



FORT ORD REUSE AUTHORITY

REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, October 12, 2018 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON OCTOBER 11, 2018.

1. CALL TO ORDER

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

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation, Gov. Code §54956.9(d)(4)

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

6. ROLL CALL

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

7. CONSENT AGENDA

INFORMATION/ACTION

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

- a. Approve September 28, 2018 Meeting Minutes ([p. 1](#))
Recommendation: Approve September 28, 2018 meeting minutes.
- b. Administrative Committee ([p. 5](#))
Recommendation: Receive a report from the Administrative Committee.
- c. Veterans Issues Advisory ([p. 10](#))
Recommendation: Receive an update from the Veterans Issues Advisory Committee.
- d. Environmental Services Cooperative Agreement Quarterly Report ([p. 13](#))
Recommendation: Receive an Environmental Services Quarterly Report.
- e. Building Removal Quarterly Update ([p. 16](#))
Recommendation: Receive a quarterly report on building removal.
- f. Transition Planning Process Update ([p. 18](#))
Recommendation: Receive a report providing responses to Transition Plan items from the September 28, 2018 Special Board meeting.
*The September 28, 2018 agenda item and recommendation will be forwarded to the October 19, 2018 Special Board Meeting for Action/Information. **No other Action contemplated for October 12, 2018.***
- g. Public Correspondence to the Board ([p. 33](#))
Recommendation: Receive Public Correspondence to the Board.

8. BUSINESS ITEMS

INFORMATION/ACTION

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

a. Habitat Conservation Plan Update (p. 34)

Recommendation:

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (HCP) report regarding United States Fish and Wildlife Service (USFWS) HCP and State of California Department of Fish and Wildlife (CDFW) 2081 Incidental Take Permit (ITP) developments.
- ii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority (JPA) to implement base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP). Should the Board direct staff to form a JPA to implement the HMP, consider including a target date for forming the JPA. For example, if the HCP JPA is not formed by July 31, 2019, then the Board could set this as a target date to begin forming a JPA to implement the HMP.

b. Presentation on the Marina Coast Water District Annexation Application Status (p. 45)

Recommendation: Receive a presentation on the Marina Coast Water District Annexation Application Status from General Manager Keith Van Der Maaten. **INFORMATION ONLY ITEM.**

9. PUBLIC COMMENT PERIOD

INFORMATION

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

10. ITEMS FROM MEMBERS

INFORMATION

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

11. ADJOURNMENT

NEXT SPECIAL MEETING: October 19, 2018 AT 2:00 P.M.



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS SPECIAL MEETING MINUTES
2:00 p.m., Friday, September 28, 2018 | Carpenters Union Hall
910 2nd 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 Gregory Ford.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael Houlemard announced the following:

- FORA 2017-2018 Annual Report Brochure available
- Saturday, October 20 - Honor our fallen 5K run/walk
- Tuesday, October 23 – America's Competitiveness Exchange Tour in Monterey
- Saturday, October 27 - 9th Annual Heroes' open at Black Horse Bayonet in Seaside
- Saturday, October 27 - Fort Ord National Public Lands Day

These announcement details and more can be found at www.fora.org

4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation, Gov. Code §54956.9(d)(4)

Time Entered: 2:07 p.m.

Time Exited: 2:32 p.m.

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen announced there was no action to report.

6. ROLL CALL

Voting Members Present:

Mayor Ralph Rubio (City of Seaside), Supervisor Mary Adams (Monterey County), Supervisor Jane Parker (Monterey County), Supervisor John Phillips (Monterey County), Councilmember Dennis Alexander (City of Seaside), Mayor Mary Ann Carbone (City of Sand City), Mayor Jerry Edelen (City of Del Rey Oaks), Councilmember Frank O'Connell (City of Marina), Mayor Joe

Gunter (City of Salinas), Councilmember Cynthia Garfield (City of Pacific Grove), Councilmember Gail Morton (City of Marina), Councilmember Jan Reimers (City of Carmel-by-the-sea), Councilmember Alan Haffa (City of Monterey)

Ex-officio (Non-Voting) Board Members Present:

Tobias Uptain-Villa (17th State Senate), Erica Parker (29th State Assembly), Dr. P.K. Diffenbaugh (MPUSD), Dr. George Blumenthal (UCSC), Andre Lewis (CSUMB), Col. Gregory Ford (US Army), Bill Collins (BRAC), Lisa Rheinheimer (MST), Mike Zeller (TAMC), Dr. Thomas Moore (MCWD)

7. CONSENT AGENDA

- a. Approve August 10, 2018 Meeting Minutes
- b. Administrative Committee
- c. Legislative Committee
- d. Executive Officer's Report
- e. Economic Development Report
- f. Public Correspondence to the Board

Chair Rubio introduced the consent agenda items and asked Board members to make their request for any items to be pulled. Board member Morton requested to pull item 7e – Economic Development Report to seek clarification from staff. There were no comments from the public on the Consent Agenda.

MOTION: On motion by Board member Carbone second by Board member Phillips and carried by the following vote, the Board moved to approve the consent agenda items 7a-7d and 7f.

MOTION PASSED UNANIMOUSLY

Economic Development Manager Josh Metz responded to the questions and comments from the Board regarding the consent agenda item 7e – Economic Development Report.

Motion: On motion by Board member Morton and second by Board member Adams and carried by the following vote, the Board moved to receive the Economic Development Report and directed staff to report up to date numbers within the Capital Improvement Program portion of the report.

MOTION PASSED UNANIMOUSLY

8. BUSINESS ITEM

- a. Consistency Determination (CD): City of Seaside Zoning Code – 2d Vote

Principal Planner Jonathan Brinkmann presented the item. There were no verbal comments from the public comment, however correspondence on the item received was acknowledged. The Board was provided the correspondence via email. Staff responded to questions and comments from the Board. Chair Rubio requested a roll call vote.

MOTION (2d Vote): On motion by Board member Phillips and second by Board member Gunter and carried by the following vote, the Board moved to approve Resolution 18-XX, certifying Seaside Zoning Code consistency with the Fort Ord Base Reuse Plan.

Roll Call Vote: (11 Ayes; 2 No) **MOTION PASSED**

Item 8a: Motion			
Director Parker	No	Director Rubio	Aye
Director Phillips	Aye	Director Alexander	Aye
Director Adams	Aye	Director Carbone	Aye
Director Edelen	Aye	Director Gunter	Aye
Director O'Connell	Aye	Director Garfield	Aye
Director Morton	No	Director Reimers	Aye
Director Haffa	Aye		

b. Building Removal Program – 2d Vote

Mr. Brinkmann introduced the item and restated the motion to be considered for a second vote. Mr. Houlemard and staff also responded to questions and comments from the Board. There were no comments from the public. Chair Rubio called for a roll call vote.

MOTION (2d Vote): On motion by Board member Alexander and second by Board member Carbone and carried by the following vote, the Board moved to seek every effort to obtain a response from the Department of Finance as to the feasibility of bonding FORA property tax and to authorize the Executive Officer to solicit and execute service contracts for a financial advisor and bond counsel to explore the feasibility of bonding FOR A property tax to complete remaining base-wide building removal, not to exceed \$75,000.

Roll Call Vote: (11 Ayes; 2 No) **MOTION PASSED UNANIMOUSLY**

Item 8b: Motion			
Director Parker	Aye	Director Rubio	Aye
Director Phillips	Aye	Director Alexander	Aye
Director Adams	Aye	Director Carbone	Aye
Director Edelen	Aye	Director Gunter	Aye
Director O'Connell	Aye	Director Garfield	Aye
Director Morton	Aye	Director Reimers	Aye
Director Haffa	Aye		

c. University of California Monterey Bay Education, Science and Technology (UCMBEST) Center Update

University of California Santa Cruz Chancellor Dr. George Blumenthal provided an update on UCMBEST and responded to questions and comments from the Board. There were no comments from the public.

This item was for information only.

d. Regional Urban Water Augmentation Project

Project Manager Peter Said presented the item and responded to questions and comments from the Board. There were no comments from the public.

MOTION: On motion by Board member Haffa and second by Board member Parker and carried by the following vote, the Board moved to authorize the Executive Officer to execute a Reimbursement Agreement with Monterey One Water for the shared pipeline facilities not to exceed \$2,300,000 in Fiscal Year 2018-2019 for the Monterey One Water share of the New Pipeline Facilities.

MOTION PASSED UNANIMOUSLY

e. Transition Planning Process Update

Mr. Houlemard introduced the item and Risk Manager Sheri Damon provided a presentation. Comments from the Chair regarding the expected outcome of the Board's deliberation and discussion of the item. Staff responded to questions and comments from the Board. Mr. Houlemard proposed that the Board consider scheduling a special meeting in October to focus on the topic of Transition Planning Process Update and to take action regarding the resolution and other items presented in the staff report. Staff will receive questions and comments at planning@fora.org and make an effort to respond at the scheduled special meeting. The Deputy Clerk was directed to poll the Board members with their availability as soon as possible and confirm a scheduled special meeting date and time. Public comment was received.

9. PUBLIC COMMENT

There were no comments received.

10. ITEMS FROM MEMBERS

There were no items from members.

11. ADJOURNMENT at 5:02 p.m.

Minutes Prepared by:
Dominique L. Davis
Deputy Clerk

Approved by:

Michael A. Houlemard, Jr.
Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Administrative Committee	
Meeting Date: October 12, 2018 Agenda Number: 7b	INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee held a meeting on August 15 and September 19, 2018. The approved minutes for these meetings are provided as **Attachment A** and **B**.

FISCAL IMPACT:

Reviewed by the FORA Controller 

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

COORDINATION:

Administrative Committee

Prepared by  Approved by  for
Dominique L. Davis Michael A. Houlemard, Jr.



APPROVED

FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE SPECIAL MEETING MINUTES
8:30 a.m., Wednesday, August 15, 2018 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Executive Officer Michael Houlemard called the meeting to order at 8:30 a.m.

