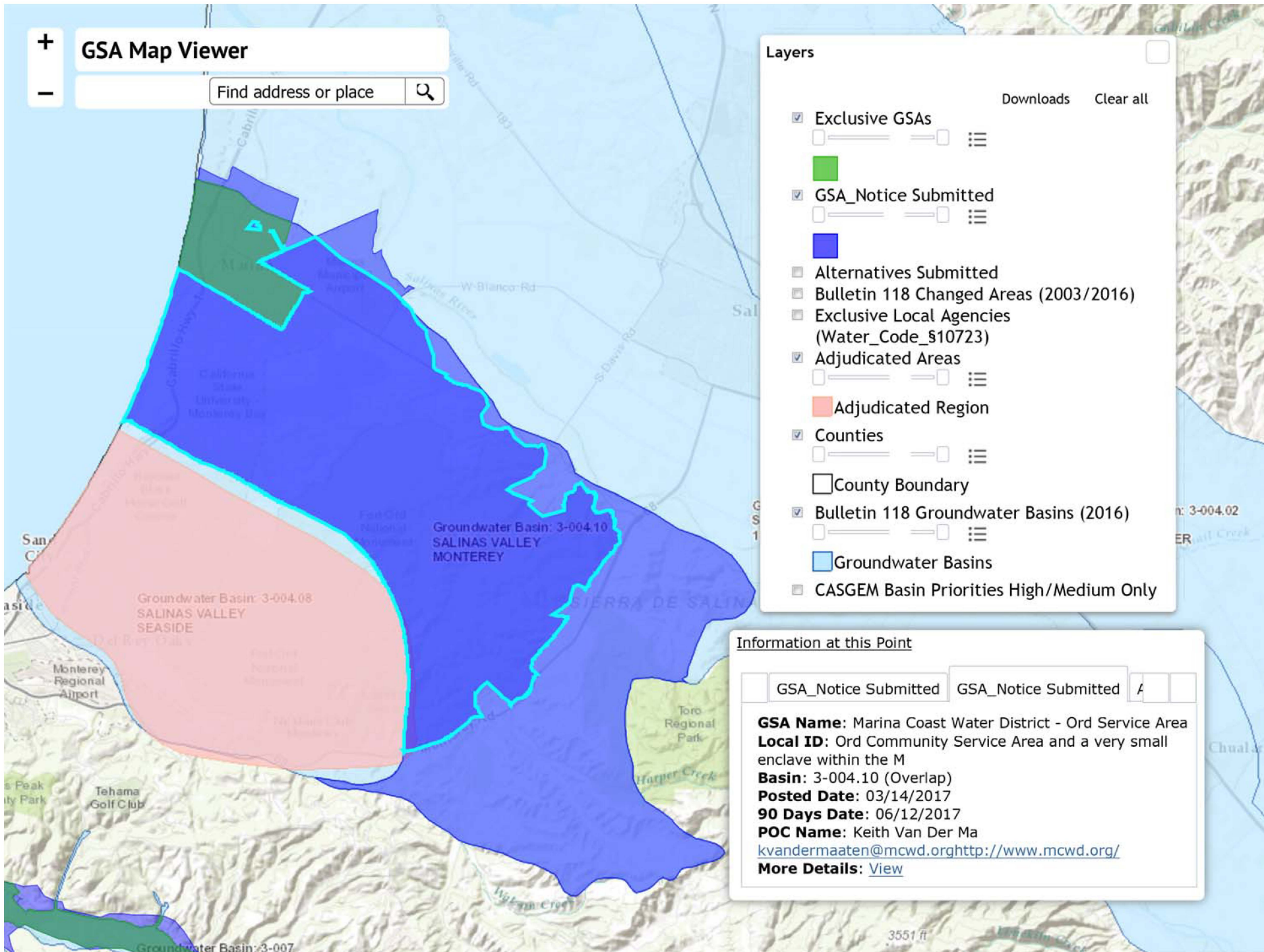
Staff time for this item is included in the approved annual budget.

**COORDINATION:**

Administrative Committee, MCWRA, MCWD, Authority Counsel.

Prepared by   
Jonathan Brinkmann

Approved by   
Michael A. Houlemard, Jr.



# Proposed Sustainable Groundwater Management Act (SGMA) Fee Schedule

## INTRODUCTION

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The State Water Resources Control Board (State Water Board) is conducting a series of stakeholder meetings throughout summer and fall 2016 to assist in the development of a groundwater extraction reporting fee schedule, as required by the Sustainable Groundwater Management Act (SGMA). The objectives of the stakeholder meetings are as follows:

- Engage stakeholders in the SGMA fee schedule development process.
- Explain issues considered in drafting the proposed fee schedule.
- Gain a better understanding of stakeholder interests and concerns.

Following the stakeholder meetings, State Water Board staff will develop and release a draft fee schedule emergency regulation for public comment and hold at least one public meeting to receive public comment on the draft emergency regulation. The State Water Board will consider adoption of the proposed fee schedule emergency regulation in spring 2017. The fee schedule must be effective by July 1, 2017.

## BACKGROUND

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SGMA requires the formation of local groundwater sustainability agencies (GSAs) in California's high- and medium-priority groundwater basins. Sustainability agencies are required to develop groundwater sustainability plans that will bring basins into sustainability within 20 years of plan implementation. If locals are unable or unwilling to sustainably manage their basin, the State Water Board is authorized to intervene. State intervention can only be triggered by one of the following events:

Date	Trigger
July 1, 2017	Failure to form a GSA.
January 31, 2020	Failure to adopt and/or adequately implement a groundwater sustainability plan for a basin in a critical condition of overdraft.
January 31, 2022	Failure to adopt and/or adequately implement a groundwater sustainability plan in all other high- or medium-priority basins.
January 31, 2025	There are significant depletions of interconnected surface waters and the sustainability plan is not being implemented adequately.

## STATE WATER BOARD FEE AUTHORITY

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Portions of basins that are not within the management area of a GSA by July 1, 2017, are considered unmanaged areas. Groundwater extractors in unmanaged areas are required to file an annual groundwater extraction report with the State Water Board. (Wat. Code §5202, subd. (a)(2).) If locals fail to form a GSA, fail to develop an adequate sustainability plan, or fail to implement the plan adequately (based on the deadlines outlined above), the State Water Board may designate the basin as probationary and step in to directly manage groundwater extractions in the basin. (Wat. Code §§ 10735.2 & 10735.8.) All extractors in a probationary basin are required to submit an annual groundwater extraction report, although the State Water Board has discretion to exempt certain probationary extractors from reporting if appropriate. (Wat. Code §5202(a)(1).) Each annual extraction report must be accompanied by a fee to cover associated programmatic costs. (Wat. Code §§ 1529.5 & 5202, subd. (f).)

The State Water Board is required to adopt, by emergency regulation, a fee schedule to cover SGMA-related costs. (Wat. Code §1530.) The emergency regulation format allows the State Water Board to update the fee

## Proposed Sustainable Groundwater Management Act (SGMA) Fee Schedule

schedule annually to reflect changing conditions and programmatic costs. It also important to note that the fees described below will not be applicable if local implementation of SGMA is successful.

### PROPOSED FEE SCHEDULE

There are three “levels” of State Water Board intervention, each level is associated with greater staff workloads and associated costs.

1. Unmanaged Area Intervention. Unmanaged areas are portions of basins that are outside of a GSA service area. Groundwater extractors in unmanaged areas are required to submit an annual report to the State Water Board detailing monthly groundwater extraction volumes, place of use, and purpose of use, and may be required to submit other information necessary to evaluate the basin.
2. Probationary Basin Intervention. A probationary basin is a basin that the State Water Board has designated to be probationary in accordance with the procedures described in Chapter 11 of SGMA. (Wat. Code §10735, et. seq.) The State Water Board will evaluate conditions in the basin and may designate the basin once one of the probationary triggers described by Water Code section 10735.2 has occurred. Probationary status will result in an increased amount of staff activities as solutions to deficiencies in basin management are developed or additional information necessary for basin management is acquired.
3. Interim Plan Intervention. The State Water Board may need to manage groundwater conditions in a probationary basin if the deficiencies that resulted in probation are not corrected. In such a scenario, the State Water Board will develop and implement an interim plan to manage groundwater extractions. (Wat. Code §10735.8.) The development and implementation of interim plans will require significant staff time, in addition to technical studies or data collection performed under contract.

The draft fee schedule ties the fees to the type of Board activity occurring in the basin, as follows:

Fee Category	Applicable Parties – Reporting Extractors	Fee Amount
Base Filing Fee <sup>(a)</sup>	Any extractor submitting an extraction report	\$100 per well
Fees based on intervention status <sup>(a)</sup>		
1. Unmanaged Area Rate	Extractors in an unmanaged area.	\$10 per acre-foot per year, if metered
		\$25 per acre-foot per year, if unmetered
2. Probationary Basin Rate	Extractors in a probationary basin.	\$40 per acre-foot per year
3. Interim Plan Rate	Extractors in a probationary basin after the time period identified by § 10735.4 or § 10735.6 (180 days or one year, accordingly).	\$55 per acre-foot per year
Fees independent of intervention status <sup>(b)</sup>		
Late Fee	Extractors that do not file reports by the due date.	25% of total fee amount, accrued monthly
Special Studies Fee	May apply to extractors when basin-specific special studies are required and the probationary or interim plan rates are insufficient. The additional cost of developing special technical studies such as groundwater investigations or modeling will be apportioned to extractors based on volume of water extracted.	

(a) Can apply to de minimis extractors in probationary basins at the Board’s discretion.

(b) These fees are paid in addition to the “Fees based on intervention status.”



# Proposed Sustainable Groundwater Management Act (SGMA) Fee Schedule

## CHALLENGES TO DEVELOPING THE SGMA FEE SCHEDULE

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There are two primary challenges in developing the SGMA fee schedule that create difficulties in anticipating programmatic costs: 1) uncertainty regarding the number and scope of unmanaged areas and probationary basins, and 2) the level of reporting compliance.

- 1) Staff workload, and resulting fees, are contingent on the number and scope of unmanaged areas and probationary basins. However, at this time there is significant uncertainty regarding the number and scope of unmanaged areas and probationary basins. In addition, the State Water Board's authority to designate probationary basins is phased in over a 10-year period and is ongoing from that point forward. Because the Board cannot pre-determine the number of unmanaged areas and probationary basins, it must rely on estimating the level of program activities.
- 2) State Water Board staff anticipate 30 to 50 percent reporting and fee submittal compliance in the first year of collecting fees; 50 to 60 percent in the second year; and 70 to 80 percent through year five. This anticipated compliance rate is applicable to the total number of extractors that must report, not the number of basins or areas generally in compliance with SGMA deadlines. SGMA authorizes the State Water Board to recover costs over a period of years, which will allow staff to create a workload history to better estimate future fees.

As a note, although there is uncertainty regarding the magnitude of program actions, the nature of the emergency regulations allows the State Water Board to update its fee schedule as the challenges described above are better understood over time.

## DISCUSSION ON PROPOSED FEE CATEGORIES

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The following questions are aimed at focusing input on elements of the draft fee schedule.

### Establishing the Fee Structure

1. What are other options the State Water Board should consider? Examples include a cap on the maximum fee amount, a larger base fee, or tiered rates.
2. Is it appropriate to scale the fees based on volumes of water used? Examples of other options include scaling by irrigated acreage, service area size, or crop type.

### Incorporating Incentives

1. Will the late fee incentivize report submittal compliance?
2. Are there are other incentives the State Water Board should consider?
3. Will the metering discount for unmanaged areas incentivize more accurate data reporting?

