



FORT ORD REUSE AUTHORITY

SPECIAL MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, January 10, 2020 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON JANUARY 9, 2020.

1. CALL TO ORDER

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

3. CLOSED SESSION

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Gov. Code §54956.9(d)(4): Anticipated Litigation, Initiation of litigation, one potential case
- c. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, two potential cases

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

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 December 13, 2019 Meeting Minutes [\(p.1\)](#)
Recommendation: Approve December 13, 2019 Meeting Minutes.
- b. Administrative Committee [\(p.5\)](#)
Recommendation: Receive a report from the Administrative Committee.
- c. Habitat Planning Update [\(p.13\)](#)
Recommendation: Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.
- d. Environmental Services Cooperative Agreement Quarterly Report [\(p.15\)](#)
Recommendation: Receive an Environmental Services Cooperative Agreement (“ESCA”) Quarterly Status Report.

- e. 2018-19 Fiscal Year Audited Financial Report (p.19)
Recommendation: Accept the Moss, Levy and Hartzheim, Certified Public Accountants Fort Ord Reuse Authority Year 2018-19 audited financial report as recommended by the Finance Committee.
- f. Executive Officer Contract (p.20)
Recommendation: Receive FORA Executive Officer Contract
- g. Public Correspondence to the Board (p.25)
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. 2018 Transition Plan Implementation (p.26)
Recommendation:
 1. Receive a report regarding the Fort Ord Reuse Authority (“FORA”) federal government Local Redevelopment Authority (“LRA”) Obligations and Responsibilities, including the implementation of the June 11, 2000 Economic Development Conveyance (“EDC”) Memorandum of Agreement.
 2. Approve Implementing Agreement with the City of Seaside regarding its acceptance of FORA’s obligations under the EDC and Environmental Services Cooperative Agreement (“ESCA”) and designation as federally recognized LRA.
- b. 2020 Elect Board Officers (p.35)
Recommendation:
 1. Receive a report from the 2020 Nominating Committee.
 2. Approve Nominating Committee’s proposed slate or seek Board nominations, Executive Officer will conduct an election.
- c. Economic Planning Systems (“EPS”) Contract Amendments (p.38)
Recommendation: Approve EPS contract amendments for:
 1. Additional habitat management fiscal analysis requested by potential permittees not-to-exceed (“NTE”) fifty-eight thousand dollars (\$58,000); and
 2. Additional building removal bond fiscal analysis requested by Administrative Committee, NTE twenty-five thousand dollars (\$25,000).

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 MEETING: February 13, 2020 AT 2:00 P.M.

Persons seeking disability related accommodations should contact FORA 48 hours prior to the meeting. This meeting is recorded by Access Media Productions and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Channel 25. The video and meeting materials are available online at www.fora.org



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Friday, December 13, 2019 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Chair Supervisor Jane Parker called the meeting to order at 2:01 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Councilmember Jon Wizard.

3. CLOSED SESSION

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc. v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Anticipated Litigation—Initiation of litigation pursuant to ¶ (4) of subdivision (d) of CA Gov't Code §54956.9—one potential case
- c. Public Employment, Government Code section 54959.7(b) — Personnel — Executive Officer Succession Planning Report

Time Entered: 2:03 p.m.

Time Exited: 3:00 p.m.

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen reported the following actions taken in closed session:

Item 3a: The Board heard from counsel. Nothing to report.

Item 3b: Counsel was given direction. There is nothing to report.

Item 3c: Counsel announced the Board had approved Joshua Metz as to be Executive Officer effective January 1, 2020.

5. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

a. Fiscal Year 2018-19 Audit

Executive Officer Michael A. Houlemard, Jr. advised the Board that the 2018-19 Fiscal Year audit will be presented to the Finance Committee for consideration at the January 2020 Board of Directors meeting.

b. Adopt Resolution 19-14 Acknowledging Executive Officer Michael A. Houlemard, Jr.

Chair Parker introduced the item noting this would be the last FORA Board of Directors meeting for Executive Officer Houlemard. Chair Parker, along with the FORA Board of Directors, read the Resolution of Acknowledgment and Appreciation.

MOTION: On motion by Board member Phillips, seconded by Board member Wizard and carried by the following vote, the Board moved to adopt Resolution 19-14, Acknowledging Executive Officer Michael A. Houlemard, Jr.

MOTION PASSED UNANIMOUSLY

- The Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) was published along with the Environmental Impact Study (“EIS”)/Environmental Impact Report (“EIR”) documents on November 1, 2019. The Army, Land Watch, and Bureau of Land Management submitted comments. Comments must be submitted to the no later than 5:00 p.m. on December 16, 2019.
- 17th State Senate District Senator Bill Monning presented a certificate of recognition on behalf of the United States Senate to Michael A. Houlemard Jr. and read it into the record.
- 20th District Congressman Jimmy Panetta presented a mounted record on behalf of Michael A. Houlemard Jr. which has been read into the record before he U.S. House of Representatives.

6. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Supervisor Mary Adams (County of Monterey), Councilmember John Gaglioti (City of Del Rey Oaks), Councilmember Lisa Berkley (City of Marina), Mayor Pro-Tem Gail Morton (City of Marina), Councilmember Alan Haffa (City of Monterey), Mayor Ian Oglesby (City of Seaside), Councilmember Jon Wizard (City of Seaside), Mayor Joe Gunter (City of Salinas), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Cynthia Garfield (City of Pacific Grove)

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

Congressman Jimmy Panetta (20th Congressional District), Senator Bill Monning (17th State Senate District), Todd Muck (TAMC), Dr. P.K. Diffenbaugh (Monterey Peninsula Unified School District), Steve Matarazzo (University of California, Santa Cruz), Dr. Eduardo Ochoa (California State University Monterey Bay), Colonel Gregory Ford (United States Army), Bill Collins (BRAC), Lisa Rheinheimer (Monterey-Salinas Transit)

7. CONSENT AGENDA

- a. Approve November 8, 2019 Meeting Minutes
- b. Administrative Committee
- c. Water/Wastewater Oversight Committee
- d. Habitat Conservation Plan Update
- e. Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Report
- f. Economic Development Report
- g. Local Agency Formation Commission of Monterey County Indemnification Agreement
- h. 2020 Fort Ord Reuse Authority Board Meeting Calendar
- i. Public Correspondence to the Board

Chair Parker introduced the consent agenda items and asked if any Board member had an item to pull for discussion. Director Morton and Director Adams requested to pull item 7g for clarification.