The following members were present:

- | | |
|---------------------------------------|---|
| Craig Malin* (City of Seaside) | Lisa Rheinheimer (Monterey Salinas Transit) |
| Hans Uslar* (City of Monterey) | Vicki Nakamura (Monterey Peninsula College) |
| Dino Pick* (City of Del Rey Oaks) | Steve Matarazzo (UCMBEST) |
| Melanie Beretti* (County of Monterey) | |
| Elizabeth Caraker (City of Monterey) | *Voting Member |

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Monterey Salinas Transit Director of Planning & Marketing, Lisa Rheinheimer.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Dino Pick announced the Building Removal kick-off event on September 5, 2018 at 11:00 a.m. Craig Malin announced a rally in Seaside hosted by Christian Memorial Tabernacle Church Pastor Rev. Samuel Gaskins. Steve Matarazzo announced Jovi Aviation in Marina received \$100M in venture funding and are coming to the Marina Airport in early 2018, and are currently hiring to fill positions. Mr. Houlemard announced the FORA office would be closed on Friday, August 17, 2018 for a staff review and retreat; and a Board Special Meeting was scheduled for September 28, 2018 at 2:00 p.m. The September 14 regular Board meeting was canceled.

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 public comments received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. August 1, 2018 Meeting Minutes

MOTION: On motion by Committee member Uslar and second by Committee member Pick and carried by the following vote, the Administrative Committee moved to approve the August 1, 2018 minutes.

MOTION PASSED UNANIMOUSLY

6. AUGUST 10, 2018 BOARD MEETING AGENDA FOLLOW UP

INFORMATION

Principal Planner Jonathan Brinkmann reviewed the action taken at the August 10, 2018 Board meeting; and along with other staff members responded to questions and comments from the Committee and public. The schedule of Administrative Committee meetings was reviewed due to the date changes for the September and November Board meetings. The revised schedule can be accessed at the following link: https://www.fora.org/Admin/2018/2018_Admin_Comm_Schedule.pdf

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Monterey Bay Area Feasibility Study of Bus Operations

Ms. Rheinheimer provided a presentation and responded to questions and comments from the Committee and the public. The presentation is available at https://www.fora.org/Admin/2018/BOS-Branch_Line_Presentation.pdf

This item was for information only.

b. Building Removal Program

Mr. Brinkmann provided an update to the Committee regarding the 2nd vote that will be taken by the Board in September regarding the authorization for the Executive Officer to solicit and execute service contracts for a financial advisor and bond counsel to explore the feasibility of bonding FORA property tax to complete remaining base wide building removal.

8. ITEMS FROM MEMBERS

Melanie Beretti advised that the Fort Ord Committee would be holding two study sessions on FORA transition on August 23-24, 2018. Hans Uslar advised that Monterey City Council would hold a study session on FORA transition on August 29, 2018. Craig Malin advised that Seaside City Council would hold a study session on FORA transition on September 20, 2018.

9. ADJOURNMENT at 9:34 a.m.

Minutes Prepared By:
Dominique Jones
Deputy Clerk



APPROVED

FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES
8:30 a.m., Wednesday, September 19, 2018 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

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

The following members were present:

Craig Malin* (City of Seaside)

Hans Uslar* (City of Monterey)

Dino Pick* (City of Del Rey Oaks)

Layne Long* (City of Marina)

Elizabeth Caraker (City of Monterey)

*Voting Member

Melanie Beretti* (County of Monterey)

Vicki Nakamura (Monterey Peninsula College)

Bill Collins (US Army BRAC)

Steve Matarazzo (UCMBEST)

Lisa Rheinheimer (Monterey Salinas Transit)

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mr. Malin.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

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 public comments received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. August 15, 2018 Special Meeting Minutes

MOTION: On motion by Committee member Pick and second by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the August 15 special meeting minutes.

MOTION PASSED UNANIMOUSLY

6. SEPTEMBER 28, 2018 DRAFT BOARD MEETING AGENDA REVIEW

INFORMATION

Executive Officer Michael Houlemard reviewed the items on the September 28, 2018 draft Board agenda and responded to questions and comments from the Committee and public.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Habitat Conservation Plan Update

Principal Planner Jonathan Brinkmann provided an update presentation on the HCP and responded to questions and comments from the Committee. Public comments were received.

Information item only – no vote taken.

b. Caretaker Cost Reimbursement Policy

Mr. Brinkmann advised the Committee that staff would be issuing acceptance letters to jurisdictions that submitted reimbursements and he also provided the second deadline for submittal. Comments and questions were received from the Committee and public.

Information item only – no vote taken.

c. Department of Toxic Substance Control Land Use Covenant Report

Mr. Brinkmann reminded the jurisdictions that reporting will be due at the end of September. Comments and questions were received from the Committee and public.

Information item only – no vote taken.

8. ITEMS FROM MEMBERS

There were no items from members. FORA Economic Development Manager Josh Metz recommended the book "[The New Localism](#)" by Bruce Katz.

9. ADJOURNMENT at 9:34 a.m.

Minutes Prepared By:
Dominique Davis
Deputy Clerk

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Veterans Issues Advisory Committee

Meeting Date: October 12, 2018

Agenda Number: 7c

INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Veterans Issues Advisory Committee (VIAC).

BACKGROUND/DISCUSSION:

The Veterans Issues Advisory Committee met on July 26, 2018. The approved minutes for this meeting are provided as **Attachment A**.

FISCAL IMPACT:

Reviewed by FORA Controller 

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

COORDINATION:

VIAC

Prepared by


Heidi L. Lizarbe

Approved by


Michael A. Houlemard, Jr.



APPROVED

**FORT ORD REUSE AUTHORITY
VETERANS ISSUES ADVISORY COMMITTEE (VIAC) MEETING MINUTES
3:00 P.M. July 26, 2018 | FORA Conference Room
920 2nd 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 Present:

Jerry Edelen, Mayor of City of Del Rey Oaks
Edith Johnsen, Veterans Families/Fund Raising
Mary Estrada, United Veterans Council (UVC)
Jason Cameron, Monterey County Office of Military & Veterans Affairs
James Bogan, Disabled American Veterans (DAV)
Jack Stewart, Monterey County California Central Coast Veterans Cemetery Advisory Committee
Command Sgt. Major Roberto Marshall, US Army
Richard Garza, CCVC Foundation

2. PLEDGE OF ALLEGIANCE led by Edith Johnsen

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

The American Association of Defense Communities will be hosting an event at the Governor's office in August in Sacramento CA regarding issues related to former military bases, and how to build better relationships with the military communities in the state of California.

4. PUBLIC COMMENT PERIOD

There were no comments from the public.

5. APPROVAL OF MEETING MINUTES

a. June 28, 2018 Regular Meeting Minutes

MOTION: On motion by Committee member Mary Estrada and seconded by Committee member James Bogan. The VIAC approved the June 28, 2018 meeting minutes as amended by unanimous vote.

6. BUSINESS ITEMS

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

i. *Cemetery Administrator's Status*

Mr. Norris noted at the June 28, 2018 VIAC meeting, that we discussed the May revised version of the government's budget. We now have the enacted budget for CDVA with some notes/comments from Bill McGee of the CDVA. Mr. Norris requested any questions or concerns from the committee be submitted, to get answers to close the review of the budget.

ii. *Veterans Cemetery Land Use Status*
No Report

iii. Fort Ord Committee Verbal Report: Oak Woodlands Mitigation & Endowment MOU

Principal Analyst Robert Norris announced that he received clarification from Supervisor Parker's Chief of Staff, Christy Marky, that the Fort Ord Committee had given instructions to county staff relative to both the Mitigation and Endowment MOU to contact CDVA on both issues. CDVA has yet to respond.

b. Fundraising Status

i. CCVCF Status Report

No Report.

c. Veterans Transition Center (VTC) Housing Construction

Jack Murphy announced they will be receiving the occupancy certificate for the duplex that will be a 10-person residence. In addition, to opening up one four-bedroom unit for permanent supportive housing.

Mr. Murphy also provided an update on Lightfighter Village. It is still proceeding on schedule, however, with recent changes in guidelines at the HUD level, the VTC will take a bye on round 4 and reapply for the additional funding in round five which is next spring.

d. VA-DOD Clinic

No Report, however Mr. Norris advised the committee that he reached out to Beth Cane to hold a future VIAC meeting at the VA-DOD Clinic.

e. Historical Preservation Project

No Report.

f. Calendar of Events

None

7. ITEMS FROM MEMBERS

Veteran's Cemetery/State Budget

8. ADJOURNMENT at 3:42 p.m.

Minutes Prepared by:

Heidi Lizarbe

Administrative Coordinator

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Environmental Services Cooperative Agreement Quarterly Report	
Meeting Date:	October 12, 2018	INFORMATION/ACTION
Agenda Number:	7d	

RECOMMENDATION:

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

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 3,340 acres of the former Fort Ord. FORA and the Army signed the ESCA agreement in early 2007. Under the ESCA terms, the Army awarded FORA approximately \$98 million to perform the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) MEC cleanup on those parcels. FORA also entered the Administrative Order on Consent (AOC) with U.S. Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (DTSC) (collectively referred to as Regulators) defining FORA's contractual conditions to complete the Army remediation obligations for the "ESCA parcels." FORA received the ESCA parcels after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer (FOSET), May 8, 2009.

To complete the ESCA and AOC obligations, FORA entered a Remediation Services Agreement (RSA) in 2007 by competitively selecting LFR Inc. (now ARCADIS) to provide MEC remediation services. ARCADIS remediation services are executed under a cost-cap insurance policy through American International Group (AIG) assuring financial resources to complete the work and offer other protections for FORA and the jurisdictions.

DISCUSSION:

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

Of the \$98 million of ESCA FORA received, FORA paid \$82.1 million upfront, to secure an AIG "cost-cap" insurance policy. AIG controlled the \$82.1 million in a "commutation" account and paid ARCADIS directly as work was performed. AIG provides up to \$128 million assuring additional work (known and unknown) is completed to the Regulators satisfaction (see table below). Under these agreements, AIG pays ARCADIS directly while FORA oversee ARCADIS compliance with the ESCA and AOC requirements. On January 25, 2017, ARCADIS notified FORA that the ESCA commutation account was exhausted and that future ARCADIS work would be paid under the terms of the AIG "cost-cap" insurance policy until March 30, 2019. At that time, AIG's responsibility to pay for ESCA work will terminate. ARCADIS will continue to provide FORA with quarterly AIG cost-cap insurance invoicing estimates, which FORA staff will continue to report in the ESCA Quarterly Board Report.