### Fee Stability

1. Is it appropriate to apply the Special Studies Fee to individual basins?
2. Do you have suggestions on how the State Water Board can recover programmatic costs resulting from activities in specific basins during probationary or interim plan periods?

# Proposed Sustainable Groundwater Management Act (SGMA) Fee Schedule

## SUPPORTING INFORMATION AND CLARIFICATIONS

### Fee Example Scenarios

- The following table provides examples of how the proposed probationary fee rates for eight hypothetical farms would approximately relate to a fee based on irrigated acreage:

Crop	Irrigated Acreage	Acre Feet of Water Applied Annually Per Acre (DWR <sup>(b)</sup> )	Probationary Rate	Cost per Acre	Total Cost
Alfalfa	150	5.05	\$40	\$202	\$30,300
Almonds	150	3.54	\$40	\$142	\$21,240
Corn	150	2.83	\$40	\$113	\$16,980
Cotton	150	3.09	\$40	\$124	\$18,540
Grapes	150	1.86	\$40	\$74	\$11,160
Misc. Fruit Trees	150	3.3	\$40	\$132	\$19,800
Pistachios	150	3.54	\$40	\$142	\$21,240
Rice	150	4.56	\$40	\$182	\$27,360

(b) State-wide averages, Department of Water Resources, Agricultural Land and Water Use Estimates, 2010

- The following table provides examples of how the proposed probationary fee rates would apply to a municipal water supplier and industrial user:

Purpose of Use	Example Volume	Probationary Rate	Total Cost
Municipal Water Supply	3,600 acre-feet	\$40	\$144,000
Semiconductor Factory (Industrial)	5,200 acre-feet	\$40	\$208,000

### De Minimis Extractors

Water Code Section 10721, subdivision (e), defines a de minimis extractor as “a person who extracts, for domestic purposes, two-acre feet or less per year.” A person who extracts two acre-feet or less per year for a non-domestic purpose will not be considered a de minimis extractor. Domestic purposes do not include growing commercial crops or supporting commercial livestock. De minimis users are exempt from reporting in unmanaged areas. However Water Code Section 10735.2, subdivision (c)(2), authorizes the State Water Board to require de minimis extractors to report in a probationary basin if necessary. De minimis extractors that are required to report in a probationary basin will only pay the base filing fee and, if applicable, the late fee, but will not pay a per acre-foot rate.

### Interim Plans and Groundwater Sustainability Plans

State intervention is intended to be a temporary measure to address conditions of long-term overdraft or significant depletions of interconnected surface waters. An interim plan is not intended for permanent management of a basin. Local efforts to address the deficiencies that caused state intervention will need to be funded by local agencies while groundwater extractors are also paying intervention fees to the State Water Board, likely resulting in the potential scenario of extractors paying both local and state fees.

### State Water Board Flexibility during Intervention

SGMA provides the State Water Board flexibility in how intervention proceeds in three important ways:

- Areas in compliance with the sustainability goal will be excluded from probation. (Wat. Code §10735.2, subd. (e).);
- Extractors may be exempted from probationary reporting and related fees if appropriate. (Wat. Code §10735.2, subd. (c).); and
- Successful elements of a GSP will be incorporated into an interim plan. (Wat. Code §10735.8, subd. (e).)

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	Base Reuse Plan Post-Reassessment Category I Report	
<b>Meeting Date:</b>	April 7, 2017	<b>INFORMATION</b>
<b>Agenda Number:</b>	7f	

### RECOMMENDATION(S):

Receive staff report on Base Reuse Plan Post-Reassessment Category I tasks completion.

### BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (FORA) adopted a Base Reuse Plan (BRP) Reassessment Report in December, 2012 which identified four categories of work for the Board to consider in completing/implementing the BRP. Category I focused on BRP corrections, and Category II addressed prior Board actions and regional plan consistency. In March 2013, the FORA Board created the Post-Reassessment Advisory Committee (PRAC) to provide recommendations regarding Categories I and IV. Subsequently, the PRAC met and discussed Category I corrections from the Reassessment Report, and recommended FORA complete the corrections noted in this category. At the February, 2014 FORA Board meeting, the Board approved the BRP Reassessment "Work Plan," which identified Categories I and II items for completion.

In October 2015, FORA selected Michael Baker International (MBI) to make recommendations for completing Categories I and II and to assess whether Categories I and II activities required California Environmental Quality Act (CEQA) review. As part of their work, MBI hired Holland & Knight, a reputable law firm, to review MBI's Determination Opinion of Categories I and II. The response, in the form of a letter, was presented at the May 13, 2016 FORA Board meeting. MBI opined that Categories I and II do not meet the definition of "project" under CEQA that warrant detailed environmental review or are actions that have been previously reviewed by other agencies (**Attachment A**). MBI added a supplemental statement in response to questions posed by Board members and public concerning Categories I and II (**Attachment B**).

At the July 8, 2016 FORA Board meeting, the Board voted to accept the Determination Opinion of Categories I and II Report by MBI and directed staff to provide a compiled document with tracked changes for Categories I and II to the Board as an information item. This report includes Category I tracked changes and Category I figure modifications (**Attachments C and D**).

FORA staff, working with MBI, completed Category I work tasks as appropriate, including text and figure corrections.

- Sources for this task came from the Fort Ord Reuse Plan Reassessment Report (2012), the Scoping Report, and Post-Reassessment Advisory Committee comments (as presented to the Board May 10, 2013).
- Staff found additional formatting, typographical or "internal consistency" errors, and corrected them in the text as part of the tracked changes document.
- Internal consistency was of concern during the consistency determination hearing for the Monterey County General Plan (2010), which contributed to the FORA Board not finding the Monterey County General Plan consistent with the BRP. This also resulted in the issue of a memo on the matter from Alan Waltner, Esq. on December 26, 2013 (**Attachment E**).




- To address the issue of internal consistency between the BRP Volume IV (Final Environmental Impact Report) and Volume II (Reuse Plan Elements), FORA staff contrasted the two volumes, correcting some of Volume II policies and programs to conform to those in Volume IV. Volume IV conformance corrections are included in the tracked changes document.

MBI and Authority Counsel reviewed each correction to confirm it met the scope of Category I. As a result, some figure and text corrections that the Reassessment Report noted as Category I were determined to be beyond Category I scope. Some potential Volume IV consistency items were also determined to be beyond Category I scope and were therefore left as is. Each specific modification is listed in the accompanying Category I Text Corrections table and Category I Figure Corrections table (**Attachments F and G**).

FORA staff will provide Category II prior Board actions and regional plan consistency to the Board in the coming months.

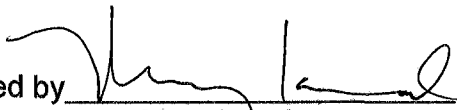
**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**COORDINATION:**

Authority Counsel, Michael Baker International, Holland & Knight, Administrative Committee.

Prepared by   
Mary Israel

Approved by  for  
Michael A. Houlemard, Jr.

May 3, 2016

Ted Lopez, Associate Planner  
**FORT ORD REUSE AUTHORITY**  
920 2nd Avenue, Suite A  
Marina, CA 93933

**RE: DETERMINATION OPINION OF CATEGORIES I AND II**

Dear Mr. Lopez:

Pursuant to Task 1 of our scope of work, Michael Baker International, in coordination with Holland & Knight LLP, has reviewed all relevant documents and supporting materials related to Category I and II of the Final Reassessment Report (2012). Review of this material was conducted to provide an informed opinion as to whether the Fort Ord Base Reuse Plan (BRP) activities, past and present, as identified and categorized during the reassessment process, constitute a project as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378.

FORA prepared the Fort Ord BRP pursuant to the provisions of Senate Bill 899 to guide the development of the Former Military Reservation. The BRP is a first-tier programmatic policy document that guides all land use decisions for any lands located within the former Fort Ord. Local land use agencies, such as the cities cited below, can refine BRP elements and act as independent lead agencies for environmental review purposes for lands that fall within their planning jurisdiction. Nonetheless, each lead local land use agency that approves projects on land located within the former Fort Ord needs to ensure such changes are consistent with the BRP. These changes can be either related to a specific development project or additional changes in land use designations. The FORA Board of Directors determines the subsequent changes' consistency with the BRP.

The Reassessment Report sorted the prior and pending changes to the BRP into five categories. For the purposes of this determination, our scope focuses only on Categories I and II. Category I, BRP Corrections and Updates, are mainly corrections to bring the BRP text and graphics up to date. These include correction of typographical errors, correction of outdated references, and revisions to the BRP maps to correct inconsistencies.

Category II, Prior Board Actions and Regional Plan Consistency, consists of text and map changes that would bring the BRP into conformance with previous FORA Board actions, particularly "consistency determinations" and other changes that would serve to improve BRP consistency with regional plans that have evolved since 1997. Such changes, taken in whole or in part, would result in modifications to the Land Use Concept map. The map changes are meant to reflect FORA Board decisions and consistency determinations that have already occurred. Category II also includes potential options for new BRP programs or policies and/or revisions to existing programs and policies to ensure the BRP is consistent with regional plans.

Based on our review of the BRP Category I and Category II revisions, it is our opinion that the individual actions and changes that have occurred or are recommended to occur do not, by themselves, meet the definition of “projects” under CEQA that warrant detailed environmental review or are actions that have been previously reviewed by other agencies. Past actions by FORA and local land use agencies that affect the BRP can be compared to amendments to an agency’s General Plan over time. Individual General Plan Amendments may be processed, analyzed and approved over time, but those changes are not always physically incorporated into the body of the General Plan until the text or graphic changes are physically made within document. In this case, the past actions and amendments have been processed, analyzed and approved by several land use agencies, and the need for minor technical corrections have been identified. Updating the BRP at a future date to reflect these past actions is an administrative exercise necessary to memorialize the changes in one place.

### **CATEGORY I EVALUATION SUMMARY**

Table 5, Index of BRP Corrections in the Reassessment Report, lists the identified corrections under Category I, and the text following that table outlines the specific corrections to be considered. During 2013, after the FORA Board received the BRP Reassessment Report, the public and FORA staff identified additional errata not included in the August 2001 Republished BRP, which also fall into Category I. Those corrections have no material effect on the purpose, intent, or guidance provided in the BRP, but are meant solely as BRP “cleanup” items. All of the Category I corrections are minor and incidental, such as typographical, grammar, incorrect references, minor figure changes, and formatting associated with BRP policies, programs, or mitigation measures. In addition, the Post-Reassessment Advisory Committee (PRAC) adopted figure Category I recommendations to reflect land use designation changes, to clarify how boundaries and names have changed, to correct labels and legends, and to properly cite the sources for the various changes on each map. These changes to the BRP would not result in direct or indirect physical impacts on the environment and would be considered administrative activities of governments per CEQA Guidelines Section 15378(b)(5). Therefore, Category I changes do not constitute a distinct “project,” and an errata to the EIR can be prepared to address these changes.

### **CATEGORY II EVALUATION**

Category II addresses two types of possible modifications to the BRP. The first type is based on actions the FORA Board has already taken (labelled II.a). These actions have resulted in draft modifications to BRP Figure 3.3-1, Land Use Concept Ultimate Development, and modifications to BRP transportation-related figures and text. The second type of modification reflects new policies or programs or the expansion of existing BRP policies or programs to ensure BRP consistency with regional and local plans (labelled II.b).

Our evaluation of Category II (II.a and II.b) for CEQA compliance follows.