MOTION: On motion by Board member Gunter, seconded by Board member Phillips and carried by the following vote, the Board moved to approve the consent agenda items 7a -7i.

MOTION PASSED UNANIMOUSLY

8. BUSINESS ITEMS

a. Review Building Removal Bond Legal Status

Mr. Houlemard introduced the item and noted FORA staff have moved ahead with the direction that was given by the FORA Board. Senior Project Manager Peter Said provided the background as to where FORA started in the process in October 2018, investigating the legality and feasibility of bond issuance to receiving Department of Finance (“DOF”) response from dissolution law perspective in December 2019. There have been several questions as to what the DOF response letter is saying. DOF is not clear whether the money

is secure or not, and specifically DOF provided an opinion on dissolution law, the dissolution law did not list FORA as having statutory passthrough payments, and community redevelopment law does not allow funds to flow as an enforceable obligation. However, the DOF opinion does not consider the authorizing act nor other legislative actions. Since the FORA Board authorized the Executive Officer and Authority counsel to take action as necessary to enable a bond issuance the course of action is as follows; 1) Hold a public hearing and start the Mello-Roos clock which was completed on 12/10/2019, 2) Approve legal documents and bond issuance, 3) Consider validating action, and 4) Issue bonds upon successful verification/validation. Mr. Said reviewed the remaining work to be completed as follows: December 2019 – Complete Fiscal Consultants Report (Legal Document 3), January 2020 – The County of Monterey to pass a Resolution to assign pass-through to Successor Entity, Successor Entity needs to resolve to administer the Bond and assign pass-through from the County to the trustee, and the Credit review process with Standard and Poor’s begins. In February 2020 an agreement will be sought on how to address the Monterey County Regional Fire District revenue loss, and bond sale. Mr. Said responded to questions and comments from the public.

MOTION: On motion by Board member Morton and seconded by Board member Phillips and carried by the following vote, the Board moved to adopt resolution **19-13** Authorizing the Issuance and Sale of Bonds in a Principal amount not to exceed \$55,000,000 to Finance Building Removal and Related Costs, Approving the Form and Authorizing the execution of an Indenture of Trust, Authorizing Judicial Validation Proceeding Relating to the Issuance of Such Bonds and Authorizing Actions Related Thereto.

MOTION PASSED UNANIMOUSLY

b. 2018 Transition Plan and Draft Implementing Agreements Status Report

Regional Government Services (“RGS”) consultant Kendall Flint gave a brief 2018 Transition Plan and draft Implementing Agreements progress report. Ms. Flint reported a draft Multi-Agency Transition Plan Implementing Agreement (“TPIA”) has been provided to member agencies for review and comments collected will be reflected in the updated document. She noted Marina Coast Water District (“MCWD”) has sent Implementing Agreements pertaining to water supply/allocation rights to member agencies. Ms. Flint reviewed the Finalization Timeline and estimated adoption of the Implementing Agreements following execution of the Army-Seaside Environmental Services Cooperative Agreement (“ESCA”) contract in March 2020. Ms. Flint reviewed the proposed neutral approach to Joint Powers Authority (“JPA”)/Cooperative formation and HCP/Habitat Management Plan implementation, suggesting establishment of an ad-hoc Committee or “working group” where permittees may meet weekly beginning January 2020 to determine whether to move forward with JPA formation. RGS is working to create a website for public access to all habitat-related materials, reports and documents, which will be available at www.FortOrdHabitatWorkingGroup.org. Ms. Flint and staff responded to questions from Board members and public.

MOTION: On motion by Board member Morton and seconded by Board member Berkley and carried by the following vote, the Board moved to create a Habitat Management Working Group in the form of an ad-hoc Committee.

MOTION PASSED UNANIMOUSLY

c. Eucalyptus Road Storm Drain Infiltrator Repair

Mr. Said provided background regarding the Eucalyptus Road storm water infiltrator repair noting in 2014 FORA was notified of slope failures along Eucalyptus Road and General Jim Moore Boulevard. Mr. Said explained in 2015 C+D Engineers lost engineers familiar with the project, and FORA also had a turn-over in engineering staff in 2016. New engineers were brought on to the project and a Root Cause Analysis was performed to identify why it was failing. Mr. Said reported the engineering consultants decreased the project’s scope by developing a solution to replace the five failing storm water infiltrators with three storm

water basins saving \$750K. FORA decreased long term maintenance costs with a sustainable bio-retention system, and created a programmatic construction support plan, facilitating future digging for maintenance on adjacent munitions response areas. In November 2019 FORA received from the Department of Toxic Substances Control, Environmental Protection Agency, and Army sign-off on Construction Support Plan. Mr. Said stated the project is ready for Public Bid and Construction. Mr. Said reviewed what would happen should the project run past the FORA dissolution date of June 30, 2020. Harris and Associates is the construction manager for FORA and the City of Seaside and will ensure continuity. The contract identifies the City of Seaside as the FORA successor, and assigned the project to Seaside. Additionally, the project has a 25% contingency to decrease the risk of overruns. Mr. Said responded to questions from the Board and the public.