Post-ESCA Amendment ESCA fund status as of June 2018:

Item	2017 Amendment Allocations	Accrued through June 2018	Invoiced to AIG Cost Cap-Policy
Line Item 0001 Environmental Services			
FORA Self-Insurance or Policy	\$916,056	\$916,056	N/A
State of California Surplus Lines Tax, Risk Transfer, Mobilization	6,100,000	6,100,000	N/A
Contractor's Pollution Liability Insurance	477,344	477,344	N/A
ARCADIS/AIG Commutation Account - <i>plus</i> - AIG insurance	82,117,553	82,117,553	\$4,723,934
Original FORA Administrative Fees	4,562,001	4,562,001	N/A
Line Item 001: Subtotal	\$94,172,954	94,172,954	N/A
Line Item 0002 thru 31 Dec 2019: DTSC and EPA Technical Oversight Services	4,301,568	3,900,346	N/A
Line Item 0003 thru 30 June 2020: FORA ESCA Administrative Funds	1,865,848	148,330	N/A
Line Item 0004 thru 30 June 2028: Post-Closure MEC Find Assessments	528,651	0	N/A
Line Item 0005 thru 30 June 2028: Long Term/LUC Management	3,705,792	0	N/A
Total	\$104,574,813	\$98,221,630	\$4,723,934
	ESCA Remainder	\$6,353,183	N/A

ESCA Activity Status:

Data collected during the ESCA field investigations is under Regulator and Army review. The review and documentation process is dependent on Army and Regulator responses and decisions, who will issue written confirmation that CERCLA MEC remediation work is complete (known as Regulatory Site Closure).

The Record of Decision (ROD) records the Regulator and Army decision on the cleanup and what controls are required to continue to protect public health and safety. On November 25, 2014, the Regulators signed the ROD for the ESCA Group 3 properties located in Monterey County (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 (MOUT) property. On February 26, 2015, the Regulators signed the ROD for the ESCA Group 2 California State University Monterey Bay (CSUMB) property (south of Inter-Garrison Road). The Regulators signed the ESCA Interim Action Ranges (IAR) ROD in December 2016. Currently, Draft Final ESCA Group 1 and 4 RODs are being signed and once signed, all ESCA properties will have RODs.


The Land Use Control Implementation Plan/Operation and Maintenance Plan (LUCIP/OMP) document prescribes implementing, operating and maintaining ROD controls tailored to individual site conditions and historic MEC use. The Regulators and Army approve LUCIP OMP documents before issuing regulatory site closure. Final ESCA Group 2, Group 3 and IAR LUCIP/OMP documents have recently received Army and Regulatory Approval. Draft ESCA Group 1 and 4 LUCIP/OMP are currently under review.

In 2018, Army BRAC Headquarters (HQ) in Washington D.C. changed their document review and approval process resulting in extended Army review of ESCA documents. On June 14, 2018, FORA advised the Army BRAC office that since the recent shift in Army HQ document review policy, Army document review has become more complicated. This has resulted in protracted Army HQ review times (Section 4.2 of the ESCA Agreement) and their inability to meet the comment time frames on the Group 1 and Group 4 RODs and IAR LUCIP/OMP documents (impacting the ESCA completion schedule) has created a breach of the ESCA contract terms. On August 10, 2018 in a closed session, the FORA Board authorized the FORA Executive Officer and FORA Special Counsel, under the direction of the FORA Executive Committee to enter into negotiations with the Army for additional funds to cover ESCA costs beyond the AIG cost-cap insurance policy expiration date. On August 14, 2018, FORA Special Counsel met with the FORA Executive Committee and briefed them on the situation and requested permission for the FORA Executive Officer to negotiate with the Army for additional funds to complete the ESCA.

ESCA 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.

FISCAL IMPACT:

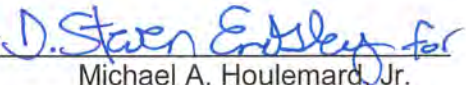
Reviewed by FORA Controller 

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 Update
Meeting Date:	October 12, 2018
Agenda Number:	7e
	INFORMATION/ACTION

RECOMMENDATION(S):

Receive a quarterly report on building removal.

BACKGROUND/DISCUSSION:

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

Seaside Surplus II:

In 2016, at Seaside’s request, FORA performed a hazardous materials assessment of the site and presented the results and a course of action to Seaside. Seaside concurred with the plan to utilize FORA’s \$5.2M CIP obligation to remove 17 of the 27 buildings at Surplus II, enabling future development of the site. In July 2017, the FORA Board authorized the Executive Officer to execute multiple contracts necessary to remove buildings at Surplus II.

In September 2017, the FORA Board awarded a contract for General Engineering Services to Harris and Associates (H&A), approving Service Work Order (SWO) H1. H&A prepared plans, specifications and bid documents for prospective construction contracts between November 2017 and February 2018. During the same time, local company Central Coast Land Clearing (CCLC) performed brush and vegetation removal. In January 2018, local Falconer, Antonio Balestreri dba Sky Patrol, began Biological Species Control prior to the bird nesting seasons. In July 2018, FORA staff conducted a second public bid opening for Hazmat and Building Removal. FORA received three bids from PARC Environmental, UEI, and Resource Environmental, Inc. In August 2018, the Executive Officer executed a contract with Resource Environmental, Inc., the apparent low bidder, to abate hazardous material and remove 17 buildings. The same month, the on-call services of Vista Environmental were extended to cover the air and hazardous material removal monitoring; and the contract for H&A was extended to include on-call construction support for inspection, construction management, and prevailing wage monitoring. In September, the public and elected officials participated in a building removal kick-off event.

Staff provided Resource Environmental a Limited Notice to Proceed (NTP) to start building abatement on September 11, 2018, reserving a full NTP for completion of utility cut-off plans estimated to be completed October 31, 2018. Abatement is 38% complete, the Surplus II project is 18% complete, and the estimated completion date is February, 08, 2019. Staff anticipates additional change orders pertaining to the utility cut-offs and recent vandalism resulting in additional hazardous material abatement costs.

The previously authorized Surplus II budget and expenditures are as follows:

% Comp	Contractor	Work Description	Contract Date	Contract Amount	Spent to-date	Remaining
100%	Vista Environ.	Hazmat Surveys, Reports	2/1/16	\$170,000	\$166,827	\$3,173
-	BKF Engineers	Contract Terminated	2/10/17	\$164,049	\$104,514	\$59,535
3%	FORA	Management Reserve	7/14/17	\$260,772	\$8,662	\$252,110
100%	CCLC	Weed Abatement/Fire protection	10/10/17	\$106,500	\$86,364	\$20,136
95%	H&A	Engineering & Bid Support	12/5/17	\$133,735	\$90,960	\$42,775
80%	Sky Patrol	Falconer - Bio Species Control	1/22/18	\$120,960	\$37,920	\$83,040
18%	Vista Environ.	On-Call Monitoring Services	9/10/18	\$322,175	\$58,050	\$264,125
15%	H&A - Amd#2	Construction Support - SWO-H1	9/10/18	\$98,500	\$0	\$98,500
15%	Resource	Hazmat & Building Removal	8/9/18	\$2,930,000	\$155,730	\$2,774,270
			Total	\$4,306,691	\$709,027	\$3,597,664
		Change Order Reserve		\$430,000		
		Unallocated Reserve		\$562,780		
		Surplus II, Total CIP Budget		\$5,299,471		

Marina Stockade:

Early in 2016, FORA and Marina staff began Stockade removal discussions. FORA staff contracted professional Industrial Hygienist services to sample, test, characterize hazardous materials and monitor removal at the Stockade. In September 2017, the FORA Board approved a contract with H&A for engineering support and awarded SWO-H2 for work on the Stockade. In June 2018, H&A completed 90% Engineering Drawings. In August 2018, the FORA Board authorized the Executive Officer to negotiate and execute multiple contracts pertaining to the removal of the Stockade. FORA staff is currently preparing a Request for Proposals (RFP) for the abatement of the Stockade. FORA expects to coordinate with Marina, and then advertise the RFP in November 2018.

FISCAL IMPACT:

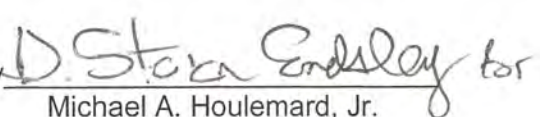
Reviewed by FORA Controller HF signing for Helen Rodriguez

Funding for the current building removal efforts is included in the approved FY 18-19 CIP and FY 18-19 FORA Budget.

COORDINATION:

Administrative Committee, Seaside, Marina, H&A, Vista Environmental, Resource Environmental, Inc., MCWD, PG&E, M1W, Monterey Bay Air Resources District, CSUMB, Presidio of Monterey, property owners, and Authority Counsel.

Prepared by  Peter Said Reviewed by  Jonathan Brinkman

Approved by  Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Transition Planning Process Update

Meeting Date: October 12, 2018

Agenda Number: 7f

INFORMATION/ACTION

RECOMMENDATION:

Receive a report providing responses to Transition Plan items from the September 28, 2018 Special Board Meeting

BACKGROUND/DISCUSSION:

At its special September 28, 2018 Board Meeting, the Fort Ord Reuse Authority (“FORA”) Board engaged in an informational background session revolving around a DRAFT recommendation from staff which included an implementing DRAFT Resolution. The combination of the DRAFT recommendation and the DRAFT resolution is intended to serve as the heart of a statutorily required Transition Plan submittal to the Local Agency Formation Commission (“LAFCO”) due in December 2018. Since the August regular Board meeting, the Board received requests from some Board Members/ FORA jurisdictions asking that action regarding the Transition Plan be deferred from the Special Meeting date to a future time. Consequently, the Board elected to hold an information-only session. During that session, the Board and members of the public asked a number of questions and suggested options. This staff report will highlight some of those questions with responses, in order to expedite completion of this important task.