#### **II.A. MODIFICATIONS OF THE BRP LAND USE CONCEPT MAP**

##### **Prior Del Rey Oaks General Plan Consistency Determinations**

*This is a previously approved project under CEQA.* The City of Del Rey Oaks General Plan (1997) included a General Plan designation change of approximately 7 acres of Open Space/Recreation under the BRP to General Commercial–Visitor/Office. In addition, the plan included other minor land use designation changes such as from Visitor Serving to General Commercial–Visitor/Office.

This was a discretionary project undertaken by the City and is considered a project under CEQA. Land use changes in Del Rey Oaks are documented in the General Plan's Land Use Map (see Del Rey Oaks General Plan Figure 2). Environmental impacts from these changes were analyzed in the City's General Plan EIR (State Clearinghouse [SCH] #1996041076) and certified by the City Council in May 1997.

Because the City of Del Rey Oaks reviewed the impacts of this exact change, no additional CEQA review is needed. Public Resources Code (PRC) Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding the 7-acre designation (see also 14 California Code of Regulations (CCR) Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the Del Rey Oaks General Plan are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.

### **Prior Marina General Plan Consistency Determinations**

*This is a previously approved project under CEQA.* The City of Marina General Plan (2005) plan included a General Plan designation change of approximately 11 acres of Open Space under the BRP to High Density Residential. The plan also changed approximately 60 acres from Planned Development Mixed Use to Parks and Recreation. In addition, the plan included other minor land use designation changes such as from Regional Retail to Light Industrial/Service Commercial.

This was a discretionary project undertaken by the City and is considered a project under CEQA. Environmental impacts from most of the land use changes in Marina were analyzed in the City's General Plan EIR (SCH #1999031064), certified by the City Council in October 2000 (see Marina General Plan EIR Figure 2.4 and pages 2-13 and 2-14). The change in the city's eastern portion, which corresponds to the Marina Heights development, was analyzed in the Marina Heights Specific Plan EIR (SCH #2003021012), certified in November 2003 (see Marina Heights Specific Plan EIR Table 2.2 and pages ES-4 and ES-5). Therefore, these land use changes have been addressed under CEQA.

Because the City of Marina reviewed the impacts of this exact change, no additional CEQA review is needed. PRC Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding the 11-acre designation (see also 14 California CCR Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the Marina General Plan and the Marina Heights Specific Plan are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.

### **Prior Seaside General Plan Consistency Determinations**

*This is a previously approved project under CEQA.* The City of Seaside General Plan (2003) included a General Plan designation change of approximately 43 acres of Open Space/Recreation under the BRP to Regional Commercial and approximately 11 acres of Open Space/Recreation to High Density

Residential. The plan also changed approximately 100 acres from Military Enclave and about 10 acres from Medium Density Residential to Park and Open Space. In addition, the plan included other minor land use designation changes such as from High Density Residential to Medium Density Residential.

This was a discretionary project undertaken by the City and is considered a project under CEQA. Environmental impacts from land use changes in Seaside were analyzed in the City's General Plan EIR (SCH #2003031021), certified by the City Council in August 2003 (see Seaside General Plan EIR Figure 5.8-1 and pages 5.8-3 through 5.8-7).

Because the City of Seaside reviewed the impacts of this exact change, no additional CEQA review is needed. PRC Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding the 54-acre designation (see also 14 CCR Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the Seaside General Plan are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.

### **City of Monterey General Plan**

*This is a previously approved project under CEQA.* The City of Monterey General Plan (amended 2013) was a discretionary project undertaken by the City and would be considered a project under CEQA. The plan included General Plan designation changes of approximately 8 acres of Public Facility/Institutional under the BRP to Industrial and approximately 7 acres of Public Facility/Institutional to Parks and Open Space.

Although FORA has not yet analyzed the City of Monterey General Plan for consistency, environmental impacts from land use changes in Monterey were analyzed in the City's General Plan EIR (SCH #2003081011), certified by the City Council in January 2005 (see City of Monterey General Plan EIR Figure 4 and pages S-3, 1-17, 1-18, and 3-3).

Because the City of Monterey reviewed the impacts of this exact change, no additional CEQA review is needed. PRC Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding the 15-acre designation (see also 14 CCR Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the City of Monterey General Plan are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.

### **2010 Monterey County General Plan**

*This is a previously approved project under CEQA.* The County of Monterey adopted the Fort Ord Master Plan concurrently with its General Plan (2010). Both were discretionary projects undertaken by the County and would be considered projects under CEQA. The Fort Ord Master Plan land use map

essentially matches the BRP Land Use Concept, with the following exceptions: (1) the Youth Camp site near East Garrison is shown in the BRP as Public Facility/Institutional and in the Fort Ord Master Plan as Habitat Management; and (2) the Fort Ord Master Plan describes the East Garrison/Parker Flats land swap but does not reflect changes on the land use map.

Although FORA has not yet analyzed the Monterey County General Plan for consistency with the BRP, environmental impacts from land use changes in Monterey County were analyzed in the County's General Plan EIR (SCH #2007121001), certified by the Board of Supervisors in October 2010 (see Monterey County General Plan EIR Exhibit 3.2 and pages 4.1-13 and 4.1-14).

Because the County of Monterey reviewed the impacts of this exact change, no additional CEQA review is needed. PRC Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding land use designation changes (see also 14 CCR Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the Monterey County General Plan are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.

#### **FORA Board-Approved East Garrison/Parker Flats Land Swap**

*This is a project that was previously approved under CEQA.* On December 13, 2002, the FORA Board authorized execution of the Memorandum of Understanding (MOU) Concerning the Proposed East Garrison/Parker Flats Land-Use Modification between the Fort Ord Reuse Authority, Monterey Peninsula College, County of Monterey, US Bureau of Land Management, and US Army as parties to the agreement MOU. The MOU documented several land use modifications to the BRP, primarily the relocation of Monterey Peninsula College public safety training facilities from East Garrison, and amendments to the Habitat Management Plan (approved by the US Fish and Wildlife Service). The five parties signed the MOU between August 3, 2004, and December 20, 2005.

The purpose of the land swap agreement was to resolve land use conflicts stemming from a long history of ordnance and explosives use, as well as competing conveyance requests for surplus property at the former base, and to address impacts associated with potential East Garrison development conflicts. The land swap agreement amended the 1997 Fort Ord Installation-Wide Multispecies Habitat Management Plan (HMP) for Fort Ord and was also signed by the US Fish and Wildlife Service and the California Department of Fish and Game. Although the land swap agreement affected the areas of allowable development, it resulted in a net increase of 246.7 acres in habitat reserve areas. The exchange of lands based on the MOU resulted in a transfer in densities without intensification, consistent with Section 8.02.010 of the Master Resolution. The land swap agreement amended the HMP designations for the territory within the East Garrison Specific Plan from Development with Reserve Areas/Restrictions to Development. Under the original HMP, the East Garrison area was permitted a 200-acre development footprint, 10 acres of development at the site of existing utilities, and a 31-acre road corridor; under the revised HMP, the East Garrison area has 451 acres of Development area with no restrictions (Zander Associates 2002).

At the time it was signed, MOUs were not legally considered a project under CEQA and in 2007 a case specifically found that a land swap agreement was not a project under CEQA (*Friends of the Sierra*

*Railroad v. Tuolumne Park and Recreation Dist.* (2007) 147 Cal.App.4<sup>th</sup> 643). Since that time, case law has evolved and an MOU that included wording that commits an agency to an action is now considered a project under CEQA (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4<sup>th</sup> 116). Here, the terms of the MOU could be considered a project. However, since the MOU was entered, it is our understanding that all the parcels subject to the land swap have been legally exchanged and are owned by the entity contemplated under the exchange, or have since been sold to others. Those actions are complete and based on the MOU are valid since the time to challenge the actions has long since passed. FORA's amendments to make the BRP consistent with the land exchange merely restate the exchanges that were previously approved in the MOU and in the contractual land exchanges that already occurred.

Moreover, any subsequent projects or land use designation changes on the land that has been swapped are or were subject to CEQA. For example, Monterey County certified the project-level East Garrison Specific Plan Subsequent EIR (SCH #2003081086) in 2005, which analyzed impacts of the new land uses on that portion of the land swap. As such, all potential impacts associated with the action have been fully analyzed, with appropriate findings made by the County.

The City of Seaside is currently reviewing the Parker Flats portion of the land swap under the Monterey Downs and Horse Park and Central Coast Veteran's Cemetery Specific Plan Subsequent EIR (SCH #2012091056). Similar to East Garrison, any and all impacts will be disclosed and analyzed in the City's Final EIR, and findings will be required by the City Council if the project is ultimately approved. A separate consistency determination will also need to be made for that project.

### **Designation of the Fort Ord National Monument**

*This is not a project under CEQA.* On April 20, 2012, the President of the United States established the Fort Ord National Monument (Proclamation 8803). Presidential proclamations are not subject to CEQA because CEQA applies to decisions of all California state, regional, or local agencies, but not to federal agencies. Therefore, this designation was not previously analyzed under CEQA and it does not need to be under California environmental law.

### **Modification of BRP Circulation Maps, Text, and Capital Improvement Program**

*Part of this is not a project and part is a previously approved project under CEQA.* The reassessment plan identifies two potential changes to the circulation maps in the BRP:

1. A Memorandum of Agreement (MOA) adopted by FORA on December 10, 2010, resulted in changing the alignment of the multimodal corridor along Imjin Parkway/Blanco Road.
2. Abandoning planned improvements that would have realigned General Jim Moore Boulevard and 2nd Avenue where they intersect with Lightfighter Drive.

*Change 1 is not a project under CEQA.* The MOA is an agreement to cooperate. It is not a project under CEQA because it is not a discretionary action undertaken by a public agency per CEQA Section 21080(a). Under the California Supreme Court reasoning in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4<sup>th</sup> 116, the MOU by its terms and circumstances is not a project because it does not commit any agency to any particular action. Also per CCR Section 15004(b)(2)(B), the MOU does not approve a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." CEQA review would begin when Monterey-Salinas Transit (MST) begins the

process of approving the corridor for construction. MST would be the lead agency at that time, and the MOU does not foreclose or predetermine any part of their analysis.

*Change 2 is a previously approved project under CEQA.* Realignment of a road would impact the physical environment because it could result in development of land that was not previously analyzed. As such, it would need to be analyzed under CEQA. To that end, environmental impacts from this change were analyzed in the California State University Monterey Bay Campus Master Plan EIR (SCH #1997081036), certified by the California State University Trustees in 2009 (see California State University Monterey Bay Campus Master Plan EIR Figure 11-4 and page 11-2). Therefore, Change 2 has been addressed under CEQA and no further analysis is necessary.

## **II.B. BRP MODIFICATIONS REGARDING CONSISTENCY WITH REGIONAL AND LOCAL PLANS**

### **Transportation Agency for Monterey County (TAMC) Monterey County Regional Transportation Plan**

*This is a previously approved project under CEQA.* The 2005 Monterey County Regional Transportation Plan (RTP) was prepared under the direction of the California Transportation Commission Regional Transportation Plan Guidelines, pursuant to Government Code Section 14522. This would be considered a project under CEQA. The plan includes many new or expanded policies, including one that directs TAMC to “implement road and highway capacity improvements” that would be subject to CEQA. Other policy changes, such as “identify and prioritize funding for elimination of bicycle network gaps,” would not impact the physical environment and would not be analyzed under CEQA.

Environmental impacts from these changes were analyzed in the RTP Program EIR (SCH #2004061013), certified by the TAMC Board in 2005 (see RTP Program EIR Chapter 3). Subsequently, the TAMC Board adopted an addendum in 2008 that evaluated the environmental impacts of the Investment Plan for Transportation Sales Tax in Monterey County and the Development Impact Fee program. The addendum did not identify any significant environmental impacts that were not previously identified in the program EIR (see Addendum EIR page 5). Therefore, these changes have been addressed under CEQA. Recently, the Association of Monterey Bay Area Governments, in partnership with Council of San Benito County Governments, the Santa Cruz County Regional Transportation Commission and TAMC started preparing the 2040 Metropolitan Transportation Plan/Sustainable Communities Strategy (as an update to the RTP). This most recent update will yet again undergo individual environmental review.