MOTION: On motion by Board member Gaglioti and seconded by Board member Wizard and carried by the following vote, the Board moved to authorize the Executive Officer to execute all bidding requirements and associated contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$1,102,500.

MOTION PASSED UNANIMOUSLY

MOTION: On motion by Board member Morton and second by Board member Wizard and carried by the following vote, the Board moved to hear public comment and adjourn the meeting.

MOTION PASSED UNANIMOUSLY

9. PUBLIC COMMENT

Public comment was received.

10. ITEMS FROM MEMBERS

None.

11. ADJOURNMENT at 5:13 p.m.

Minutes Prepared by:
Heidi L. Gaddy
Deputy Clerk

Approved by:

Joshua Metz Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Administrative Committee

Meeting Date: January 10, 2020

Agenda Number: 7b

INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee held meetings on December 4, 2019 and December 18, 2019. The approved minutes for these meetings are provided as **Attachments 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 
Heidi L. Gaddy

Approved by 
Joshua Metz



FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m., Wednesday December 4, 2019 | FORA Conference Room
 920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Dino Pick called the meeting to order at 8:31 a.m.

The following were present:

- | | |
|-----------------------------------|---------------------------------------|
| Dino Pick* (City of Del Rey Oaks) | Jonathan Brinkmann (LAFCO) |
| Anya Spear (CSUMB) | Melanie Beretti* (County of Monterey) |
| Patrick Breen (MCWD) | Elizabeth Caraker* (City of Monterey) |
| Layne Long* (City of Marina) | Steve Matarazzo (UCMBEST) |
| Todd Muck (TAMC) | Vicki Nakamura (MPC) |
| Craig Malin* (City of Seaside) | *Voting member |

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey Community Development Department Manager Elizabeth Caraker.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Senior Program Manager Stan Cook provided the Administrative Committee (“AC”) with an Environmental Services Cooperative Agreement (“ESCA”) draft Long-Term Obligation Management Program meeting calendar. Mr. Cook requested the AC review the draft schedule and return to the December 18, 2019 meeting with feedback and confirm management personnel attendance for the first scheduled meeting on February 5, 2020.
- Executive Officer Michael Houlemard reported staff and colleagues traveled to Washington, D.C. two weeks prior and met with the US Army regarding the future transfer of ESCA long-term obligations, as well as how economic development conveyance may be impacted.

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.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

- a. November 13, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the November 13, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. DECEMBER 13, 2019 BOARD MEETING AGENDA REVIEW

Assistant Executive Officer Josh Metz reviewed the items proposed to appear on the draft Board agenda for December 13, 2019. Mr. Houlemard noted that the Executive Committee will likely approve adding LAFCO Indemnification Agreement as a Consent Item.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Habitat Conservation Plan Update

Mr. Metz reported the November 20, 2019 public review meeting's main focus was the Environmental Impact Survey/Environmental Impact Report ("EIS/EIR") and noted public comment period ends December 16, 2019. At the November 20th "all permittees" meeting Mr. Metz reported jurisdictions raised concerns regarding funding and legal liability associated with Joint Powers Authority ("JPA") formation. He stated staff continues to work with the Habitat Conservation Plan ("HCP") consultant team to address these questions and have scheduled follow-up meetings on December 11, 2019 with the County of Monterey and Cities of Seaside and Marina to clarify financial aspects of JPA. Mr. Metz emphasized that FORA will no longer be in place to facilitate these discussions after its June 30, 2020 sunset and encouraged permittees to designate a lead agency to coordinate the JPA and HCP administration.

i. Draft Habitat Conservation Plan

Denise Duffy & Associates consultant Erin Harwayne provided a review of information presented at the November 20th "all permittees" meeting, and public meeting. Ms. Harwayne stated FORA, as lead California Environmental Quality Act agency, must certify the EIR prior to June 30, 2020 in order to be used by jurisdictions for Incidental Take Permits going forward. If the EIR is not certified by FORA by that time each jurisdiction will be responsible for performing its own EIS/EIR at the jurisdiction's expense. Mr. Metz emphasized it is much easier to amend existing EIS/EIR than to create new ones and regardless of whether the JPA, is formed the certified EIR would be a valuable document to the entire region. Ms. Harwayne and Mr. Metz responded to questions from members and public.

ii. Joint Powers Authority Formation

Mr. Metz introduced the item and noted that jurisdictions have expressed concern regarding two aspects of JPA formation: legal liability and financial feasibility. He reported the consultant team is developing a comparative analysis of FORA's HCP and other California HCPs, focusing on start-up costs, operating costs and administration methods. Regional Government Services consultant Kendall Flint and Economic Planning Systems consultants will review "legal" issues, initial costs and how JPA formation may be affected by development pace at the December 11th meetings with the County of Monterey, City of Marina, and City of Seaside. Ms. Flint emphasized that a lead jurisdiction must be identified as soon as possible and begin scheduling weekly JPA formation meetings no later than January 2020 in order to meet the April 1, 2020 deadline established in the Base Reuse Plan. FORA will not be setting these meetings; however, staff and consultant team are available to facilitate. Ms. Flint stated a list of JPA formation questions submitted by Monterey County, Seaside, and Marina are being compiled for discussion and encouraged all to submit questions. Staff and consultants answered additional questions from members and public.