The first set of Board/public questions centered on the level of statutory authority held by FORA and LAFCO, and how to structure the process in a way that honors the statutes that both agencies operate under. FORA staff have adjusted prior language in the Resolution to focus on what we believe FORA has the authority to do, rather than a refutation of LAFCO’s interpretation which is best remedied through continued discussion between the agencies. There was some discussion in the meeting about overuse of the words ‘should’ and ‘shall’, and we are mindful of that sensibility, but it should also be kept in mind that the Transition process is not optional, it is a mandatory set of actions set out by the State Legislature, with specific deadlines and actions that must be accomplished. In particular, the tasks center on an orderly ultimate dissolution of the Fort Ord Reuse Authority, and assignment of assets, liabilities, and contracts to various successors.

Issues were also raised about the nature and extent of the liabilities and obligations needed to be completed. These are not new issues. The Transition Task Force members and the Board has been advised for quite some time that there is disagreement about the nature and extent of what needs to be completed. Some contend that this needs to be re-examined and further legal analysis performed on whether or not the entire capital improvement program contains enforceable obligations. As explained multiple times and throughout the Transition Planning process most of the obligations are ones where FORA is not the lead agency but is instead *reimbursing* lead agencies (i.e. sharing revenue collected by other member jurisdictions within the FORA Community Facilities District) for a portion of the costs associated with their projects. As outlined in the Transition Plan (and to be implemented by Transition Plan Implementation Agreements), this does not change. Instead of having a regional collection mechanism through the Community Facilities Fee program, the obligation to raise funding for their lead projects reverts to the underlying agencies (along with the “obligation” to the extent they so desire to revenue share with other member jurisdictions). For example, what this means to the County

with respect to the Davis Road project, is that it will have to absorb and/or figure out how to collect revenues from the other FORA member agencies (i.e. revenue sharing) in order to facilitate reimbursements it would have received from FORA. This is particularly difficult when trying to make collections from already entitled development. The only three transportation projects where FORA must assign are the ones in which FORA is the lead agency. The Transition Plan Implementation Agreement approach gives each jurisdiction which disagrees with any aspect of the plan, the opportunity to perform whatever legal analysis they wish, or enter agreements with other entities. It is not FORA, but ultimately the FORA jurisdictions, who would resolve any disagreements and bring back to the FORA Board those agreements on a set timeline.

What came out of the prior reworking of the Resolution was a staff recommended approach that appeared to receive support from most Board Members, and which also appears to satisfy the concerns of LAFCO that the FORA jurisdictions enter into a series of agreements formally implementing the Transition Plan. The basic outline of the recommendation is to approve the base Transition Plan by December 2018 as required by law, and forward it to LAFCO with a 'cascading' to do list, i.e. a listing of each agreement, purpose, parties, referred to as Transition Plan Implementing Agreements ("TPIA"), with clear deadlines and default results if any of the agreements are not completed by the desired timeframe. This approach is designed to protect the home rule rights of FORA and other jurisdictions, while respecting the will of the State Legislature to complete the transition as they envisioned. The ancillary benefit is that if successful the TPIA's would be negotiated by the jurisdictions themselves, with assistance from, but not imposed upfront by FORA, LAFCO or other parties. This approach also provides a discrete timeframe within which jurisdictions that disagree with what is perceived as an overbroad listing, of obligations or have legal objections. to have facilitated agreements with other jurisdictions. The Board's adoption of the Transition Plan would be without prejudice, to consider the facilitated agreements between the jurisdictions and potential modifications to the Transition Plan as necessitated by those agreements. Ultimately, the Board has responsibility for creating the Transition Plan.

A number of additional questions then arose regarding how to conduct these negotiations, whether or not an overarching consultant would be needed, and what the process might look like. Again, in outline form, it is noted that the time frame for the TPIA negotiations is short, they need to be concluded by March 31, 2019 for some items, and by June 30, 2020 for others. It is unlikely that a consultant could be brought online in time to complete the process of drafting multiple agreements, especially in light of reluctance of some of the parties to do so and the newly raised legal issues. Over a year ago, FORA staff contacted at least two facilitator firms in an endeavor to obtain assistance with this process and were advised that the facilitators would not be able to meet a December 2018 timeline. In addition to their own existing City Attorneys and County Counsel, each of the FORA jurisdictions have already hired various financial and legal consultants to analyze and advise on the Transition process. It is best to take advantage of that already in place brain-power. FORA could provide the venue where these discussions can take place, including the physical space, access to files and data base, availability of staff with subject matter expertise, and support staff, as well as help with scheduling and organization of required meetings. In order to meet the legislative deadlines and promote an urgency to reach timely agreements, it is suggested that the Board adopt the Transition Plan but authorize simultaneously securing a facilitative consultant as requested by the County. This facilitator would work with the jurisdictions to negotiate the agreements and understandings noted in this report. In the instance that agreements are reached that do not implement all of the "obligations" (because the parties believe them to be legally inappropriate or otherwise) as set forth by the Board approved

Transition Plan, then those agreements should return to the Board by March 2019 for final resolution and potential revision of the Transition Plan. Another series of questions had to do with the financing mechanisms required to complete a successful transition. The key dilemma we face, is the potential loss of FORA's Community Facilities District ("CFD") fees which provide the bulk of financing for major elements of the FORA Capital Improvement Program ("CIP"), in particular Transportation (Roads and Transit), Water Augmentation, and Habitat Management/Conservation. FORA land sale and property tax revenue streams are also lost if a mechanism cannot be found to extend FORA's financing authority. This has a direct impeding effect on efforts to master finance large scale additional activities like building removal, the bulk of which was not assigned to FORA by the legislature and remains a burden to both the individual jurisdictions and economic development in general.

Staff has discussed with the Board a potential legislative fix to this problem that would take a great deal of pressure off the jurisdictions/successor agencies. The Board should explore extending FORA solely for the purpose of implementing a Board approved Transition Plan, including collecting the necessary CFD, property tax and land sale revenues, assign those revenues to specific entities including, TAMC, Habitat JPA, County-Seaside ESCA JPA, and the jurisdictions themselves, and ramp FORA down under set timeframes and as functions are transferred and agreements implemented. The continued revenue stream could then be coordinated with existing efforts by the FORA jurisdictions to create their own CFD's and financing mechanisms, and revenue sharing agreements needed to complete the physical projects, operational expenses, and the like. This effort would also be 'cascading,' if state legislation is not forthcoming, individual jurisdictions and successor agencies would continue to work on bridging the financing gap as FORA implements the default shuttering of the agency on June 30, 2020.

Finally, the Board expressed its intent to hold another Special Board Meeting in October, tentatively scheduled for October 19, 2018, where these approaches can be further discussed and harmonized. This effort is one of the more complicated government efforts that most staff and elected officials will face in their careers. It is not surprising that it would entail a certain amount of uncertainty and political disagreement, but it is not insoluble. The draft approach outlined here is meant to help the Board steer its decision making through timelines and deadlines not of their making, assuage legislative mandates of multiple agencies, while remaining cooperative and focused on solutions to specific problems. In this manner, the completion of the Reuse Plan envisioned so many years ago gets nearer to reality.

To recap prior efforts, FORA is slated to sunset **June 30, 2020**. FORA is required under State Law to submit a Transition Plan to the LAFCO no later than **December 30, 2018** to be in compliance with state law. FORA has been engaged in transition planning activities over the past three years, empaneling two Transition Task Force Committees, and one Transition Ad Hoc Committee. The FORA Board of Directors received a report outlining the first draft of the Transition Plan and background materials on June 8, 2018. On July 13, 2018, a second Board study session was held to allow the Board to deliberate policy and programmatic issues. Senator Monning attended the July 13, 2018 session and was engaged in the discussion, with particular interest in how the Transition Plan would be implemented, how policies would be enforced, and how building removal might be addressed.

At the August 13, 2018 Board meeting a draft Transition Plan Resolution was presented which covered legislative intent and findings, assignment of assets, liabilities, obligations and schedule. Since the August 13, 2018 Board meeting, FORA held or participated in the following meetings:

- On August 23 and 24, FORA staff attended the County's Fort Ord subcommittee.

- On August 27, 2018, FORA staff attended the LAFCO presentation to its Board.
- On August 31, 2018, FORA staff made a workshop presentation to the City of Monterey. The City of Monterey held another session on September 19, 2018 and October 2 and will further consider the Transition Plan on October 16th.
- On August 15, 2018, FORA staff met with the City Manager of Marina who requested that FORA prepare and share a map which identifies locations of FORA lands), and where CFD fees have been collected.
- The County Board of Supervisors held a workshop on September 11, 2018 and held subcommittee and Board meetings on September 24 and 25, respectively.
- The Board of Supervisors also held a meeting on October 2, 2018.
- The City of Seaside considered Transition Plan issues on September 20, 2018.
- The City of Marina considered and transmitted a Resolution on Transition Plan/Dissolution issues on September 25, 2018 and provided copies of that resolution to the FORA Board

In addition, FORA staff has fielded numerous phone calls from consultants and staff from the jurisdictions. A table which compiles jurisdictional reports and materials can be accessed through this link: <https://www.fora.org/Transitiontaskforce.html>.

As discussed above, there were multiple examples of how the Transition Plan could be implemented without resorting to the General Fund of an agency and how the implementing agreements may be negotiated and returned to the FOR A Board, if modifications to the Transition Plan are required. Accordingly, staff is recommending the following next steps:

1. October 19, 2018: Approve the Transition Plan (DRAFT) and authorize retention of a facilitator to work on Transition Plan Implementation Agreements (and if a corresponding amendment to the Transition Plan is required to return to the Board with the Agreements) no later than March 2019;
2. Transmit the Transition Plan to LAFCO with the caveat that the member agencies are working on Implementation Agreements which may modify the Transition Plan and to hold off on final action until after March 2019;
3. Direct staff to continue work with TAMC, MST and MCWD on regional transportation and water issues.

FISCAL IMPACT:

Reviewed by FORA Controller _____


COORDINATION:

County of Monterey, LAFCO, TAMC, Cities of Seaside, Monterey, Del Rey Oaks, Marina and Salinas.