Because TAMC reviewed the impacts of this exact change, no additional CEQA review is needed. PRC Section 21080.1(a) requires FORA to rely on the existing document unless substantial evidence shows that there are significant new circumstances surrounding the policy change (see also 14 CCR Section 15162(c)). As there are no substantial changes to the circumstances, no new environmental review is required per CEQA Guidelines Section 15162 (see 14 CCR Section 15096(e), (h)). Additionally, no formal finding is necessary to rely on a prior EIR.

The BRP changes to reflect the Monterey County RTP are considered administrative. The procedure is intended to update the document and make it consistent with the local agency's approvals and findings.



**Monterey Bay Unified Air Pollution Control District (MBUAPCD) Air Quality Management Plan**

*This is an exempt project under CEQA.* The 2008 MBUAPCD Air Quality Management Plan (AQMP) was drafted to comply with the California Clean Air Act, which requires each nonattainment district in the state to adopt a plan showing how the California ambient air quality standard for ozone would be met in its area of jurisdiction. The AQMP is a State-certified regulatory program (PRC Section 21080.5; CCR Section 15251(d)). Under PRC Section 21080(b)(15), there is an applicable statutory exemption for “projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5.” As such, no CEQA review is necessary for the addition of policies that implement policies from the Air Quality Management Plan in the BRP. In addition, the MBUAPCD is considered exempt from CEQA under Class 8, Actions by Regulatory Agencies for the Protection of the Environment (CEQA Guidelines Section 15308). Similarly, the amendments to the BRP to be consistent with the AQMP are also exempt.

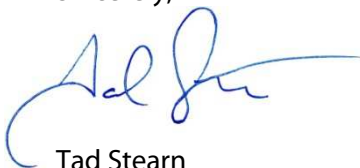
**Regional Water Quality Control Board (RWQCB) Water Quality Control Plan for the Central Coast Basin**

*This is an exempt project under CEQA.* The RWQCB Water Quality Control Plan for the Central Coast Basin (2011, updated 2016) (Basin Plan) was drafted to comply with the state Porter-Cologne Water Quality Control Act (1969) and portions of the federal Clean Water Act (1977). The Basin Plan is a State-certified regulatory program that was reviewed under a Substitute Environmental Document (SED) which was approved by the State Water Resources Control Board on June 19, 2012 (PRC Section 21080.5; CCR Section 15251(g)). Under PRC Section 21080(b)(15), there is an applicable statutory exemption for “projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5.” As such, no CEQA review is necessary for the addition of policies that implement policies from the Basin Plan in the BRP.

**CONCLUSION**

Based on our review of the BRP Category I and Category II revisions, it is our opinion that the individual actions and changes that have occurred or are recommended to occur do not, by themselves, meet the definition of “projects” under CEQA that warrant detailed environmental review or are actions that have been previously reviewed by other agencies. Past actions by FORA and local land use agencies that affect the BRP can be compared to amendments to an agency’s General Plan over time. Individual General Plan Amendments may be processed, analyzed and approved over time, but those changes are not always physically incorporated into the body of the General Plan until the text or graphic changes are physically made within document. In this case, the past actions and amendments have been processed, analyzed and approved by several land use agencies, and the need for minor technical corrections have been identified. Updating the BRP at a future date to reflect these past actions is an administrative exercise necessary to memorialize the changes in one place.

Sincerely,



Tad Stearn  
Project Director



Darcy Kremin  
Project Manager

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May 26, 2016

Ted Lopez, Associate Planner  
**FORT ORD REUSE AUTHORITY**  
920 2nd Avenue, Suite A  
Marina, CA 93933

**RE: RESPONSE TO COMMENTS ON DETERMINATION OPINION OF CATEGORIES I AND II**

Dear Mr. Lopez:

Michael Baker International, in coordination with Holland & Knight LLP, has provided responses to the Fort Ord Reuse Authority (FORA) Board of Directors and public comments on the Determination Opinion of Categories I and II Memo, dated May 5, 2016. The comments were received at the May 13, 2016 meeting. For clarification purposes, we want to emphasize that Michael Baker International and Holland & Knight reviewed the land use decisions, which occurred subsequent to the adoption of the Base Reuse Plan in 1997, in light of the California Environmental Quality Act (CEQA). We looked at whether those decisions were adequately covered under CEQA or if they require additional environmental review. Consistent with our scope of work, we did not provide a conclusion as to whether those changes are consistent with the BRP; rather, we focused on the scope direction to determine whether additional CEQA review is needed.

One member of the public mentioned the equal-dignities rule. The equal-dignities rule refers to a legal doctrine related to written contracts whereby an agent must have written authority to enter the contract on the principal's behalf for the contract to be binding. The equal-dignities rule is a corollary to the Statute of Fraud and does not apply to CEQA. Therefore it is not applicable to our determination opinion. Moreover, the point the commenter seemed to be making was that the revisions to the BRP needed by be made through an ordinance amendment. The process for revising the BRP is outside the scope of the Determination Opinion. The Determination Opinion simply addresses whether additional CEQA review is necessary. CEQA review can be satisfied in CEQA documents prepared by other agencies as CEQA seeks to avoid duplicative environmental review (Public Resources Code Section 21080.1(a)).

Another member of the public also inquired about the Monterey County General Plan and the relationship between that plan and the previous Board decisions regarding it. FORA analyzed the Monterey County General Plan in 2012 for consistency with the BRP. The board voted 6 to 6 at that time, thus per the Board rules the General Plan was not found to be consistent or inconsistent with the BRP and was returned to the County "without prejudice." However, the Board's vote does not preclude a finding regarding the adequacy of CEQA analysis for the Monterey County General Plan. The Determination Opinion does not address consistency, rather it found that environmental impacts from land use changes in Monterey County were analyzed in the County's General Plan EIR and therefore, no further environmental analysis would be required.

Lastly, the public inquired about the East Garrison/Parker Flats land swap agreement. The agreement included several conditions that may or may not have been met prior to exchange of the parcels. However, our review focused on whether land use changes were covered under CEQA and if additional environmental review would be needed. Our review determined that, regardless of the conditions, all of the exchanges have occurred. No subsequent environmental review is required to update the BRP.

Sincerely,



Tad Stearn  
Project Director



Darcy Kremin  
Project Manager

Link to Volume II and IV Category I Corrections in Tracked Changes:

Link to Category I Figure Corrections:

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WALTNERLAW@GMAIL.COM

## Memorandum

Date: December 26, 2013

To: Fort Ord Reuse Authority

Board of Directors

Mayor Jerry Edelen, Board Chair

Michael Houlemard, Executive Officer

From: Alan Waltner, Esq.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Link to Table 1 Category I Text Corrections Table:

\*8 ½ x 14', aka legal paper required for printing

Link to Table 2 Category I Figure Corrections Table:

\*8 ½ x 14', aka legal paper required for printing

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>	
<b>CONSENT AGENDA</b>	
<b>Subject:</b>	Environmental Services Cooperative Agreement-Quarterly Report Update
<b>Meeting Date:</b>	April 7, 2017
<b>Agenda Number:</b>	7g
<b>INFORMATION/ACTION</b>	

**RECOMMENDATION:**

Receive an Environmental Services Cooperative Agreement (ESCA) quarterly update.

**BACKGROUND:**

In Spring 2005, the U.S. Army (Army) and the Fort Ord Reuse Authority (FORA) entered negotiations toward an Army-funded Environmental Services Cooperative Agreement (ESCA) for removal of remnant Munitions and Explosives of Concern (MEC) on portions of the former Fort Ord. FORA and the Army entered into a formal ESCA agreement in early 2007. Under the ESCA terms, FORA received 3,340 acres of former Fort Ord land prior to regulatory environmental sign-off and the Army awarded FORA approximately \$98 million to perform the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) munitions cleanup on those parcels. FORA also entered into an Administrative Order on Consent (AOC) with U.S. Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (DTSC) defining contractual conditions under which FORA completes Army remediation obligations for the ESCA parcels. FORA received the "ESCA parcels" after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer on May 8, 2009.

In order to complete the AOC defined obligations, FORA entered into a Remediation Services Agreement (RSA) with the competitively selected LFR Inc. (now ARCADIS) to provide MEC remediation services and executed a cost-cap insurance policy for this remediation work through American International Group (AIG) to assure financial resources to complete the work and to offer other protections for FORA and its underlying jurisdictions.

The ESCA Remediation Program (RP) has been underway for ten (10) years.

**DISCUSSION:**

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

Under the ESCA grant contract with the Army, FORA received approximately \$98 million in grant funds to clear munitions and secure regulatory approval for the former Fort Ord ESCA parcels (see table below). FORA and ARCADIS executed the RSA, a guaranteed fixed-price contract for ARCADIS to perform the ESCA grant Technical Specifications and Review Statement work. As part of the RSA, FORA paid \$82.1 million upfront, to secure an AIG "cost-cap" insurance policy. Under the terms of the ESCA grant, the EPA AOC requirements and AIG insurance provisions, AIG controls the \$82.1 million in a commutation account and pays ARCADIS directly as work is performed. AIG provides up to \$128 million to assure additional work (both known and unknown)

is completed to the Regulators satisfaction. Under these agreements, AIG pays ARCADIS directly while FORA oversee ARCADIS compliance with the grant and AOC requirements.

On January 25, 2017, ARCADIS notified FORA that the ESCA commutation account had been exhausted and that future ARCADIS work would be paid under the terms of the AIG "cost-cap" insurance policy. ARCADIS originally provided to AIG \$82.1 million; \$2.4 million for California tax, \$102,647 for insurance Surplus Lines Filing Fee, \$7.9 million for the cost-cap insurance policy, and \$74.5 million (\$71.6 plus \$2.9 million interest) for ESCA work. The difference between \$74,568,752 for the ESCA work and the \$74,588,716 ARCADIS invoices submitted to AIG (reported to the Board below) is \$19,964 of invoiced items not reimbursed to ARACADIS.

Status as reported to FORA Board January 13, 2017:

<i>Item</i>	<i>Revised Allocations</i>	<i>Accrued through September 2016</i>
<i>FORA Self-Insurance or Policy</i>	\$ 916,056	\$ 916,056
<i>Reimburse Regulators &amp; Quality Assurance</i>	3,280,655	3,094,205
<i>State of California Surplus Lines Tax, Risk Transfer, Mobilization</i>	6,100,000	6,100,000
<i>Contractor's Pollution Liability Insurance</i>	477,344	477,344
<i>Work Performed ARCADIS/AIG Commutation Account</i>	82,117,553	\$74,588,716
<i>FORA Administrative Fees</i>	4,837,001	3,924,288
<b>Total</b>	<b>\$ 97,728,609</b>	<b>89,100,609</b>
	<b>ESCA Remainder</b>	<b>\$8,628,000</b>

ARCADIS will continue to provide FORA with quarterly invoicing estimates transmitted to AIG for payment under the cost-cap insurance policy. Staff will continue to provide the Board with that information as part of the ESCA Quarterly Board Report.