**Chair Dino Pick of Del Rey Oaks requested a Habitat Management Plan ("HMP") and HCP cost-benefit analysis by jurisdiction. Ms. Flint stated EPS would provide this information at the December 11th meeting.*

**Committee member Melanie Beretti of Monterey County requested a copy of the current list of questions and Ms. Flint stated she would provide the list attached to the meeting invitation.*

**Mr. Houlemard noted FORA staff and Ms. Flint's assistance in JPA formation is included in FORA's budget. He reported Board members approve JPA formation due to consolidation of jurisdictional efforts and FORA is prepared to incur costs of assisting JPA formation, including legal counsel and consultant fees.*

b. 2018 Transition Plan Status

Ms. Flint gave a brief status update noting to date she has not received back any questions, details, legal opinions from the proposed signatories. Ms. Flint encouraged all Permittees' counsels review the agreement and submit any final comments/concerns so that a final Transition Planning Implementing Agreement can be adopted by the respective counsels between January and February of 2020. Ms. Flint and staff responded to questions from members and public.

i. 2020 Proposed Meeting Schedule

Mr. Metz introduced the item and Mr. Houlemard noted the FORA Administrative Committee meets twice a month, on the Wednesday one week prior to the FORA Board meeting and on the Wednesday following the Board Meeting. This item will be brought back to the Administrative Committee for approval/adoption on December 18, 2019. Staff responded to questions and comments from the Committee.

c. Eucalyptus Road Storm Water Infiltrator Repair

Senior Project Manager Peter Said provided background regarding the Eucalyptus Road storm water infiltrator repair project and noted the proposed Construction Management Plan has been approved by Department of Toxic Substances Control and US Army. Environmental Protection Agency approval is expected by year end. Mr. Said reported engineering consultants decreased the project's scope by developing a solution to replace the five failing storm water infiltrators with three storm water basins. Mr. Said stated construction is expected to begin February 2020 and noted this is the only Capital Improvement Plan project that is repair rather than roadway construction or mitigations. He stated staff will bring this information to the Board to request approval to solicit bids and award necessary contracts in order to complete construction by May 2020. Mr. Said responded to questions from the members and the public.

d. Marina Coast Water District Capacity Fees and Water/Wastewater Oversight Committee

Mr. Said reported the Water/Wastewater Oversight Committee ("WWOC") met on December 2, 2019 and reviewed Marina Coast Water District ("MCWD") 10-year master plans, which are the basis for the capacity fees. The Committee approved the master plan on the condition MCWD hold a technical engineer's meeting with the development community to refine the plans. At the technical meeting, MCWD decreased the scope in the master plans which reduced the proposed fees by \$13M. The WWOC has been reviewing the capacity fees since June 2019, and the documents have been available for public review for the last six months. The development community has strong concerns about the methodology and the planning level contingency of 48%. Mr. Said advised the Committee the Building Industry Association submitted letters outlining the development communities' position. The WWOC reviewed the increase in fees, and noted that the increase includes a Community Facilities District ("CFD") replacement for the FORA CFD. The FORA CFD currently collects a certain amount of money to pay for water augmentation. MCWD will need to collect the same amount, the way they will collect the funds is through the capacity fees. In addition, it includes cost indexing as the capacity fee from 2013

has not been indexed. In reviewing those components, there is a significant increase in the fees of about 45%. After viewing these documents for a number of months the WWOC approved to recommend the Draft Capacity Fees to the FORA Board, with the caveat that if a 10% or more reduction occurs within the next two months from another technical meeting between MCWD and the developer community, the WWOC would support the reduction. Mr. Said responded to questions and comments from the committee and public.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT at: 9:30 a.m.

Minutes Prepared By:

Heidi Gaddy

Deputy Clerk

Natalie Van Fleet

Administrative Assistant



FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m. Wednesday, December 18, 2019 | FORA Conference Room
 920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-chair Michael A. Houlemard, Jr. called the meeting to order at 8:30 a.m.

The following were present:

- Dino Pick* (City of Del Rey Oaks)
- Anya Spear (CSUMB)
- Patrick Breen (MCWD)
- Bill Collins (BRAC)
- Todd Muck (TAMC)
- Craig Malin* (City of Seaside)
- Lisa Reinheimer (MST)

- Hans Uslar* (City of Monterey)
- Melanie Beretti* (County of Monterey)
- Elizabeth Caraker (City of Monterey)
- Steve Matarazzo (UCMBEST)
- Vicki Nakamura (MPC)
- Nicole Hollingsworth (17th State Senate)
- *Voting member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey City Manager Hans Uslar.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Executive Officer Michael Houlemard noted that to date he has co-chaired over 600 Administrative Committee (“AC”) meetings and thanked Committee members for acknowledging his 23 years of service with the Fort Ord Reuse Authority (“FORA”) as he prepares for retirement at the end of the year.
- Mr. Houlemard reported the Board of Directors approved Assistant Executive Officer Joshua Metz as FORA Executive Officer beginning January 1, 2020.
- Doug Yount of Shea Homes reported Marina City Council unanimously approved the Dunes on Monterey Bay Project on December 17, 2019.
- Committee member Dino Pick reported the City of Del Rey Oaks adopted its first Housing Element in 25 years.

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.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

- a. December 4, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Pick and carried by the following vote, the Administrative Committee moved to approve the December 4, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. DECEMBER 13, 2019 BOARD MEETING FOLLOW-UP

Mr. Metz reported the Board approved building removal bond draft legal documents at the December 13, 2019 Board meeting and validation action is in process to establish FORA’s ability to issue the bonds. Pending the validation action outcome and final document Board review, bond issuance is expected as early as March 2020. Mr. Houlemard noted the County of Monterey (“The County”) approved the Public Benefit Hearing and in order to move forward the Board will need to take action to address Monterey County Regional Fire District (“MCRFD”) revenue loss. Additional discussion is required between the cities of Seaside, Marina and the County to determine which jurisdiction will “take the lead” as successor agency. Authority Counsel Jon Giffen reported validation action legal documents are being prepared and expects a court opinion by the first quarter of 2020. Mr. Metz noted MCRFD revenue loss and successor agency designation are two key items on the agenda for the January 2, 2020 AC meeting. Senior Project Manager Peter Said stated the Water/Wastewater Oversight Committee will no longer perform Marina Coast Water District (“MCWD”) budget reviews and are working on a recommendation to approve MCWD capacity fees. Mr. Houlemard stated MCWD heard concern regarding capacity fee increases and asked that the item be pulled from the Board meeting agenda to allow additional time for discussion.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. ESCA Long Term Obligation Management Program Update

i. Follow up on Draft February 5th Initial ESCA Long Term Obligation Management Program Meeting Invitation