ATTACHMENTS:

Attachment A: Revised Draft Transition Plan Resolution *(includes minor revisions by Authority Counsel)*
[Exhibit A:to Attachment A: Contract Assignment Chart](#)

Prepared by 
 Sheri L. Damon

Reviewed by 
 Steve Endsley

Approved by  for
 Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY RESOLUTION NO. 18-xx

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY Adopting a Transition Plan

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

- A. In 1991, the Secretary of Defense announced the proposed downsizing of the United States Army Fort Ord Military Reservation under the Base Realignment and Closure Act. The United States Army (the "Army") moved the 7th Infantry Division - Light to Fort Lewis Washington over the following two years. Regional communities lost significant economic, social, and cultural contributions that had been associated with the military presence.
- B. After the announcement but prior to the implementation of the base downsizing/closure, the regional political leadership formed a Fort Ord Community Task Force ("Task Force") which was asked to develop recommendations for moving forward with a recovery effort.
- C. In October 1992, the Fort Ord Reuse Group ("FORG") was formed/organized by local governments and potential property recipients to initiate former Fort Ord recovery planning - predicated upon the June 1992 Fort Ord Task Force Strategy Report. An initial and revised plan were considered and adopted by FORG in 1993. Those early planning efforts recognized the significant costs associated with the implementation of any plan and sustained the regional and basewide approaches that were inherent in the Task Force conclusions.
- D. The Fort Ord Reuse Authority ("FORA") was established in 1994 by state legislation (Government Code sections 67650 and following, the "FORA Act") and when the member jurisdictions adopted resolutions favoring the establishment of the authority in accordance with Government Code section 67656. FORA's primary legislative directive is to plan, facilitate, and manage the transfer of former Fort Ord property from the Army to the local jurisdictions or their designee(s).
- E. FORA, under FORA Act authority, adopted a Fort Ord Base Reuse Plan (the "Reuse Plan") on June 13, 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the "Basewide Mitigation Measures") and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the "Basewide Costs"). As a part of that approval, the Board certified an Environmental Impact Report and adopted a Statement of Overriding Considerations after making the following findings:
 - The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;

- The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside (“Seaside”) and Marina (“Marina”), thereby creating a housing stock with higher income families in these communities with larger disposable incomes;
- The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
- The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
- The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
- The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
- The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks (“DRO”), Monterey (“Monterey”), Seaside, Marina, and the unincorporated areas of the County of Monterey (“County”) in the vicinity of Fort Ord;
- The Reuse Plan will provide for additional and needed senior housing opportunities;
- The Reuse Plan will assist the communities of Seaside and Marina in the transition of their respective community images from dependent, military base extensions with transient military personnel to vital, independent, and self-actuated communities populated with permanent residents with long-term interests in the well-being of their respective communities; and
- The Reuse Plan will encourage development that will enhance the continued viability of California State University at Monterey Bay and the open space areas retained by the federal government through the Bureau of Land Management and conveyed to the California Department of Parks and Recreation.

F. FORA is obligated either by the California Environmental Quality Act, the Reuse Plan and/or the FORA Act to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA arranged for a public financing mechanism to apply to all former Fort Ord properties.

G. In the Reuse Plan, FORA identified land sale and lease (or “property based”) revenues, FORA’s share of Fort Ord property taxes, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.

H. To implement its obligations under the FORA Act and transition the base as quickly as possible, FORA sought funding, entered into multiple agreements with local, state, and federal entities, established community facilities district (“CFD”) special taxes and a Capital Improvement Program (“CIP”). The Reuse Plan carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan (“PFIP”). The PFIP served as the baseline CIP for the Reuse Plan.

The CIP was adopted in 2001 and is reviewed on an annual basis. It is estimated that the expenses identified in the 2018-19 CIP will be approximately \$194.5M after 2020.

- I. On or about June 7, 2000, FORA entered into a Memorandum of Agreement (MOA) for the No-Cost Economic Development Conveyance (“EDC”) of former Fort Ord Lands. This document was recorded on June 23, 2000 at Series No. 2000040124 in Monterey County records. The MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. A condition of the land transfer was that any proceeds from the subsequent sale or lease of the transferred land must be applied to the economic development of the former Fort Ord.
- J. In 2001, each underlying land use jurisdiction and FORA entered into an Implementation Agreement or other agreement to provide for orderly transfer of EDC property and the allocation of a fair and equitable share of Basewide Costs and Basewide Mitigation Measures. The Army required that water be allocated in a fair and equitable manner among all property recipients and each Implementation Agreement requires compliance with FORA water allocations. It is intended that these contracts be addressed through Transition Plan Agreements to be entered into with the recipients of EDC property for the mutual benefit of the Monterey Bay region and all successors in interest to FORA.
- K. On or about 2001, FORA established a Community Facilities District (“CFD”), which collects a special tax on all properties to be developed, due and payable on issuance of a building permit for the property and adjusted annually. The CFD special taxes are structured to promote business/job generating uses on the base. Unless assigned or modified as part of the transition process, when FORA sunsets the CFD special taxes may no longer be collected. If the CFD special taxes are replaced with a nexus fee, it is likely that there will be a shift of the tax burden resulting in job generating uses paying a greater share and housing paying a lesser share than under the current system. Other forms of replacement fees may also be imposed on future development.
- L. The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) applies to the entire Fort Ord base closure. The Army is obligated to remediate the former Fort Ord by state and Federal law, including the removal of munitions and explosives. The timeline for the Army cleanup was based in part upon the contingent nature of funding and Department of Defense priorities for funds. Accordingly, in order to receive the properties early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement. Through a series of agreements between Army, FORA, Environmental Protection Agency, and Department of Toxic Substance Control, remediation of munitions and explosives on the former Fort Ord has proceeded. The remediation obligations will not be completed before the currently scheduled dissolution of FORA.
- M. The FORA Board wishes to continue orderly reuse, arrange for the orderly transition of FORA’s assets, liabilities, pledges, and obligations, and provide for the payment and satisfaction of the Basewide Costs and Basewide Mitigation Measures.

N. Government Code section 67700 requires that FORA sunset when eighty percent (80%) of the base has been reused or on June 30, 2020, whichever first occurs, and that FORA Board approve and submit a Transition Plan to the Local Agency Formation Commission (“LAFCO”) on or before December 30, 2018 or eighteen months prior to the anticipated expiration of FORA, whichever first occurs. The Transition Plan shall assign assets and liabilities, designate responsible successor agencies and provide a schedule of remaining obligations.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Board hereby makes the following findings:

Section 1. Basewide Costs and Basewide Mitigation Measures:

The Board hereby finds that all the projects contained in the CIP are Basewide Costs and/or Basewide Mitigation Measures and are required to be addressed as assets, liabilities or obligations pursuant to Government Code section 67700 by this Transition Plan.

The Board further finds that the CFD funding mechanism provides the best vehicle to ensure long term revenue generation and revenue sharing to complete the projects contained in the CIP and should be extended at a minimum, until all CFD special taxes have been collected from already entitled development. Unless assigned or modified as part of the transition process, the CFD will expire by its own provision when FORA sunsets. The Board makes this finding knowing that imposing new financing mechanisms on already entitled development creates risk of loss to the Monterey County region of approximately \$72 million dollars toward completing the remaining Basewide Mitigation Measures. The Board further finds that shifting revenue generation from a Mello Roos special tax to a nexus based system will shift costs to economic job generating land uses, such as retail, industrial and commercial uses.

The Board further finds that the Implementation Agreements with the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County all require that they continue to fund the base reuse until all Basewide Costs and Basewide Mitigation Measures have been retired. Accordingly, the Board assigns all its rights in each Implementation Agreement to its successor who is responsible to complete the projects in the CIP. Each Implementation Agreement requires each jurisdiction to generate revenues according to the following formula as its fair and equitable share of Basewide Costs and Basewide Mitigation Measures: 50% land sales or lease revenues, plus the CFD or development fee, plus the property tax revenues to be received by FORA.

Pursuant to the authority granted by the legislature in Government Code 67700(b), the Board hereby designates all projects identified in the CIP as obligations required to be assigned by this Transition Plan in accordance with the formulas set forth in the Implementation Agreements and as the schedule of implementing those obligations.

The Board further finds that this Transition Plan may be implemented through Transition Plan Implementation Agreements (TPIA) with all agencies affected by this Transition Plan. All TPIA shall address how each underlying jurisdiction will generate revenues to meet its obligations as assigned herein, revenue sharing provisions between those that will generate revenues and

those implementing CIP projects and such other matters as required to implement this Transition Plan and a schedule of when the receiving jurisdiction will complete said actions.

The Board strongly encourages all underlying jurisdictions with future prospective development to form Community Facilities Districts (or other replacement mechanisms) to replace the revenues which would have been raised by the CFD. Additionally, the Board encourages member jurisdictions to include in documents about future projects, language which will obligate future development projects to pay a CFD fee (or equivalent replacement fees).

In the absence of fully executed TPIA, all revenues required to be contributed pursuant to the Implementation Agreements shall be paid into a fund/escrow account established for the purpose of sharing revenues. A TPIA may identify a jurisdiction or entity which will manage said account, which shall be done on a reimbursement basis pursuant to the 2020 CIP adopted by FORA.

Section 2. Assignment of assets/liabilities/obligations:

FORA has two types of assets/liabilities/obligations: **administrative** assets, liabilities and obligations (e.g. CalPERS, administrative costs not flowing from the ownership, control, management or transfer of real property) and **real property related** assets, liabilities and obligations (Basewide Mitigation Measures, Basewide Costs, ESCA and other contractual obligations). Each type of asset/liability/obligation must be accounted for and assigned as a part of the transition process.

In general, administrative liabilities and obligations will be assigned to member jurisdictions in conformity with the voting percentage in FORA held by each as outlined below and each voting member shall be deemed a successor to FORA in the percentages as outlined below.