ESCA fund status as of January 2017:

<i>Item</i>	<i>Revised Allocations</i>	<i>Accrued through January 2017</i>
<i>FORA Self-Insurance or Policy</i>	\$916,056	\$916,056
<i>Reimburse Regulators &amp; Quality Assurance</i>	3,280,655	3,123,004
<i>State of California Surplus Lines Tax, Risk Transfer, Mobilization</i>	6,100,000	6,100,000
<i>Contractor's Pollution Liability Insurance</i>	477,344	477,344
<i>ARCADIS/AIG Commutation Account</i>	82,117,553	82,117,553
<i>FORA Administrative Fees</i>	4,837,001	4,043,960
<b>Total</b>	<b>\$97,728,609</b>	<b>\$96,777,917</b>
	<b>ESCA Remainder</b>	<b>\$950,692</b>

In December 2016, FORA and Army Base Realignment and Closure (BRAC) Headquarters (HQ) staff held a meeting to discuss the yet-to-be funded ESCA Grant Long Term Obligations and to amend certain Administrative and Regulatory ESCA costs. Army BRAC HQ agreed to review a draft Grant Amendment scope package last December, and the Executive Committee authorized travel to address these issues. On February 12, 2017, Chair Rubio, Executive Officer Houlemard and Project Manager Cook met with Army BRAC HQ to address the ESCA Grant Amendment scope of services. This meeting was successful in reaching agreement on the scope of services; additional meetings with the Army Grant Administrator staff are required to negotiate pricing the ESCA Amendment.

In addition to funding for long-term obligations, FORA notified BRAC HQ that existing ESCA Grant Regulatory Reimbursement funds will be exhausted as early as March 2018. ESCA Grant Section C 4.1.16.2 stipulates that *“requests for additional funds for Regulatory Response Costs may be submitted by FORA at the time FORA recognizes a need. Costs will be paid by the Army contingent upon approval of the overruns in question by the Grants Officer.”*

FORA ESCA staffing/overhead estimated in 2006, includes Executive Officer, Program Manager, and Coordinator compensation, office supply, equipment needs; and legal review. Original estimates assumed a seven (7) to ten (10) year completion period, which was impacted by delays from unknown factors, external economic and several agency policy deliberations/adjustments issues outside of FORA’s control. FORA notified BRAC HQ that the ESCA FORA administrative funds are projected to be exhausted by April 2017.

The unfunded short term ESCA needs are:

- Regulatory oversight reimbursement
- FORA administrative costs

The ESCA Grant Amendment Long Term Obligation Request addresses funding Army CERCLA Long Term Obligation responsibilities that were anticipated during the ESCA negotiations and award, but could not be known until the CERCLA process was implemented and remedies were selected. Records of Decision (RODs) have been adopted identifying the Army’s requirements for implementing and maintaining Post-Closure MEC Find Assessments, Remedy Long Term Management, and Land Use Controls. Remedy requirements were refined in subsequent Land Use Control Implementation Plan/Operation and Maintenance Plans (LUCIP/OMP).

The currently identified unfunded Army Long Term Obligations are:

- Long Term Management
- Land Use Controls
- Post-Closure MEC Find Assessments

FORA assembled a Grant Amendment request package providing estimates for the unfunded short term and Army Long Term Obligations with scenarios to 2028 and 2038. This estimate package focuses and guides FORA/Grant Administrator ESCA Grant Amendment discussions/negotiations.

**ESCA Activity Status:**

Data collected during the ESCA investigation stage remains under regulatory review to determine when remediation is complete. The review and documentation process is dependent on Army and regulatory agency responses and decisions. They will issue written confirmation that CERCLA MEC remediation work is complete (known as regulatory site closure).

On November 25, 2014, EPA signed the Record of Decision (ROD) for the ESCA Group 3 properties located in County of Monterey (at Laguna Seca); City of Monterey (south of South Boundary Road); Del Rey Oaks (south of South Boundary Road); and, Monterey Peninsula College (MPC) Military Operations in Urban Terrain property. On February 26, 2015, the Regulators signed the ROD for the ESCA Group 2 California State University Monterey Bay property (south of Inter-Garrison Road). The ROD records the EPA, DTSC and Army’s decision on the cleanup of these properties and what controls are required to continue to protect public health and safety.

The process for implementing, operating and maintaining ROD controls is prescribed under a Land Use Control Implementation, Operation and Maintenance Plan (LUCIP OMP) document based on site conditions and historic MEC use. LUCIP OMP documents are approved by the Regulators prior to issuing regulatory site closure. The ESCA team and Regulatory agencies held workshops with the FORA Administrative Committee in May; June; July 2015; and, June and July 2016, to help the jurisdictions understand and develop comments to the Group 2 and Group 3 LUCIP OMP documents. The Group 3 Draft LUCIP/OMP comment period ended on August 23, 2016. Currently, the ESCA team released the Draft Final Group 3 LUCIP for comments.

In January of 2017, DTSC during their review of past Army cleanup work asked the ESCA Team to expand fieldwork designed to assure the effectiveness of past munitions remediation work. This work is in the Seaside area east of where Hilby Avenue intersects with General Jim Moore Boulevard. The field work is expected to be complete mid-2017.

**Future Actions:**

Until regulatory review, concurrence and site closure is received, the ESCA property is not open to the public. Regulatory approval does not determine end use. When regulatory site closure is received, FORA will transfer land title to the appropriate jurisdiction for reuse programming. Underlying jurisdictions are authorized to impose or limit zoning, decide property density or make related land use decisions in compliance with the FORA Base Reuse Plan.

The ESCA team completed collecting information, site inspections and providing content for the draft ESCA sections to support the Army's fourth Fort Ord CERCLA Five Year Review. The ESCA team contacted jurisdiction staff, via the FORA Administrative Committee, to collect this information. The CERCLA Five Year Review is performed to collect information on the Fort Ord land use controls operation and maintenance for the Regulatory agency review and to determine if the controls remain effective. The Army's fourth Five Year Review will be completed and released in 2017.

The ESCA team actively monitors biological resources and tracks restoration activities on ESCA properties. We expect to publish the ESCA 2016 Annual Natural Resource Monitoring, Mitigation and Management Report in April 2017. The ESCA RP provides environmental stewardship on a yearly basis for 3,340 ESCA acres through erosion control; managing trespassing and illegal dumping; and, performing Army sensitive species monitoring and reporting.

**FISCAL IMPACT:**

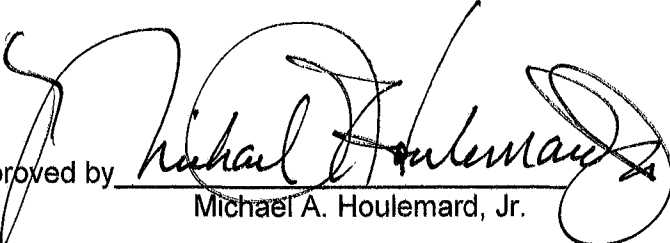
Reviewed by FORA Controller 

The funds for this review and report are part of the existing FORA ESCA funds. Potential grant adjustments may be forthcoming to address items reviewed in this report.

**COORDINATION:**

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

Prepared by   
Stan Cook

Approved by   
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Building Removal Quarterly Report

**Meeting Date:** April 7, 2017

**Agenda Number:** 7h

**INFORMATION**

### RECOMMENDATION(S):

Accept a Building Removal Update.

### BACKGROUND/DISCUSSION:

In 2006, the Fort Ord Reuse Authority (FORA) Board included building removal in the Capital Improvements Program (CIP) and identified Surplus II in Seaside and the Stockade in Marina to be remaining obligations. Between 2006 and 2016, the City of Seaside and Marina explored alternatives to building removal.

The City of Marina currently owns and leases the Stockade property. Early in 2016, FORA and Marina staff began Stockade removal discussions. FORA staff prepared an open solicitation for professional Industrial Hygienist services to sample, test, characterize hazardous materials and monitor removal at the Stockade. In February 2017, the FORA Board awarded an Industrial Hygienist professional services contract to Vista Environmental and they have commenced the Stockade hazardous materials assessment.

The City of Seaside owns the Surplus II properties. In 2016, FORA performed a Hazardous Materials assessment of the site and presented the results and a course of action to the City of Seaside. Seaside has concurred with the plan to utilize FORA's \$5.2M CIP obligation to remove 17 of the 27 buildings at Surplus II enabling economic development of the site. In March 2017, the FORA Board awarded a General Engineering Services Contract to BKF. The Engineer assessed the level of effort required to prepare specifications sufficient to solicit for Hazardous Materials Removal, Building Removal and Site Restoration Contractors. The scope of the General Service Work Order #1 has been provided (**Item 7k, Attachment A**).

### FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for these building removal efforts is included in the approved FY 16-17 Capital Improvement Program and FY 16-17 FORA Midyear Budget.

### COORDINATION:

Administrative Committee, Seaside, Marina.

Prepared by

  
Peter Said

Reviewed by

  
Stan Cook

Approved by

  
Michael A. Houlemard, Jr.



# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	Public Correspondence to the Board	
<b>Meeting Date:</b>	April 7, 2017	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7i	

Public correspondence submitted to the Board are posted to FORA's website on a monthly basis and is available to view under the section labeled "emails" at <http://www.fora.org/board.html>.

Correspondence may be submitted to the Board via email to [board@fora.org](mailto:board@fora.org) or mailed to the address below:

FORA Board of Directors  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933

At the March 10, 2017 Board meeting, some Directors indicated a concern about public correspondence being made available to the public. FORA makes all its correspondence to the Board available on its website using the methods mentioned above and will continue to do so.

**FORT ORD REUSE AUTHORITY BOARD REPORT**  
**CONSENT AGENDA**

<b>Subject:</b> Executive Officer Travel Report	
<b>Meeting Date:</b> April 7, 2017 <b>Agenda Number:</b> 7j	<b>INFORMATION/ACTION</b>

**RECOMMENDATION:**

Receive a report from the Executive Officer

**BACKGROUND/DISCUSSION:**

Per the FORA Travel Policy, the Executive Officer (EO) submits travel requests to the Executive Committee on FORA Board/staff travel. The Committee reviews and approves requests for EO, Authority Counsel and board members travel; the EO approves staff travel requests. Travel information is reported to the Board.

**COMPLETED TRAVEL**

None to report

**UPCOMING TRAVEL**

*Dates:* June 19-21, 2017

*Location:* Washington D.C.

*Purpose:* Association of Defense Communities - 2017 Annual Summit

*Attendees:* Michael A. Houlemard, Jr., three (3) FORA Board members

*Dates:* June 25-27, 2017

*Location:* Newport Beach, CA

*Purpose:* California Special Districts Association - General Manager Leadership Summit

*Attendee:* Michael A. Houlemard, Jr.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

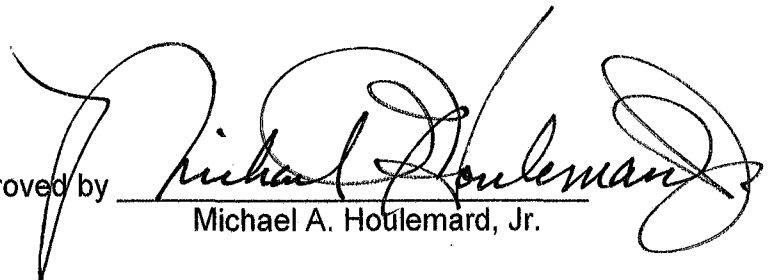
**COORDINATION:**

Executive Committee

Prepared by

  
Dominique Jones

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	General Engineering Service Work Order No. 1	
<b>Meeting Date:</b>	April 7, 2017	<b>ACTION</b>
<b>Agenda Number:</b>	7k	

**RECOMMENDATION(S):**

Approve General Engineering Service Work Order #1 (GE-SWO-1) with BKF Engineering (**Attachment A**).