Senior Program Manager Stan Cook reported several agencies have submitted questions regarding how some of FORA’s foundational documents relate to Environmental Services Cooperative Agreement (“ESCA”) successor issues. Mr. Cook stated FORA special counsel Barry Steinberg and George Schlossberg of Kutak Rock LLP will hold an informal workshop at the FORA office on January 9th from 9:00 a.m. - 12:00 p.m. to address these concerns. Mr. Houlemard emphasized the need for attendance by representatives of the cities of Del Rey Oaks, Seaside, Marina, Monterey and the County, as well as California State University Monterey Bay (“CSUMB”), University of California Monterey Bay (“UCMBEST”) and MCWD, as these agencies may be subject to underlying federal regulatory requirements. Mr. Cook distributed a Draft February 5th Initial ESCA Long Term Obligation Management Program Meeting Invitation to the Committee at the December 4th AC meeting, and hearing no schedule conflicts, stated the official meeting invitation will go out this week.

ii. 2019 Fort Ord Annual Land Use Control Report Status

Mr. Cook introduced Monterey County Assistant Bureau Chief for the Environmental Health Department Ric Encarnacion who is currently collecting all Annual Land Use Control reports for submittal to the Department of Toxic Substances Control (“DTSC”) as required by Memorandum of Understanding with the County. Mr. Cook explained in past years the DTSC annual reporting deadline of September 1st was informally extended to December 31st due to administrative and scheduling conflicts. Mr. Encarnacion will facilitate collection of jurisdictions’ signatures on an official DTSC document in order to permanently extend the reporting deadline to December 31st going forward. Mr. Encarnacion will collect the required signatures and coordinate with DTSC should the document require amendment. Mr. Cook and staff responded to questions from members.

b. Habitat Conservation Plan Update

Mr. Metz stated the Habitat Planning Update item title will be modified to “Habitat Planning Update” and the Joint Powers Authority (“JPA”) Formation sub-item title will be modified to “Habitat Working Group” on future agendas as a result of December 13, 2019 Board action.

i. Draft Habitat Conservation Plan

ii. Joint Powers Authority Formation

Mr. Houlemard reported the Board approved an ad-hoc committee to meet regularly to address the path forward for habitat management, particularly the following policy-related questions:

- 1) Is there a regional, collective intent to pursue the JPA?
- 2) What are the financial implications for each jurisdiction?
- 3) Is the National Monument included in this process?

Mr. Houlemard noted FORA has \$15.9M budgeted for habitat management, a portion of which funds Authority counsel services, consultant advising and administrative support. Mr. Metz reported an email poll was sent out with three proposed Habitat Working Group meeting dates and AC members discussed possible scheduling alternatives. Staff stated a new poll would go out to participants following the meeting and encouraged prompt responses from recipients.

Denise Duffy & Associates consultant Erin Harwayne reported United States Fish and Wildlife Services (“USFWS”) is compiling public comment letters while staff is cataloguing the inquiries and responses. Comment letters will be posted online concurrently as staff responds. Ms. Harwayne stated the National Environmental Policy Act/California Environmental Quality Act process requires the final Environmental Impact Report include all comment letters and responses. Additionally, USFWS requires Notice of Publication for the final Environmental Impact Statement, in addition to a compilation of public comments into a “Frequently Asked Questions” format (generalized inquiries and responses) for publication in the Federal Register.

c. 2018 Transition Plan Status

Ms. Flint gave a brief transition plan status update, noting that she is in the process of creating a website containing all Habitat Conservation Plan (“HCP”)/JPA related documents and background information, including ESCA documents which affect the Implementing Agreements.

Ms. Flint reported scheduling presentations for each jurisdiction to address specific concerns and estimated adoption of the Implementing Agreements in March 2020. Mr. Houlemard noted additional agenda items must be submitted before the December 31, 2019 Executive Committee meeting in order to be included in the January 10, 2020 Board meeting agenda.

i. 2020 Committee Meeting Schedule

The Committee approved the proposed 2020 Administrative Committee Meeting Schedule. Mr. Metz noted the January 10, 2020 Board meeting will be held on a Friday, but all subsequent Board meetings are scheduled for the second Thursday of the month at 2:00 p.m.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT

Mr. Houlemard’s requested the meeting be adjourned in honor of the recovery of the former Fort Ord and future success by jurisdictions moving forward at 9:36 a.m.

Minutes Prepared By:
Natalie Van Fleet
Administrative Assistant

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Habitat Planning Update	
Meeting Date:	January 10, 2020	INFORMATION/ACTION
Agenda Number:	7c	

RECOMMENDATION: Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.

BACKGROUND:

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan (“BRP”), 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. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, State listing of California Tiger Salamander (“CTS”), changing CDFW and USFWS staffing, added funding requirements, and adjustments to HCP/2081 ITP requirements.

Funding the HCP program is based on building to a habitat endowment that would generate sufficient annual interest earnings to fund protection “in perpetuity,” restoration and enhancement of habitat as mitigation for take, and management of the funds. The Cities, County, and other members of a potential future Joint Powers Authority (“JPA”) would be issued Federal and State ITPs and oversee stay-ahead provisions so that species take would not exceed completed mitigations.

HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (“CFD”) special taxes collected from former Fort Ord development. FORA has paid several million dollars 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 are now projected to cost between \$48 to \$66 million. By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFD funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate fiscal soundness to USFWS/CDFW (“Wildlife Agencies”). Wildlife Agencies provided strong input into the design of the HCP so that funding is scalable and must fund Habitat Management Area (“HMA”) management and additional mitigations five percent ahead of impacts.

The HCP EIS/EIR Public Draft was released on November 1, 2019. FORA Staff, HCP and EIS/EIR Consultants, USFWS Staff, and CDFW Staff held a DRAFT HCP EIS/EIR Public Meeting from 6-8pm Wednesday, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented an overview of the HCP and DRAFT EIS/EIR. The team answered questions and directed stakeholders to submit written comments on the DRAFT EIS/EIR no later than 5:00pm December 16, 2019. 32 comment letters were received by the close of comment period deadline.

In addition to the Public Meeting, FORA Staff, HCP and EIS/EIR Consultants, convened an All-Permittees meeting from 9am-12pm Wednesday, November 20, 2019 at the Soper Field Community Center in Seaside. The intent of this meeting was to refresh potential permittees understanding of the DRAFT HCP content and path forward to form the proposed Joint Powers Authority ("JPA"). Permittees and members of the public raised significant concerns about potential legal and fiscal liabilities associated with forming the JPA and implementing the HCP.


DISCUSSION:

Following receipt of comment letters and concerns raised by stakeholders, the FORA Board directed formation of an ad hoc Habitat Working Group ("HWG") to meet weekly in the 1st quarter of 2020 to assess habitat management options and attempt to address the significant legal and fiscal liability concerns raised during the HCP review process. The goal of the HWG is to bring a recommendation on habitat management options back to the Board for deliberation and action.

Following polling of participants, a regular meeting day, time, and location (Fridays 10am-12pm at the FORA Offices, 920 2nd Ave., Suite A, Marina, CA 93933) was established for the HWG meetings to begin on Friday January 10. Staff will bring regular reports back to the Board at the regular meetings.

Staff has also contacted the Wildlife Agencies to engage their staff and resources in a focused effort to address stakeholder concerns and help the FORA jurisdictions identify and viable and sustainable habitat management. Staff and consultants will be meeting with USFWS Staff on Monday January 6, and expect to engage them in subsequent HWG meetings. Staff and consultants have scheduled a Jan 17 meeting with CDFW and are working to confirm their participation in near future HWG meetings.

FISCAL IMPACT:

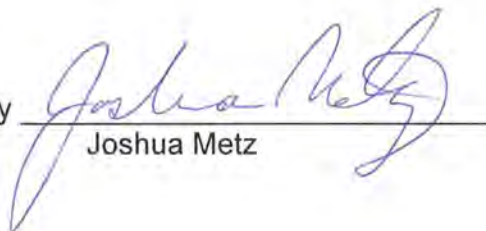
Reviewed by FORA Controller 

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

COORDINATION:

Authority Counsel, ICF, Denise Duffy & Associates, Reimer Associates Consulting, Inc., CDFW, and USFWS.

Prepared and Approved by


Joshua Metz

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Environmental Services Cooperative Agreement Quarterly Report	
Meeting Date:	January 10, 2020	INFORMATION/ACTION
Agenda Number:	7d	

RECOMMENDATION:

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

BACKGROUND:

In Spring 2005, the U.S. Army ("Army") and the Fort Ord Reuse Authority ("FORA") entered into 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 Army signed the ESCA agreement in early 2007. Under the ESCA terms, the Army awarded FORA approximately \$98 million to perform Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") MEC cleanup on those parcels. FORA also entered into the Administrative Order on Consent ("AOC") with United States 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 ESCA property ownership after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer in 2009.

To complete the ESCA and AOC obligations, FORA entered into 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 combination of cost-cap insurance policy through American International Group ("AIG") and Army ESCA Contingent Funding, assuring financial resources to complete the work and offer other protections for FORA and the jurisdictions. Arcadis ESCA contracting team included Westcliffe Engineers, Inc. and Weston Solutions, Inc. to provide Engineering, MEC Remediation and Public/Regulatory Outreach services.

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 (3) historic concerns: 1) yearly federal appropriation funding fluctuations 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 that FORA ESCA RP received, FORA paid \$82.1 million up front, 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 provided up to \$128 million assuring additional work (known and unknown) is completed to the Regulators satisfaction (see table below). Under those agreements, AIG paid Arcadis directly while FORA oversaw 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. Starting April 2019, the Army ESCA Contingent Funds have been used to pay for ESCA work. Arcadis continues to provide FORA with quarterly invoicing estimates.

Post-ESCA Amendment ESCA Fund Status as of September 2019:

Item	2017 & 2019 Amendment Allocations (to 9/1/19)	Accrued through September 2019	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 -plus-AIG insurance	82,117,553	82,117,553	\$5,817,277
Original FORA Administrative Fees	4,562,001	4,562,001	N/A
Line Item 0001: Subtotal	\$94,172,954	\$94,172,954	N/A
Line Item 0001A: Environmental Services Post-Cost-Cap Insurance - Hourly	192,201	192,201	N/A
Line Item 0001B: Environmental Services Post-Cost-Cap Insurance - Lump Sum	134,899	134,899	N/A
Line Item 0002: thru 31 Dec 2019 DTSC and EPA Technical Oversight Services	4,301,568	4,301,568	N/A
Line Item 0003: thru 30 June 2020 FORA ESCA Adm. Funds	1,865,848	1,228,916	N/A
Line Item 0003A: FORA ESCA Admin. Oversight Post-Cost-Cap Insurance	16,355	16,355	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	\$104,918,268	\$100,046,893	\$5,817,277
	ESCA Remainder	\$4,871,375	N/A