Voting Percentage

City of Monterey 1/13	7.69%
City of Marina 2/13	15.38%
City of Del Rey Oaks 1/13	7.69%
City of Monterey 1/13	7.69%
County of Monterey 3/13	23.1%
City of Pacific Grove 1/13	7.69%
City of Carmel-by-the-Sea 1/13	7.69%
City of Sand City 1/13	7.69%
City of Seaside 2/13	15.38%
	100%

Unless otherwise specified, real property related assets, liabilities and obligations shall be assigned to the underlying jurisdiction, unless there are agreements changing that allocation. For real property related assets, liabilities and obligations, unless otherwise specified each identified underlying jurisdiction shall be deemed FORA's successor entity for that obligation.

Contractual Obligations.

FORA's outstanding contractual obligations are reflected on the attached Exhibit A. These contractual obligations are hereby assigned in accordance with Exhibit A. The TPIA shall address how each agency intends to comply with such assignments.

Assets. FORA has multiple assets, the most significant of which are identified below. These assets shall be transferred to the corresponding entity, in proportion to the obligation.

Section 115 Trust: To be used only for retirement purposes. Currently the Section 115 Trust is returning over 2%. The fund will be transferred to the California Public Employees' Retirement System upon FORA's sunset or as otherwise set forth in a TPIA to minimize future jurisdictional liability and maximize the Trust benefits.

Reserve Funds. FORA currently has funds identified for retirement and other purposes. Those funds shall be reviewed in 2020, allocations made and distributed in accordance with the approved FORA budget for that year.

Habitat Conservation Funds. Estimated to be approximately \$21M on June 30, 2020, any amounts accumulated by that date shall be transferred to the HCP Cooperative, if it has been established; or if no HCP Cooperative or alternative joint powers authority for basewide habitat management issues is by then in existence, then such funds shall be transferred to the County in trust for individual basewide habitat management and future development take permits, as more fully developed in the 2020 CIP.

Indemnification/Litigation Funds. To the extent required, indemnification funds shall be managed pursuant to a contract with the Monterey County Local Agency Formation Commission ("LAFCO"). If there is no need for the indemnification funds, said funds shall "roll over" into a litigation fund for any post-FORA sunset litigation costs. Upon conclusion of any litigation in which FORA is either the named Petitioner or Respondent, any funds remaining in the indemnification fund or litigation fund shall be disbursed to all the member jurisdictions in proportion to their voting percentages in FORA as outlined above.

Capital Improvement Funds. All CFD special taxes collected prior to FORA's sunset shall first be directed to completing in progress construction projects, such as South Boundary Road as identified in the 2019-2020 or final year CIP. Funds shall be transferred to the jurisdiction completing construction, which in general shall be completed by the jurisdiction in which the majority of the project is situated.

ESCA Reimbursement Agreement. Estimated to be \$6.8M in potential reimbursement. Said Reimbursement Agreement shall be transferred to either the County or Seaside, which shall be deemed the FORA successor agency and accepted by the Army as successor to the ESCA contract. The County and/or Seaside TPIA shall address succession by one or both of these entities.

Miscellaneous Plant/Facilities. FORA has office furniture and equipment which shall be disposed of within two (2) months of FORA's sunset in accordance with any applicable rules or requirements for the disposal of surplus property by a California public entity. Any proceeds shall first be directed to any shortfall in administrative liabilities. Once all administrative liabilities have been fully satisfied, any remaining funds shall be directed into the CIP toward any project in which FORA is the lead that is then under construction first, and any funds remaining thereafter shall be directed next to other projects in the CIP.

After Discovered Items:

To the extent that any contractual obligation is discovered during the LAFCO review and/or implementation of this Transition Plan or a TPIA, those contractual obligations shall be assigned as follows:

- If the obligation is related to underlying use of real property, it shall be assigned to the underlying land use jurisdiction.
- If the obligation is an administrative liability/obligation it shall be proportionately assigned to the member jurisdictions in conformity with their voting percentages in FORA as outlined above.

Section 3. Transition Plan Subject matters:

A. **Habitat.** The Board hereby finds that integrated basewide habitat protection is best funded by the CFD special taxes. The Board has identified and set aside approximately 30.2% of collected CFD special taxes to be put toward a basewide habitat management and conservation plan. Once a joint powers authority (JPA) is formed for the purposes of basewide habitat management and conservation, the habitat management and conservation obligations shall be assigned/transferred to that entity. If the CFD special taxes are continued, they shall continue to be used to fund basewide habitat conservation and management of habitat in perpetuity. The attendant funds on hand at FORA's sunset shall be provided to the JPA to be held in trust solely for the purposes of long term management of habitat management areas and assistance for other projects requiring site specific habitat conservation plans and take permits. If no JPA is formed, then long term habitat management shall be borne by the underlying land use jurisdictions. Prior to FORA's sunset, the Board shall review the basewide habitat funding policies to determine whether those funds shall be transferred/provided to underlying jurisdictions at FORA's sunset or allocated to other basewide costs and mitigation measures. FORA's 2018-19 CIP projects that \$45,161,654 will remain to be funded for the Fort Ord Habitat Conservation Plan (HCP) after June 30, 2020. As part of this Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on former Fort Ord: \$20,142,098 (44.6% of the cost) to the City of Marina, \$9,890,402 (21.9%) to City of Seaside, \$7,587,158 (16.8%) to City of Del Rey Oaks, \$4,516,165 (10%) to County of Monterey, \$2,935,508 (6.5%) to University of California, and \$90,323 (0.2%) to City of Monterey. These assignments shall be addressed in the TPIA to be executed by all members and/or ex officio members affected by this Transition Plan.

B. **Transportation.** The Board hereby finds that completion of the on-base Fort Ord Transportation Network projects that have been identified in the CIP are essential to the long term success of the economic recovery of the reuse. The Board further finds that extension of the CFD special taxes for the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues to fund the transportation network for the on-site and off-site projects and the regional projects to the extent that a replacement regional transportation fee may not be imposed on already

approved development projects. For all of those projects in which FORA is not the designated lead agency and that have not been completed, the responsibility to generate and/or collect revenues from the other member agencies and complete construction will rest with the lead agency. For those projects in which FORA is the lead agency and have not yet been completed, the Board assigns those projects to the underlying jurisdiction in which the majority of the project is situated, to be FORA's successor, to generate and/or collect revenues and complete construction in accordance with the schedule set forth in the 2020 CIP, unless otherwise addressed in a TPIA. FORA's 2018-19 CIP projects that \$132,346,818 will remain to be funded for FORA's share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. As part of its Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on the former Fort Ord: \$59,026,681 (44.6% of the cost) to the City of Marina, \$28,983,953 (21.9%) to City of Seaside, \$22,234,265 (16.8%) to City of Del Rey Oaks, \$13,234,682 (10%) to County of Monterey, \$8,602,543 (6.5%) to University of California, and \$264,694 (0.2%) to City of Monterey.

- C. **Environmental Services**. The Board hereby finds that the long term stewardship obligations and related monitoring activities identified by the Army for its munitions removal obligations are crucial to the future success of the recovery program. The Board further finds that the current full time staffing of the Environmental Services Cooperative Agreement ("ESCA") must be continued and sustained either by an extension of a modified FORA through the anticipated termination of the ESCA in 2028 or by assignment to the County or Seaside upon the dissolution of FORA. The funding associated with the performance of the terms of the ESCA shall be addressed in the TPIA.
- D. **Building Removal**. The Board hereby finds that former Fort Ord remnant, non-historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the recovery and reuse overall program and a nuisance to quiet enjoyment of the region's assets. The Board also finds that an extension of the FORA Act to sustain resources that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, further requests legislative consideration of an extension to meet this blight eradication need as well as other resource demands noted above.
- E. **Establishment of a Basewide Funding Escrow Account**. The Board hereby finds that a unified funding mechanism for handling indemnification, litigation and other expenses related to Basewide Mitigation Measures and Basewide Costs is necessary and appropriate. The unified funding mechanism may be either managed by a successor jurisdiction willing and able to hold the collected funds in a special account solely for the purpose of administering the Basewide Mitigation Measures and Basewide Costs or an escrow account established for the sole purpose of holding and administering Basewide Mitigation Measures and Basewide Costs. The administrative overhead for holding and managing either of these mechanisms shall be treated as a real property related cost. Litigation management shall be pursuant to unanimous agreement of all affected parties, unless otherwise agreed to in writing. Any additional funds required for administrative type liabilities/obligations shall be funded in accordance with the voting percentages of

the FORA member jurisdictions. Any additional funds required for real property type liabilities/obligations shall be borne by the underlying land use jurisdictions, unless such Basewide Mitigation Measure or Basewide Cost relates to a project in which an underlying jurisdiction is the lead agency.

- F. **Water/Wastewater.** The Board hereby finds that it has made water allocations in accordance with its obligation under the MOA with the Army to ensure a fair and equitable water supply to all property recipients and imposed those requirements in the Implementation Agreements. The Board further finds that the Implementation Agreements may need to be enforced should any jurisdiction's approved developments exceed its water allocation. In such a case, the remedy shall be that no water connection permits shall be issued until that jurisdiction brings its water allocation into compliance **or** the Marina Coast Water District (MCWD) develops an augmented water supply sufficient to cover any excess.

The Board further finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to MCWD to implement the Reuse Plan is appropriate at FORA's sunset. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD special taxes, the Board finds that continuation of the CFD special taxes (or a replacement source of revenue) allows for funds to reduce connection and other costs imposed by MCWD. FORA's 2018-19 CIP projects that \$17,098,686 will remain to be funded for basewide water augmentation improvements after June 30, 2020. As part of its Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on former Fort Ord: \$7,626,014 (44.6% of the cost) to the City of Marina, \$3,744,612 (21.9%) to City of Seaside, \$2,872,579 (16.8%) to City of Del Rey Oaks, \$1,709,869 (10%) to County of Monterey, \$1,111,415 (6.5%) to University of California, and \$34,197 (0.2%) to City of Monterey.

The Board's intent is that jurisdictions may alter their water allocations as identified in the Implementation Agreements, only by written agreement with other jurisdictions. Upon submission of such revised written agreements as to water allocation, MCWD shall honor that revision as though it was the allocation set forth in the Implementation Agreement.