**BACKGROUND/DISCUSSION:**

In 2016, Fort Ord Reuse Authority (FORA) Staff identified the need for professional services and construction support of engineering efforts to remove buildings at Seaside's Surplus II and Marina's Stockade, as well as peer review the various transportation and implementation efforts. In February 2017, after a competitive bid process, the Board approved an up to \$800,000 contract with BKF Engineering to supply General Engineering and Construction Management Services.

A Work Scope has been prepared identifying the following tasks:

- 1) Surplus Area II Building Removal Specifications Creation
- 2) Stockade Building Removal Specifications Creation
- 3) Develop Hazardous Material & Building Removal Bid Documents & Generic Guidelines
- 4) Eucalyptus Road Infiltrator Repair (Peer Review) and Construction Management

The budget is based upon the agreed Fee Schedule in Executed Contract FC-20170308, and shall not exceed the total combined budget of the programs as set forth in the Capital Improvements Program. Staff is negotiating the proposal and shall make available the final service work order (GE-SWO-1) budget and scope by end of business on Tuesday, April 4<sup>th</sup>, 2017.

Staff is recommending the Board approve the General Engineering Service Work Order No. 1 (GE-SWO-1) with BKF Engineering (**Attachment A**). Staff expects to commence work immediately following approval.

**FISCAL IMPACT:**


Reviewed by FORA Controller 

Funding for these building removal and transportation efforts is included in the approved FY 16-17 Capital Improvement Program and FY 16-17 FORA Midyear Budget.

**COORDINATION:**

Administrative Committee, Seaside, Marina

Prepared by  Peter Said      Reviewed by  Jonathan Brinkmann

Approved by  Michael A. Houlemard, Jr.

# **Placeholder for Attachment A to Item 7k**

**BKF Service Work Order No. 1 (Attachment A)**

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**This attachment will be made available by End of Business  
Tuesday, April 4, 2017.**

**FORT ORD REUSE AUTHORITY BOARD REPORT**  
**CONSENT AGENDA**

<b>Subject:</b> Legal Services Contract Amendment – Kutak Rock, LLP	
<b>Meeting Date:</b> April 7, 2017 <b>Agenda Number:</b> 71	<b>ACTION</b>

**RECOMMENDATION(S):**

Authorize the Executive Officer to sign Amendment #1 (**Attachment A**) to the Kutak Rock contract (FC-091407- **Attachment B**) reflecting hourly rate increases for legal services. Kutak Rock provides Special Counsel for existing federal contract implementation, property transfer issues and any related counsel for interaction with federal agencies.

**BACKGROUND/DISCUSSION:**

Kutak Rock has been providing specialized real property, federal agency and other legal services to the Fort Ord Reuse Authority since the Economic Development Conveyance negotiations from the 1990s. In 2007, Agreement No. FC-0914070 was signed. This is the first amendment to that contract.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

The fiscal impact of this amendment was anticipated and included in the approved budget. FY 2016-17 budget includes a total amount of \$75,000 for special counsel services.

**COORDINATION:**

Administrative Committee, Executive Committee, Authority Counsel, Kennedy, Archer, and Giffen, and Kutak Rock.

Prepared by   
Sheri L. Damon

Reviewed by   
D. Steven Endsley

Approved by   
Michael A. Houlemard, Jr.

**Amendment No. 1 to  
Agreement for Professional Services No. FC-091407**

**This Amendment No. 1** to the Agreement for Professional Services No. FC-091407 (“Agreement”) between the Fort Ord Reuse Authority (FORA) and Kutak Rock LLP (“Consultant”) is hereby amended as follows:

1. The Scope of Work for the Agreement, as set forth in Exhibit A, is amended to change the Consultant’s hourly billable rate as follows:

- (i) Effective January 1, 2017: George Schlossberg \$400.00/hour  
Barry Steinberg \$400.00/hour  
Joey Fuller \$350.00/hour
- (ii) Effective July 1, 2017: George Schlossberg \$450.00/hour  
Barry Steinberg \$450.00/hour  
Joey Fuller \$400.00/hour

2. This Amendment No. 1 shall be effective on January 1, 2017.

**IN WITNESS WHEREOF**, FORA and CONSULANT execute this Agreement as follows:

**FORT ORD REUSE AUTHORITY**

**KUTAK ROCK LLP**

By: \_\_\_\_\_  
Michael A. Houlemard, Jr.

By: \_\_\_\_\_  
George R. Schlossberg

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
FORA Counsel

**Agreement for Professional Services**

This Agreement for Professional Services (hereinafter referred to as "Agreement") is by and between the Fort Ord Reuse Authority, a political subdivision of the State of California (hereinafter referred to as "FORA") and Kutak Rock LLP (hereinafter referred to as "CONSULTANT")

The parties agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide FORA with legal services associated with property transfers as described in Exhibit "A". Such services will be at the direction of the Executive Officer of the Fort Ord Reuse Authority or the Executive Officer's designee.

2. TERM. CONSULTANT has been providing services since February of 2001 and shall continue work under this Agreement until the maximum amount of the compensation as noted above is reached. The term of the Agreement may be extended upon mutual concurrence and amendment to this Agreement.

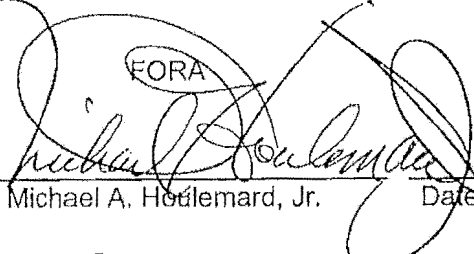
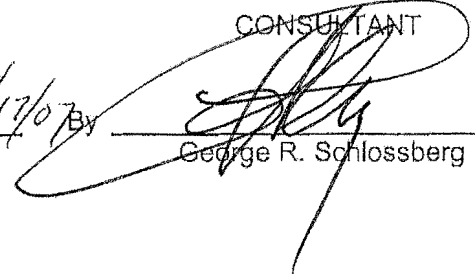
3. COMPENSATION AND OUT OF POCKET EXPENSES. In consideration for services, FORA shall pay CONSULTANT for services rendered at the hourly rate and time frame specified in Exhibit "A". In addition, FORA shall reimburse CONSULTANT for reasonable business expenses incurred in response to a request by FORA for CONSULTANT to travel.

4. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment required for furnishing services pursuant to this Agreement.

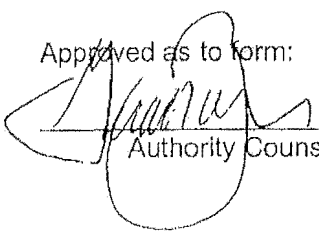
5. GENERAL PROVISIONS. The general provisions set forth in Exhibit "B" are incorporated into this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with the General Provisions.

6. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

IN WITNESS WHEREOF, FORA and CONSULTANT execute this Agreement as follows:

	FORA		CONSULTANT	
By		9/17/07	By 	9/20/07
	Michael A. Houlemard, Jr.	Date	George R. Schlossberg	Date

Approved as to form:

  
\_\_\_\_\_  
Authority Counsel

**EXHIBIT A**

**SCOPE OF WORK**

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**Professional Legal Services for Programmatic Activities**

Kutak Rock LLP will continue to provide professional legal services to FORA on general legal and administrative matters such as FORA's legislative mission and agenda; conflict resolution in the East Garrison; reviewing insurance policies and provisions concerning environmental matters such as unexploded ordinance; and drafting and negotiating general agreements and documents relating to the closure and reuse of the former Fort Ord.

**Professional Legal Services for Transactional Matters**

Kutak Rock LLP will continue to provide professional legal services to FORA on specific transactions involving both the acquisition of parcels of property from the United States and the transfer or resale of those parcels to FORA member jurisdictions in accordance with the Implementation Agreements. In this regard, Kutak Rock will continue to provide our customary professional and legal services in the negotiation, drafting and execution of all necessary transfer documents as well as conduct closings both with the government and FORA member Jurisdictions at times to be agreed upon by both parties.

**Professional Legal Services for MEC Cleanup Activities**

Requirements of and Advice concerning DoD Grant Regulations for Cooperative Agreement; EPA, DTSC, LFR and Insurance questions, disputes, risk allocation issues, Responsibilities of FORA's successors to the AOC; Negotiation of future insurance products; Development of Institutional Controls and components of final Record of Decision; Reporting requirements for Grant money expenditures; Reconciliation of AOC, ESCA and insurance requirements; Insurance Claim notifications; Relationship of FORA and Successors; Implementation of final remedies; Negotiation of covenants not to sue, insurance policy amendments, transfer of long term obligations, amendments to existing agreements and partial payments by the Army.

George Schlossberg	\$355/hour
Seth Kirshenberg	\$305/hour
Barry Steinberg	\$355/hour
Joey Fuller	\$265/hour

**COMPENSATION:** CONSULTANT is entitled to be paid each fiscal year the maximum amount approved in an annual budget for this CONSULTANT. If the cost of CONSULTANT'S services exceeds the budgeted amount, the excess will be paid from unencumbered land sale proceeds and may be delayed until such funds become available.

1. CONSULTANT shall submit quarterly invoices to FORA. The invoice is due by the 25<sup>th</sup> day following the end of each calendar quarter.
2. CONSULTANT shall separate each task from the scope of services on the invoice.
3. CONSULTANT shall be reimbursed for reasonable business expenses if consistent with FORA policy and IRS guidelines and directly incurred pursuant to the terms of this agreement. Invoices for expenses must contain detailed itemizations and any expense of \$50.00 or more must be accompanied by a receipt.

**CONTRACT AMENDMENTS:** Any changes in services or financial terms will require an amendment to this Agreement.



**EXHIBIT B**

**GENERAL PROVISIONS**

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1. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent CONSULTANT and shall not be an employee of FORA. FORA shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement.

2. TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities shown in Exhibit "A".

3. INSURANCE.

CONSULTANT shall maintain and shall provide to FORA the following insurance policies:

COVERAGES	Limits
General Liability Including Bodily Injury and Property Damage	\$1,000,000 each occurrence
Automobile Liability Including Bodily Injury and Property Damage	\$1,000,000 each occurrence
Professional Liability	\$1,000,000 each claim \$1,000,000 aggregate
Worker's Compensation	\$1,000,000 each occurrence

4. CONSULTANT NO AGENT. Except as FORA may specify in writing, CONSULTANT shall have no authority, express or implied to act on behalf of FORA in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind FORA to any obligation whatsoever.

5. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6. PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that FORA, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT. CONSULTANT shall remove any such person immediately upon receiving notice from FORA of the desire for FORA for the removal of such person or person.

7. STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products and services of whatsoever nature, which CONSULTANT delivers to FORA pursuant to this Agreement, shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. FORA shall be the sole judge as to whether the product or services of the CONSULTANT are satisfactory.

8. CANCELLATION OF AGREEMENT. Either party may cancel this Agreement at any time for its convenience, upon written notification. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt entitled to no further compensation for work performed after the date of receipt of written notice to cease work shall become the property of FORA.

9. PRODUCTS OF CONTRACTING. All completed work products of the CONSULTANT, once accepted, shall be the property of FORA. CONSULTANT shall have the right to use the data and products for research and academic purposes.

10. INDEMNIFY AND HOLD HARMLESS. CONSULTANT is to indemnify, defend, and hold harmless FORA, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of FORA, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies have been determined to be applicable to any of such damages or claims for damages.

FORA is to indemnify, defend, and hold harmless CONSULTANT, the State of California, the Trustees of the California State University, and California State University Monterey Bay, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by FORA or any person directly or indirectly employed by or acting as agent for FORA in the performance of this Agreement, including the concurrent or successive passive negligence of CONSULTANT, its officers, agents, employees or volunteers.