The ESCA properties have received Records of Decision (“RODs”), documenting controls required to protect public health and safety, and Land Use Control Implementation Plan/Operation and Maintenance Plans (LUCIP/OMP) implementing, operating and maintaining ROD controls tailored to individual site conditions and historic MEC use. The Final ESCA LUCIP/OMP documents were accepted by the Army and Regulators in February 2019. The future property owner staff (California State University Monterey Bay, City of Del Rey Oaks, Monterey County, City of Monterey and Monterey Peninsula College [MPC]) have received LUCIP/OMP site-specific training workshops. The ESCA properties received the last EPA Remedial Action Completion letter February 2019. The EPA has outlined the requirements for a site-wide ESCA remedial

completion and associated site-wide EPA Remedial Action Completion documents which are in progress. ESCA property cannot be transferred to the jurisdictions and remain closed for public access until DTSC Covenants Restricting Use of Property amendments, Army deed modifications and issuance of the Army CERCLA Warranties/Deed Amendments are completed. In 2019, FORA requested the Army CERCLA Warranties/Deed Amendments for the ESCA CSUMB Off-Campus, Seaside and MPC properties.

Please note that Regulatory approval of remedial completion does not determine land use. 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.

ESCA Amendments Update:

ESCA Amendment 2017: ESCA Remedial Action Completion has initiated Army Long-Term "Obligations ("LTO") on ESCA property (see table above, Line Item 0004, Post-Closure MEC Find Assessments and Line Item 0005, Long-Term/LUC Management). Under the ESCA, FORA contracted for \$4,234,443, to take on the Army LTO until 2028. FORA (and its Successor) will need continued qualified ESCA LTO support services through 2028. The contracting firms of Arcadis, Weston Solutions, Inc. and Westcliffe Engineers, Inc. have provided ESCA-specific Engineering, MEC Remediation and Public/Regulatory Outreach services for over a decade and are uniquely knowledgeable/qualified to provide FORA with ESCA property LTO support services. May 2019 the FORA Board adopted Resolution 19-05 authorizing the FORA Executive Officer to retain the current ESCA team of Arcadis, Westcliffe Engineers, Inc. and Weston Solutions, Inc. to assist FORA by providing LTO support services at a cost not to exceed \$1,328,741. In June, FORA received and accepted proposals from Arcadis, Weston Solutions, Inc., Westcliffe Engineers, Inc., resulting in three (3) ESCA LTO Support Service contracts until 2028.

ESCA Amendments 2019: 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, driving ESCA work/costs beyond the March 30, 2019 AIG cost-cap insurance termination date. On August 2018, the FORA Board authorized the FORA Executive Officer and FORA Special Counsel, with FORA Executive Committee direction, to enter into Army negotiations for additional funds covering ESCA costs beyond the AIG cost-cap insurance policy expiration date. FORA staff met with Army BRAC HQ staff in Washington, D.C in December 2018. On February 20, 2019, Army BRAC HQ and U.S. Army Corps of Engineers contract support team visited/inspected the ESCA properties to finalize the Scope of Work and Estimate, which the Army accepted. On March 31, 2019, FORA received ESCA Agreement Modification 00010 with \$343,455 of Army funds covering ESCA costs beyond the AIG cost-cap insurance policy expiration date. In May 2019, the FORA Board authorized the Executive Officer to enter into an agreement with Arcadis to continue providing ESCA services using the Army Contingent Funds. In June 2019 that contract was executed.

In August 2019, FORA, as directed by the Army requested a two-month extension of the ESCA funding for an additional \$40,362 in Army Contingent Funds to cover Arcadis and FORA accounting costs to September 30, 2019. The Army accepted the request and issued ESCA Agreement Modification 00011 to fund the request.

In September 2019, FORA, as directed by the Army, will request a three-month ESCA extension and Arcadis and FORA accounting costs to December 31, 2019. FORA staff met with BRAC HQ staff in Washington, D.C. in November 2019 to review this request. The Army approved the request and is in the process of releasing the funds.

FISCAL IMPACT:

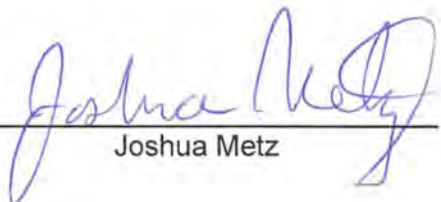
Reviewed by FORA Controller 

The actual cost to FORA of these Army obligations will be fully reimbursed.

COORDINATION:

Administrative Committee; Executive Committee; Authority Counsel; Special Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army, EPA; and DTSC.

Prepared by 
Stan Cook

Approved by 
Joshua Metz

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Fiscal Year 2018-19 Audited Annual Financial Report

Meeting Date: January 10, 2020

Agenda Number: 7e

ACTION

RECOMMENDATION:

Accept the Moss, Levy & Hartzheim (MLH), Certified Public Accountants Fort Ord Reuse Authority (FORA) Fiscal Year 18-19 Audited Annual Financial Report (Audit Report) as recommended by the Finance Committee. This link will take you to the full report: https://fora.org/Board/2020/Packet/Additional/FORA_FS_2019-Final.pdf

BACKGROUND:

Each fall, the draft Audit Report is presented to the Finance Committee (FC) for its review and consideration before it is forwarded to the FORA Board.

DISCUSSION:

MLH issued an "unmodified" opinion with respect to the Government-Wide Financial Statements. Also, there were no findings/questionable costs in the FY 18-19 financial audit concerning the FORA internal control structure. MLH's letter expresses the opinion that the financial statements present fairly, in all material respects, FORA's financial position of the governmental activities and each major fund of FORA as of June 30, 2019, and the respective changes in financial position, for the fiscal year then ended, in accordance with accounting principles generally accepted in the United States of America.