- G. **Policy Issues.** The FORA Board hereby finds that the policies contained in the Master Resolution (Chapter 3 & 8 in particular) should be continued and enforced upon FORA's dissolution and hereby directs staff to record the Master Resolution in its entirety one (1) month prior to the dissolution. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an equitability and fairness to all workers on the former Fort Ord shall be sustained in the completion of the former Fort Ord recovery program. The Board further finds that the State of California should provide legislative clarity regarding the authority of the Department of Industrial Relations, underlying land use jurisdictions or FORA to monitor and establish a procedure for compliance with this policy.

Section 4. California Environmental Quality Act

The Board hereby finds that this Transition Plan solely addresses the allocation of the assets, liabilities and obligations of FORA in advance of its ultimate dissolution. Nothing herein approves any change in land use or underlying land use jurisdiction, or makes any changes to project-specific review by lead agencies for those projects located within their respective boundaries, including but not limited to those projects contained in the CIP. As such, the Board hereby finds that this Transition Plan is not a project under CEQA and/or is exempt as an organizational reorganization.

Section 5. LAFCO Review and Enforcement

If LAFCO finds that this Transition Plan does not fully address the requirements of Government Code section 67700 to identify and assign all assets, liabilities, obligations, the Board requests that LAFCO return the Transition Plan with LAFCO's identified deficiencies at the earliest possible time (to enable possible further consideration and action by the Board).

This Transition Plan includes the opportunity for all affected jurisdictions to enter into a TPIA, subject to Board approval, to implement this Transition Plan. This Transition Plan may be modified by the Board upon the receipt of executed TPIA, if the Board so finds a revision necessary and appropriate. If by the time of FORA's sunset there are no executed TPIA, the Board hereby makes the above assignments pursuant to Government Code 67700 and requests that LAFCO ensure such Transition Plan assignments as though they were conditions of special district dissolution imposed pursuant to Government Code section 56886 and use all LAFCO's powers to enforce said Transition Plan assignments utilizing Government Code section 56122 or the enforcement powers of Government Code section 67700 as to the member jurisdictions.

THE BOARD HEREBY RESOLVES AS FOLLOWS:

1. As outlined above, this Resolution and its provisions constitute the Transition Plan required by Government Code section 67700(b); and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b) by approving this Transition Plan and intends that those assignments be implemented preferably through TPIA but in the absence of executed TPIA then as assignments and conditions of dissolution, as though they were imposed pursuant to Government Code sections 56886 and 67700(b).
3. The Board hereby directs the Executive Officer to submit this Transition Plan to LAFCO and execute all LAFCO required documents, including an Indemnification Agreement, and pay all LAFCO required fees; and
4. The Board further directs the Executive Officer, or his designee, to hire a facilitator for the purpose of **negotiating a TPIA** with each jurisdiction implementing the terms and conditions assigned in this Transition Plan. The Executive Officer is directed to report progress on or before January 1, 2019 and to complete all negotiations and documents not later than March 2019. The Executive Officer shall compile a list of such additional actions necessary to implement this Transition Plan.

Upon motion by Board member ---- seconded by Board member ---- the foregoing Resolution was passed on this _____ day of September, 2018, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Mayor Ralph Rubio, Chair

ATTEST:

Michael A. Houlemard, Jr., Clerk

DRAFT

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT AGENDA	
Subject:	Public Correspondence to the Board
Meeting Date:	October 12, 2018
Agenda Number:	7g
	INFORMATION/ACTION

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

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

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

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Habitat Conservation Plan Update	
Meeting Date:	October 12, 2018	INFORMATION/ACTION
Agenda Number:	8a	

RECOMMENDATION(S):

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (HCP) report regarding United States Fish and Wildlife Service (USFWS) HCP and State of California Department of Fish and Wildlife (CDFW) 2081 Incidental Take Permit (ITP) developments.
- ii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority (JPA) to implement base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP). Should the Board direct staff to form a JPA to implement the HMP, consider including a target date for forming the JPA. For example, if the HCP JPA is not formed by July 31, 2019, then the Board could set this as a target date to begin forming a JPA to implement the HMP.

BACKGROUND:

Update: On September 24, 2018, the FORA Board held a special workshop meeting on the pending draft HCP. After a lengthy discussion, the Board chose to defer action on the matter until a future meeting. The Board also requested additional information be provided as part of the presentation when the item returns. Staff has prepared this item for Board consideration at this October Board meeting.

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

In late 2016, USFWS Ventura Office Field Supervisor Stephen P. Henry issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which caused major revisions to the species covered and the areas included as federal permit “preserved” habitat. Due to the need for these extensive revisions, FORA staff and consultants worked significantly longer to complete the screencheck draft HCP. However, USFWS and CDFW representatives agreed to meet an HCP schedule allowing one 60-day review period prior to publishing the public review draft HCP and its Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). In July 2017, FORA distributed the screencheck draft HCP to USFWS, CDFW, and Permittees’ for the 60-day review. While other parties met the

timeline, CDFW took eleven months to send in comments on the screencheck draft HCP. Many of CDFW staff comments brought up issues that were already resolved through discussions and compromises with CDFW staff in previous years. Staff found the degree and amount of the comments challenging, and recognized that strategic meetings, rather than editorial rewrites of the draft document, were in order.

CDFW and FORA staff agreed to meet on July 27th, July 30th, August 13th, and August 22nd for phone conference meetings to work through the new comments. Nearly every issue has been resolved. The one main issue to be resolved is CDFW assurances of Bureau of Land Management (BLM) continued management of the Fort Ord National Monument in a manner consistent with HCP. Other issues pertaining to new information on California tiger salamander protection measures were incorporated into the HCP, with USFWS consent. Sand gilia take that had been permitted by CDFW in the Seahaven project and counted as impact to the species in the HCP as well as untied from the HCP. Other issues CDFW wished to see addressed for the ITP were addressed within the HCP document, so it can stand as the main source of mitigations for both Federal and State permits.

The schedule for completion of the HCP was delayed by several months by CDFW's prolonged review, as discussed above. However, a new development in the regulation of federal Environmental Impact Statements (EISs) by the Department of Interior may provide an opportunity for expediting the project timeline. On April 27, 2018, the Deputy Secretary of the Interior sent out a Memorandum mandating that all outstanding EISs with a Notice of Intent published on or before August 31, 2017 must publish a project schedule with a Final EIS completion and Record of Decision (ROD) issuance date of no later than 365 days from the effective date of the Memorandum. This pertains to the HCP, and follow-up communications with USFWS indicate that they will work on a tight timeline to complete the review. Therefore, the HCP schedule (**Attachment A**) has been adjusted to bring it to completion for a ROD in April 2019. Consistent with their new standard practice, USFWS officials urged FORA to remove the Implementing Agreement from the documents to be submitted for permits. Staff complied, and began an editorial process to assure no critical content was lost among the remaining documents (HCP, EIS/EIR and Appendices, and HCP JPA agreement). Because USFWS is the lead agency on the HCP under the National Environmental Policy Act (NEPA), their solicitor is currently doing the final screencheck review before Public Draft.

The HCP program is based on building to a habitat endowment that would generate enough annual interest earnings to fund protection in "perpetuity" for costs of restoring and managing habitat areas. The Cities, County, and other members of a future Joint Powers Authority (JPA) (called the "Cooperative") would be issued Federal and State ITPs and oversee stay-ahead provisions so that no species take would exceed completed mitigations. Additional background is included in **Attachment B**.

DISCUSSION:

Discussions at Transition Task Force (TTF) meetings have often focused on the cost of the HCP. HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (CFD) monies collected from former Fort Ord development. FORA has paid \$2-3 million for the environmental review and document preparation so far as performed by consultants and staff. The required Endowments were originally projected to be

\$9 million but is now expected to cost \$48 to \$66 million with about \$21 million expected to be collected by FORA before June 30, 2020. It is estimated that, if FORA sunsets, the jurisdictions would have to figure out how to generate the remaining \$27 to \$45 million required by USFWS/CDFW if they were to continue the effort, or, alternatively, the State Legislature might extend FORA's financing ability with FORA assigning that revenue stream to a successor.

Some have raised the idea that HMP obligations can be met by using current HCP funding, and that will be as useful to individual jurisdictions as a functioning base-wide HCP. There are several issues associated with this approach:

- 1) The HMP obligations are for a longer list of species;
- 2) The HMP sets aside Habitat Management Areas (HMAs), but does not provide a mechanism for take of species in the required management actions for the HMAs;
- 3) Without a base-wide USFWS HCP and CDFW 2081 ITPs, any development project will have to process Federal and State ITPs individually. Additive costs for such an approach are estimated to be much higher than a base-wide approach;
- 4) Also, mitigation for listed plant species is most commonly in the form of preserved habitat. As a result, some jurisdictions may not be able to find sufficient mitigation land for the permits that they seek.

The Transition Ad Hoc Committee (TAC) discussed Habitat Management on May 16, 2018 and subsequent meetings, and several Task Force members were concerned that, without a JPA to assign HCP work to, the Transition Plan to be delivered to the Local Agency Formation Commission (LAFCO) of Monterey County by the end of 2018 would have a loose end. This discussion was elevated to Board on July 13, in a Transition Plan study session. In response, Authority Counsel has considered options to allow for early execution of a JPA Agreement. At a meeting on August 30th, prospective permittees reviewed an updated version of the agreement. Those in attendance were not opposed to forming a JPA with the purpose of implementing base-wide habitat management activities required by the HMP. If the HCP and its accompanying EIS/EIR are completed in the future, the JPA's purpose could be amended. It is important to note that Take authorization would be required to manage the HMAs and FONM Borderlands (in designated development areas and HMAs).


CDFW, BLM and FORA have time to resolve the remaining issue after the HCP and its supporting documents are brought forward for public comment in November, 2018. CDFW expressed, in recent meetings, that would be settled after the Federal permit requirements are met (HCP approval and ROD) with State conditions for approval. Therefore, there are no known major impediments to the HCP completion by mid-2019, as shown in **Attachment A**.

The FORA Board may entertain options and alternatives to the current assumed approach. It is an option put forth by the TAC that the participants sign a form of JPA Agreement establishing a Habitat Cooperative promptly. This would provide an existing recipient for Habitat obligations in the 2018 Transition Plan, rather than a planned JPA. The TAC anticipates this Habitat Cooperative would continue discussing how to protect and manage habitat on the former Fort Ord and set up a permitting structure.