11. PROHIBITED INTERESTS. No employee of FORA shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of FORA if this provision is violated.

12. CONSULTANT-NOT PUBLIC OFFICIAL. CONSULTANT possesses no authority with respect to any FORA decision beyond the rendition of information, advice, recommendation or counsel.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** Local Preference Policy: Amendment to Master Resolution

**Meeting Date:** April 7, 2017

**Agenda Number:** 8a

**ACTION**

### RECOMMENDATION(S):

1. Adopt Resolution 17-xx amending the Fort Ord Reuse Authority (FORA) Master Resolution to delete subsection (d) from Section 3.03.040.
2. Adopt Resolution 17-xx amending the Master Resolution to add Section 3.02.135 encouraging local preference in services contracts.

### BACKGROUND:

At its February 9, 2017 Board meeting, the FORA Board directed staff to prepare/resume a local preference policy. At the March 10, 2017 Board meeting, staff presented background information regarding local preference and proposed related draft amendments to the Master Resolution. Staff made two basic suggestions. One, eliminate the expiration date of December 31, 1999 contained in Section 3.03.040 (d) of the Master Resolution; and two add a new section to address service contracts and non-public works contracts. The Board chose not to adopt either of the suggestions, instead providing comment and direction to staff to bring back revisions at the April meeting.

The predominant discussion at the March Board meeting was focused on the addition of a new subsection relating to procurement of services. The Board raised concerns that no specific criteria for employment of the local workforce, that inclusion of a "bid" preference would conflict with other provisions of the Master Resolution, and that the Board's flexibility in awarding service contracts might be overly/improperly limited. The debate did not focus on the elimination of the expiration date in Section 3.03.040(d). Accordingly, today, we are bringing forward two separate actions. One is to eliminate the expiration date in Section 3.03.040(d). The other is to amend the Master Resolution by adding the proposed language of Section 3.02.135 to encourage local preference in services contracts.

### DISCUSSION:

#### **I. AMEND Section 3.03.040. Delete subsection (d) in its entirety.**

The Master Resolution includes Section 3.03.040(d) relating to contractors performing work to which FORA is a signatory on the contract which expired by its own terms on December 31, 1999. FORA staff is recommending that the Board eliminate the expiration date. This deletion will have the effect of reenacting the provisions of 3.03.040 for as long as the Master Resolution remains in effect.

#### **II. ADD Section 3.02.135: Local Preference for Services.**

The Master Resolution is currently silent as to local preference in awarding service contracts. Service contracts are generally exempt from the competitive bidding process. FORA has historically procured personal, consultant and/or professional services through the Request for Qualification (RFQ) or Request for Proposal (RFP) process. FORA has also informally applied a local preference policy where it has been able to do so. It is noteworthy that personal, professional, and consultant service contracts are not subject to state law low bidding requirements. Contracts for private architectural, landscape architectural, environmental, land surveying or construction project management professional services are subject to Government Code section 4525. This code section requires that those types of professional services be awarded upon the basis of demonstrated competence and qualifications for the types of services to be performed at fair and reasonable prices to public agencies. In summary, the Board currently has a great deal of discretion in how to award service contracts.

The proposed addition to the Master Resolution has been narrowly tailored to address personal, professional and consultant services which are procured through an RFP or RFQ. FORA staff reviewed a large number of source materials in preparing this revised draft Master Resolution section. As currently drafted, the section would not apply to services which are unique or which are not procured through the RFP and RFQ processes. The revised section amends the Master Resolution only as to procurement of services. This revision clarifies that the Board retains its discretion to reject FORA staff's evaluation of applicants and instead award these types of contracts based upon the demonstrated competence and qualifications which best meet the requirements of the Agency at a fair and reasonable value to the Agency.

An example of how the Preference would work is as follows:

1. *Proposer A submits a proposal which certifies that 50% of its workforce lives within the tri-county area and has an office in Monterey for the last 3 years and his proposal is \$350,000.*
2. *Proposer B submits a proposal which certifies 85% of its workforce lives within the tri-county area. Proposer B has an office in Oakland for the last 3 years and a satellite office in Salinas for the past year and its proposal is \$400,000.*

100 points are available:

- 5% are available for Local Preference (5 Points)
- 95% are allocated on other provisions (95 Points)
- Proposer A would receive 2 points for Workforce and 1 point for local office. (Total of 3 LP points)
- Proposer B would receive 4 points for Workforce and 0 points for local office. (Total of 4 LP points)
- Price of the proposal would most likely be included in the evaluation of the remaining 95 points

However, under the revised Section 3.02.135, the Board continues to maintain discretion to reject recommendations that FORA hire Proposer A and instead select the higher proposal of Proposer B on the basis that the latter better meets the needs of the Agency, in the sense that the extra 35% of local workforce is one of the FORA needs.

The Board has multiple options in moving forward (it is anticipated that FORA will issue between **5-10 new requests** for qualifications or proposals through June 30, 2020):

1. **Do nothing.** FORA's legislative direction and "informal" policy to apply local preference where it can through solicitation documents would remain in effect.
2. **Formalize a Local Preference policy, maintain discretion.** Adopt a new Master Resolution provision relating to service contracts, preserving to the extent possible Board discretion when awarding contracts to provide the best value to FORA while promoting local preference.
3. **Formalize a Local Preference policy, limit discretion.** Limit the Board's discretion and mandate the application of a local preference to the maximum extent possible.

A draft Resolution for Master Resolution amendment as noted above is attached for your consideration.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

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

**ATTACHMENT:** Click on the links for the Exhibits below:

EXHIBIT A: Draft Master Resolution Section 3.02.135

EXHIBIT B: Draft Resolution 17-xx Deleting (d) from Section 3.03.040

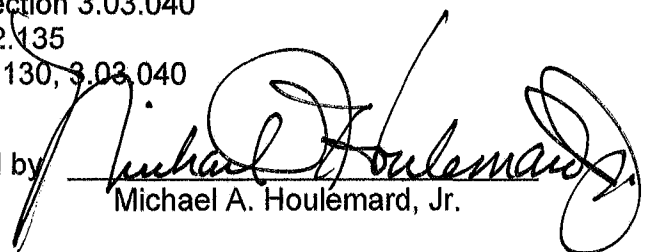
EXHIBIT C: Draft Resolution 17-xx Adding Section 3.02.135

EXHIBIT D: Master Resolution sections 3.02.090, 3.02.130, 3.03.040

Prepared by

  
Sheri Damon

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** Economic Development Quarterly Status Update

**Meeting Date:** April 7, 2017

**Agenda Number:** 8b

**INFORMATION/ACTION**

### RECOMMENDATION(S):

Receive Economic Development ("ED") Quarterly Status Update.

### BACKGROUND/DISCUSSION:

The primary goal of FORA's ED effort, as referenced in the 1997 Base Reuse Plan ("BRP") and 2012 Reassessment Report ("RR"), is to assist the three county region in general and FORA jurisdictions specifically in economic recovery from the employment, business, and other economic losses resulting from the departure of soldiers, civilians, and families after the base closure. BRP projections for full recovery include: 37,000 replacement population; 15-18,000 jobs to replace military employment; 11-12,000 homes (6160 new units); and approximately 3 million sf commercial/office. Progress towards these targets to date include: 14,600 population; 4500 FTE jobs; 5191 homes (1000 new + 4191 reused); and 660k sf commercial.

FORA's ongoing ED strategy is based on the following key components:

- **Build upon Regional Economic Strengths** (Agriculture, Tourism, Higher Education/ Research, Military Missions)
- **Pursue New & Retain Existing Businesses/Enterprises.**
- **Engage Internal & External Stakeholders** (i.e. FORA Jurisdictions, California State University Monterey Bay ("CSUMB"), University of California Santa Cruz ("UCSC"), Monterey Bay Economic Partnership ("MBEP"), Monterey County Business Council ("MCBC"), Monterey Peninsula Chamber of Commerce (MPCC), and others).
- **Develop and Maintain Information Resources.**
- **Report Success Metrics.**

Per ongoing Board direction and following the strategy outlined above, staff continues to make progress on a number of key projects. The following notes summarize and highlight progress since the January 13, 2017 Economic Development Quarterly Status Update:

- **Business Recruitment/Retention.** FORA staff continues efforts to both respond to and broadly refer inquiries from businesses/contacts interested in location or relocation and reuse of former Fort Ord real estate. Staff actively participates in efforts to prepare/package site marketing content and work with relevant jurisdiction staff and elected officials where appropriate to advance new and emerging opportunities.
- **UCMBEST.** The vision for UCMBEST as a regional R&D tech innovation and regional employment center has yet to be realized. Even after 21 years of UC ownership only a small fraction of new venture and employment opportunities exist on the lands conveyed for that purpose. FORA has a critical interest in seeing progress made on the UCMBEST vision. To that end, staff plays active roles in convening key stakeholders to infuse the effort with new energy and craft a viable route forward. Advancing existing planning to conclusion and entitlement for future sale, lease or other transfer are key focus areas.

Vice Chancellor Scott Brandt will provide UCSC-UCMBEST Status Report at the May 12, 2017 Board meeting. Bi-weekly coordination with UC Santa Cruz and Monterey County representatives continue. Focus of the planning group includes: West Campus public auction in Q2 2017; North Central Campus sub-division map and specific plan completion (City of Marina), then water and environmental in Q4 2017; advancing East Campus alternative futures discussions with UCSC and County; and preparing marketing content.

- **Start-up Challenge Monterey Bay/CSUMB Collaboration.** FORA continues to support expansion of regional entrepreneurship through support of CSUMB and Start-up Challenge Monterey Bay. This multi-day competitive pitch event cultivates entrepreneurship skills and identifies promising start-up concepts. Registration for the 2017 Startup Challenge closed Monday March 13 with a total of 90 completed applications (49 Venture Division, 29 Main Street Division, 12 Student Division), which represents a 9% increase from 2016 (82 total: 40 Venture Division, 34 Main Street Division, 8 Student Division). Qualifying round pitches will be held April 8, 2017. Final round pitches and Venture showcase will be held Friday May 12 at the CSUMB BIT Building. FORA continues working with campus partners to grow Startup Challenge quantity and quality; supporting entrepreneur and developer efforts to realize new coworking facilities; supporting campus economic development staff in realizing goals; and supporting CSUMB-Small Business Development Center (SBDC) success.

Collaborating with CSUMB Institute for Innovation and Economic Development (iiED) faculty, Mr. Metz led a Coworking Space Market Feasibility Study. This completed study demonstrates Monterey Bay region market readiness for additional shared workspaces, with particular emphasis on the Monterey Peninsula to Salinas sub-region. The study is available via the FORA website, and has generated interest from entrepreneurs and developers. In February, Mr. Metz joined by CSUMB iiED Faculty and a developer representative visited active coworking/accelerators in San Luis Obispo (*SLO Hothouse*) and Santa Barbara (*ImpactHubSB, Work Zones, SandboxSB*) on a fact finding and recruitment mission. This effort yielded insights into potential financial and operating models; business sector and university partnerships; management strategies; and market opportunities. A summary presentation can be accessed at [FORA.org/EconDev.html](http://FORA.org/EconDev.html).

On February 23, 2017, FORA supported the Sustainable Hospitality Development Symposium put on by the CSUMB Sustainable Hospitality Department, held at the Intercontinental Hotel – The Clement on Cannery Row. This first of its kind, 1-day symposium brought together 130 participants including a distinguished list of presenters including a virtual appearance of the President of Costa Rica; a delegation of business and government representatives; regional hospitality and tourism industry leaders; university leaders; and elected officials. The vision for the symposium was to further the establishment of the Monterey Bay region as an international example of quality sustainable tourism development, hospitality and eco-recreation. Symposium outcomes include deepening of the international relationship with tourism leaders and developers in Costa Rica, plans for subsequent exchanges, and future symposium. Additional information including presentations and video can be found at <https://csumb.edu/green>.