The Executive Officer suggests that the Board could consider the following alternatives:

- A. Form a JPA Cooperative according to the current HCP schedule (March/April 2019) and continue building the HCP Endowments with HCP replacement funding mechanisms provided by the Jurisdictions post-FORA or an extension of FORA financing authority.
 Pro: Staff time efficiently directed to completing the HCP within the expedited schedule
 Con: Possible loose end in the Transition Plan, depending on HCP outcome
- B. Form a JPA Cooperative providing the initial purpose of implementing the 1997 HMP on behalf of its members and supporting member jurisdiction's CESA and ESA ITP processing, prior to providing LAFCO with a draft Transition Plan (December 2018), and provide flexibility that this JPA may amend its purpose in the future to implement the base-wide HCP if that effort is successfully concluded.
 Pros: Loose ends are tied up in one aspect of the Transition Plan; the region would have a responsible entity that would fund and implement HMP requirements.
 Con: Staff time directed to forming a JPA might divert resources from completing HCP
- C. Abandon the HCP process and assign FORA funds collected so far to FORA jurisdictions charged with implementing FORA's habitat management obligations or their own.
 Pro: This option would save FORA from expending approximately \$150,000 for HCP consultants in the current FY18-19 budget.
 Cons: Individual HCPs and/or ITP applications for future development, trails, etc., lack regional cohesion and as such would be less effective at protecting endangered species. CDFW and USFWS have indicated that individual permits would be difficult to acquire without a regional approach, FORA jurisdictions (Seaside, Del Rey Oaks, Monterey) may not be able to identify enough mitigation land for the permits that they seek.

FISCAL IMPACT:

Reviewed by FORA Controller 

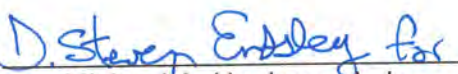
Staff and Authority Counsel time for this item is included in the approved annual budget.

COORDINATION:

Authority Counsel, Administrative Committee, ICF International, Denise Duffy & Associates, CDFW, and USFWS.

Prepared by 
 Mary Israel

Reviewed by 
 Jonathan Brinkmann

Approved by 
 Michael A. Houlemard, Jr.

	Status	2017												2018												2019											
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
EIR/EIS																																					
1 Prepare 1st Admin Draft EIS/EIR	Done																																				
2 Review Period	Done																																				
3 Prepare 2nd Admin Draft EIS/EIR	Done																																				
4 Solicitor review (2 weeks)																																					
5 Prepare Public Review EIS/EIR																																					
6 Prepare and publish Notice of Availability in Federal Register (see HCP-15 above)																																					
7 Prepare and publish CEQA Notice of Availability																																					
8 Public/Agencies Review Period (60 days)																																					
9 Respond to public comments/Prepare Admin Draft Final EIS/EIR																																					
10 Agency Review Period (2 weeks)																																					
11 Prepare Final Public Draft EIS/EIR - clear for publication																																					
12 Prepared and Publish Notice of Final EIS, HCP Availability in Federal Register - 30 day comment period																																					
13 Publish CEQA Notice of Determination - Permit Applicants - 30 day challenge period																																					
14 CEQA Notice of Determination--CDFW - 30 day challenge period																																					
15 See Approval Process steps																																					

Former Fort Ord Habitat Conservation Planning – Significant Historical Events

- 1991 - The United States Department of the Army (“Army”) was directed to close and then dispose of Fort Ord, CA.
- 1993, June – US Army National Environmental Policy Act (“NEPA”) Environmental Impact Statement identified need to develop and implement an Installation-Wide Multispecies Habitat Management Plan (“HMP”) as mitigation regarding impacts to protected species on the former Fort Ord base.
- 1993 – US Fish and Wildlife Service (“USFWS”) issued Biological Opinion (p1-4 Zander Assoc.)
 - After sec. 7 consultation with the Army.
 - No Harm would come to species or habitats listed if a proper HMP was adopted to conserve and be implemented in accordance with the law and agreement.
 - Section 1.3 p 4 September 2000 draft
- 1994, February - HMP Developed, published, implemented; By United States Army and initially adopted
 - 18 Species Listed
 - Expands the USFWS’ analysis to accommodate the 1993 NEPA Record of Decision anticipated scenarios for reuse
 - P 1-6 Table 1-2 Plant Species
 - P 1-10 Table 1-3 Animal Species
- 1996, February - The Department of the Interior published in the Federal Register (FR) the Department of the Interior Endangered and Threatened Species, Plant and Animal Taxa; Proposed Rule (61FR7596 February 28,1996). Under the rule, the Category 1 and 2 classifications for federal candidate species are removed.
- 1996, November - HMP revised to be programmatic - HCP to be prepared by FORA and include a group of actions at a time rather than separately
 - Also allows for many entities to be involved in the HCP through “Certificates of Inclusion”
 - In the Fort Ord Reuse Authority’s (FORA’s) first effort, FORA requested the U.S. Army combine a 1996 HMP Implementing/Management Agreement with the Army’s draft HMP. Army agreed.
- 1997, January & April - USFWS issued Biological Opinion
 - No Harm would come to species or habitats listed if a proper HMP were made to conserve and be implemented in accordance with the law and agreement
 - Section 1.3 p 4 September 2000 draft
- 1997 – Army revised HMP and FORA HCP Supplement approach approval
 - HCP created to comply with the federal requirement of Conservation Plan
 - Army HMP filed separately and was approved
 - This required repackaging and resubmitting the FORA HCP

- 1999, March - USFWS issued another Biological Opinion
- 2000-2002 – USFWS delayed HCP review due to concerns regarding the US Army’s ability to perform the rotational burn regimen required by the HMP for Fort Ord.
- 2002 - East Garrison Land Swap Agreement -Agreement completed in 2002, successful 2005 habitat burn.
- 2004 – California tiger salamander listed under the Federal Endangered Species Act
- 2005 - FORA-University of California Santa Cruz (“UCSC”) Fort Ord Natural Reserve Funding Agreement whereby FORA funds ongoing UC habitat management efforts.
- 2005, July - FORA decided to concentrate its Habitat Conservation Plan (“HCP”) efforts on a bifurcated approach of processing a California Department of Fish and Game (“CDFG”) 2081 Incidental Take Permit application concurrently with the Federal USFWS HCP process.
 - CDFG and USFWS agreed to this approach in August 2005.
- 2005, October - Del Rey Oaks and East Garrison developers signed Memoranda of Agreement (“MOA’s”) designed to assure that federal permitting delays will not take place as long as FORA is working toward regulatory approval of the basewide HCP.
- 2006 - Funding Chapter of State HCP Agreement.
- 2006 - Base-wide State 2081 Incidental Take Permit (Requires a State HCP, EIR, agreements listed above, and State approval)
 - Draft State HCP submitted June 2006; Zander Associates revising; State HCP to be completed in 2006
 - A meeting with the regulatory agencies was held on June 29, 2006 where CDFG representatives introduced a number of new requirements regarding fiscal assurances
 - CDFG introduced new provisions to be accomplished by the prospective land managers, including Bureau of Land Management, State Parks, and the U.S. Army. The regulatory agencies suggested that they might require a provision for withholding land transfers from the Army to FORA if the Army is unable to clean and convey lands slated for BLM in a timely manner. Army staff responded that, until those lands convey to BLM, U.S. Army will continue its’ extensive clean-up program and continue to manage the habitat under the provisions of the Habitat Management Plan.
- 2007, January – Zander Associates completes administrative draft HCP and submits it to CDFG and USFWS for review.
- 2007, May – ICF hired as HCP consultant to complete the process.
- 2009, December - ICF completed an administrative draft HCP.
- 2007, September - An amendment to the HCP contract for additional tasks and budget to recombine State and Federal HCP’s was approved

- 2007-2012 Regulatory agencies made additional requirements, including mitigation monitoring, fiscal and other assurances, and a series of line item contingencies to be additionally defined.
- 2010, February - FORA member jurisdictions completed a comment and review period.
- 2010, August - California tiger salamander listed under the California Endangered Species Act.
- 2012, March - ICF completed the administrative draft
 - FORA disseminated the draft to permittees, CA Department of Fish and Wildlife (“CDFW” and formerly CDFG), and USFWS.
- 2012, July - Update: FORA received comments from USFWS and CDFG staff in August 2012, and held in-person meetings on October 30 and 31, 2012 to discuss specific comments; however, *a legal review from these wildlife agencies is not yet complete.*
- 2014, December, - FORA staff requested review of the HCP governing documents (Implementing Agreement, Joint Powers Agreement, HCP ordinance/policy) from FORA Administrative Committee members by January 24, 2014.
- 2015, March - ICF completed the screencheck draft
 - FORA disseminated the draft to permittees, CA Department of Fish and Wildlife (“CDFW” and formerly CDFG), and USFWS.
- 2016, July - US Fish and Wildlife Service (USFWS) Letter
 - USFWS provided nine general recommendations for HCP changes
- 2016, December - FORA staff and consultants have received sufficient guidance to prepare the public review draft HCP and it’s EIS/EIR. Key revisions include: (1) no longer managing species that are not listed under the federal Endangered Species Act (ESA) or California Endangered Species Act (CESA), or, if listed, are not known to occur in former Fort Ord outside of the Fort Ord National Monument (“Monument”); (2) additional mitigation measures to benefit 8 HCP species within the Monument; and (3) rewriting the HCP to only rely on Monument lands for mitigation when Permittee’s additional mitigation measures provide a link for the reliance.
- 2017, July - FORA distributed the 2nd screencheck draft HCP for USFWS, CDFW, and Permittees’ 60-day review
 - While other parties met the timeline, CDFW took eleven months to send in comments on the screen-check draft HCP. Many of CDFW staff comments brought up issues that were already resolved through discussions and compromises with CDFW staff in previous years. Staff found the degree and amount of the comments challenging, and recognized that strategic meetings, rather than editorial rewrites of the draft document, were in order.

October 12, 2018
FORA Board Meeting

**Item 8b: Presentation on the Marina
Coast Water District Annexation
Application Status**

No Report