- **Jurisdiction Support/Community Engagement:**

FORA staff have produced a new draft market oriented website for business, resident and student recruitment purposes <http://www.OrdForward.org>. The website emphasizes themes consistent with FORA's economic development strategies: regional values, active communities, world-class education, inspiring open-spaces, abundant opportunities, and

awesome recreation. Among other features, it includes: a Business Directory for businesses on the former Fort Ord; entrepreneurship resources; links to new housing projects, education institutions, and regional open spaces, as well as member jurisdictions and regional partners. It will be regularly updated and marketed to grow impact and utility for all FORA jurisdictions, members and partners.

Staff has also contributed to the successful reconstitution of the Central Coast Marketing Team ("CCMT") as a regional business attraction/retention organization/ entity. Efforts are underway to develop a new CCMT website - TeamCentralCoast.org, which will integrate the use of OppSites software as an attraction/retention resource.

Staff continues serving as a technical and information resource to support jurisdiction economic development initiatives. Specific examples include: participating in Main Gate RFP review and developer recruitment; working with City of Marina staff to advance economic development projects; continuing support of City of Salinas agtech sector initiatives; and serving as a regional information resource to public interest groups and chambers of commerce.

- **Metrics: Housing Starts:** New residential development continues at the Dunes on Monterey Bay, East Garrison, and most recently Sea Haven (previously Marina Heights). A summary of CFD fees collected (and projected) from FY 14/15 thru FY 16/17 is below:

New Residential	FY 14/15	FY 15/16	FY 16/17 (Projected)
Unit Count	89	217	300
CFD Revenue	\$1,982,669	\$5,054,587	\$7,096,500

**Jobs:** Staff began conducting the 2017 Jobs Survey in January, through email surveys, followed by phone calls, then site visits. Preliminary results indicate a total of approximately 5000 jobs (3587 Full-time Equivalent ("FTE") and 1413 part-time ("PT")) on the former Fort Ord. These results indicate a 14% increase in total jobs from 2015 (1% growth in FTE and and 49% growth in PT jobs). Factors affecting these numbers include 18 new employers to the region, and 27 previously un-reported businesses. Most new employers are located at within the Dunes development in Marina. In addition, we estimate there are in excess of 10,000 students (7122 at CSUMB). A final Jobs Report will be published during Q2 2017.

**FISCAL IMPACT:**

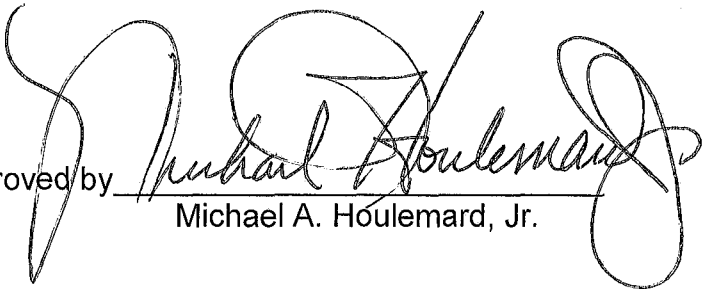
Reviewed by FORA Controller 

Funding for staff time and ED program activities is included in the approved FORA budget.

**COORDINATION:**

Administrative and Executive Committees

Prepared by   
Josh Metz

Approved by   
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** 2<sup>nd</sup> Vote: Staff Benefit Adjustment

**Meeting Date:** April 7, 2017

**Agenda Number:** 8c

**ACTION**

### RECOMMENDATION:

Adopt the fiscal year 2016-17 (FY 16-17) mid-year budget approving staff benefit adjustment - 2<sup>nd</sup> Vote.

### BACKGROUND / DISCUSSION:

At the March 10, 2017 meeting, the FORA Board reviewed the FY 16-17 mid-year budget.

The Board voted to approve the mid-year budget excluding the staff benefit adjustment. The vote was not unanimous (6 dissenting votes), therefore, the 2<sup>nd</sup> vote is required to approve the change in staff health cost benefits. **(Attachment A)**

The FORA Finance Committee Chair asked that staff note for the Board that the FY 16-17 budget approved by the Board on May 13, 2016 anticipated a 10% increase in health insurance premium cost. The actual premium increase is 4%. The Executive Committee was unable to provide salary/benefits recommendation to the Board prior to the first vote. They met on March 29, 2017 and concurred that staff should provide comment directly to the Board on this issue.

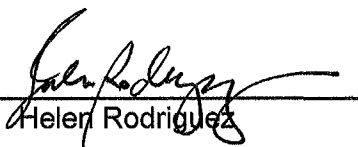
### FISCAL IMPACT:

The combined fund ending balance at June 30, 2017 is anticipated to be about \$41.0 Million Per the approved FY 16-17 mid-year budget. The fiscal impact for FY 16-17 is \$4,939.

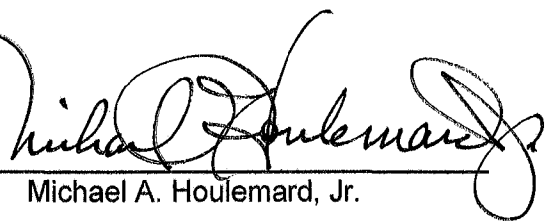
### COORDINATION:

Finance Committee, Executive Committee

Prepared by

  
Helen Rodriguez

Approved by

  
Michael A. Houlemard, Jr.



## FORT ORD REUSE AUTHORITY FY 16-17 PROPOSED BENEFITS ADJUSTMENT

Health insurance/employer share premium increase

				Fiscal Impact FY 16-17
<u>EE</u>	<u>EE+1</u>	<u>Family</u>		
798	1,447	1,826	<i>FY 16-17 Approved employer contribution</i>	
32	64	83	<i>Increase in premium - effective 1/1/17</i>	
<b>OPTIONS</b>				
a) Keep ER contribution constant until sunset/next review				<i>None</i>
b) Keep EE contribution constant until sunset/next review				
830	1,511	1,909	Employer contribution	<i>\$4,939 \$10,000 annually</i>
c) Both ER and EE contribution share increase				
814	1,479	1,868	Employer contribution	<i>\$2,846 \$6,000 annually</i>

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

<b>Subject:</b>	Resolution fixing the Employer Contribution under the Public Employees' Medical and Hospital Care Act	
<b>Meeting Date:</b>	April 7, 2017	<b>ACTION</b>
<b>Agenda Number:</b>	8d	

### RECOMMENDATION:

Adopt Resolution No. 17-XX titled "Fixing the Employer's Contribution at Unequal Amounts for Employees and Annuitants under the Public Employees' Medical and Hospital Care Act (PEMHCA)" updating Fort Ord Reuse Authority's (FORA) contribution to employees' health premium (**Attachment A**), approved on April 7, 2017 (Item 8c in this Agenda).

### BACKGROUND/DISCUSSION:

PEMHCA requires that contracting agencies adopt a resolution when modifying the employer contribution to employees' health premium. This provides the California Public Employees' Retirement System (CalPERS) proper authority to process the modification. On April 7, 2017, the FORA Board approved an adjustment in contributions to employees' health premium effective January 1, 2017. Therefore, Resolution No. 17-XX is required to replace Resolution No. 16-02 currently on file with CalPERS.

	Expiring contributions Resolution No. 16-02 <u>FY 15-16</u>	New Contributions Resolution No. 17-XX <u>FY 16-17</u>
1 party (employee)	\$ 798.00	\$ 830.00
2-party (employee+1 dependent)	\$ 1,447.00	\$ 1,511.00
Family (employee+ 2 or more dependents)	\$ 1,826.00	\$ 1,909.00

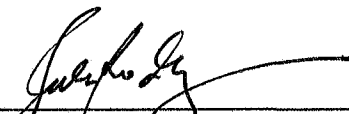
### FISCAL IMPACT:

Annual cost of this adjustment is \$10,000 based on current health insurance coverage/enrollment. The FY 16-17 cost is \$4,939 and is included in the revised FY 16-17 approved mid-year budget.

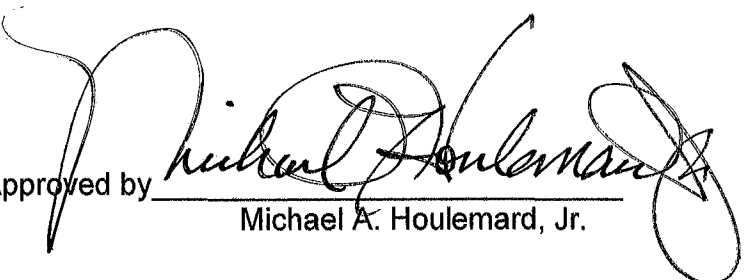
### COORDINATION:

Executive Committee

Prepared by

  
Helen Rodriguez

Approved by

  
Michael A. Houlemard, Jr.

## RESOLUTION NO. 17-xx

### **A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY FIXING THE EMPLOYER CONTRIBUTION AT UNEQUAL AMOUNTS FOR EMPLOYEES AND ANNUITANTS UNDER THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

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

- A. WHEREAS, the Fort Ord Reuse Authority ("FORA") is a contracting agency under Government Code section 22920 and subject to the Public Employees' Medical and Hospital Care Act (the "Act"); and
- B. WHEREAS, Government Code section 22892(a) provides that a contracting agency subject to Act shall fix the amount of the employer contribution by resolution; and
- C. WHEREAS, Government Code Section 22892(b) provides that the employer contribution shall be an equal amount for both employees and annuitants, but may not be less than the amount prescribed by Section 22892(b) of the Act; and
- D. WHEREAS, Government Code Section 22892(c) provides that, notwithstanding Section 22892(b), a contracting agency may establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly employer contribution for annuitants is annually increased to equal an amount not less than the number of years the contracting agency has been subject to this subdivision multiplied by 5 percent of the current monthly employer contribution for employees, until such time as the amounts are equal.

NOW THEREFORE, BE IT RESOLVED by the FORA Board of Directors as follows:

- 1. That the employer contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members in a health benefits plan up to a maximum of \$\_\_\_\_\_ per month with respect to employee enrolled for self alone, \$\_\_\_\_\_ per month for employee enrolled for self and one family member, and \$\_\_\_\_\_ per month for employee enrolled for self and two or more family members, plus administrative fees and Contingency Reserve Fund assessments; and
- 2. That the Fort Ord Reuse Authority has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above; and
- 3. That the participation of the employees and annuitants of Fort Ord Reuse Authority shall be subject to determination of its status as an "agency or instrumentality of the state or political subdivision of a State" that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code, upon publication of final Regulations pursuant to such Section. If it is determined that Fort Ord Reuse Authority would not qualify as an agency or instrumentality of the state or political subdivision of a State under such final Regulations, CalPERS may be obligated, and reserves the right to terminate the health coverage of all participants of the employer; and
- 4. That the executive body appoint and direct, and it does hereby appoint and direct,

Executive Officer, Michael A. Houlemard Jr., to file with the Board a verified copy of this resolution, and to perform on behalf of Fort Ord Reuse Authority all functions required of it under the Act.

Adopted at a regular meeting of the Fort Ord Reuse Authority Board of Directors at 920 2<sup>nd</sup> Avenue, Marina, California, upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was passed on at this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

\_\_\_\_\_  
Ralph Rubio, Chair

ATTEST:

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

DRAFT