The FC reviewed the Audit Report on January 6, 2020 as presented and unanimously recommended the FORA Board accept the FY 18-19 Audit Report.

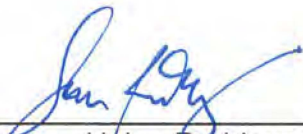
FISCAL IMPACT:

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

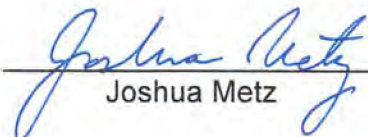
COORDINATION:

Finance Committee, Moss, Levy & Hartzheim, Certified Public Accountants

Prepared by:


Helen Rodriguez

Approved by:


Joshua Metz

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA ITEMS

Subject: Executive Officer Contract

Meeting Date: January 10, 2020

Agenda Number: 7f

INFORMATION

RECOMMENDATIONS:

Receive FORA Executive Officer Contract

BACKGROUND/DISCUSSION:

On December 13, 2019, the FORA Board of Directors met in closed session and appointed Joshua Metz as the Executive Officer of FORA for the period of January 1, 2020 to June 30, 2020. The terms of Mr. Metz's employment agreement were approved by the FORA Board and the agreement is attached as Exhibit A to this Report.

FISCAL IMPACT:

Reviewed by FORA Controller 

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

COORDINATION:

Mi Ra Park, Authority Counsel.

Prepared by Mi Ra Park, Regional Government Services

Approved by



Supervisor Jane Parker

**EXECUTIVE OFFICER
EMPLOYMENT AGREEMENT**

This Executive Officer Employment Agreement (this "Agreement") is made and entered into effective January 1, 2020 (the "Commencement Date") by and between the Fort Ord Reuse Authority, a public corporation formed under the Fort Ord Reuse Authority Act, California Government Code sections 67650 *et seq.* (hereinafter "FORA") and Joshua Metz, an individual (hereinafter "Metz").

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

(a) Metz has served as the Assistant Executive Officer of FORA since September 2019, Planning & Economic Development Manager from June - September 2019, Economic Development Manager from June 2016 - June 2019, Economic Development Coordinator from June 2015 - June 2016, Senior Planner from June 2014 - June 2015, and Associate Planner from October 2013-June 2014.

(b) Metz has performed his duties in each of these roles to the satisfaction of FORA's governing Board of Directors (the "Board").

(c) The Parties desire that Metz assumes the role of Executive Officer of FORA on the terms and conditions set forth in this Agreement.

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

3. COMPENSATION.

(a) Salary. During the term of this Agreement, as compensation for his services as FORA's Executive Officer, Metz shall be paid an annual salary of One Hundred Ninety Five Thousand Dollars (\$195,000.00) in installments in accordance with the FORA's general compensation program, prorated for any partial payroll period.

(b) Severance. At the close of the term of this Agreement, Metz shall be entitled to severance pay equal to four (4) months salary, exclusive of benefits. At the election of the Board, severance pay may be paid in substantially equal installments over any period up to four (4) months.

(c) Deferred Compensation. During the term of this Agreement, FORA shall contribute Two Thousand Dollars (\$2000.00) per month into a deferred compensation plan mutually selected by the Parties.

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

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

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

Vacation	26 days
Sick Leave	18 days
Management Leave	5 days

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

(h) Insurance. Metz and his dependents shall be entitled to participate in any life or health insurance programs made available by FORA to FORA's other employees and their dependents, as such program(s) may from time to time be amended, and in the same manner, to the same extent, and subject to the same terms and conditions, including but not limited to contribution rates, as apply to FORA's other employees and their dependents. Metz shall be entitled to 12 months of health premiums, at his current rate, at the end of the term of this agreement.

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

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

(k) Reimbursable Expenses. Metz shall be reimbursed for out-of-pocket expenses according to those policies regarding reimbursements established by FORA as they may be amended from time to time.

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

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

- (a) By mutual agreement;
- (b) By Metz providing FORA ninety (90) days advance written notice;
- (c) By FORA through written notice to Metz of intent to terminate his employment for "Cause."

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

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

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

Chair of the Board of Directors
Fort Ord Reuse Authority
920 2nd Ave, Suite A
Marina, CA 93933

Joshua Metz
224 Ross Street
Santa Cruz, CA 95060

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

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

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

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

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



Joshua Metz



Chair
Fort Ord Reuse Authority

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT AGENDA	
Subject:	Public Correspondence to the Board
Meeting Date:	January 10, 2020
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: 2018 Transition Plan Implementation	
Meeting Date: January 10, 2020	INFORMATION/ACTION
Agenda Number: 8a	

RECOMMENDATION:

- 1) Receive a report regarding the Fort Ord Reuse Authority ("FORA") federal government Local Redevelopment Authority ("LRA") Obligations and Responsibilities, including the implementation of the June 11, 2000 Economic Development Conveyance ("EDC") Memorandum of Agreement.
- 2) Approve Implementing Agreement with the City of Seaside regarding its acceptance of FORA's obligations under the EDC and Environmental Services Cooperative Agreement ("ESCA") and designation as federally recognized LRA.

BACKGROUND:

FORA was created under state law to be the LRA as required in federal law. Under the terms of that federal law, FORA was eligible to receive funding from the Department of Defense ("DoD") in the 1990s as well as in the last decade. Further, as the, FORA was the designated agency for receiving federal property under federal law that created EDCs of former military properties closed under the Base Realignment and Closure Act (BRAC"). As well, in 2005, special federal provisions allowed the U.S. Army ("Army") to negotiate contracts with federally recognized LRAs for cooperative services including environmental cleanup.

Given the federal provisions noted above, FORA implemented its three county obligations in compliance with these federal provisions. In particular, FORA negotiated the EDC for significant portions of the former Fort Ord for the purpose of creating jobs, housing, services, enterprises and other purposes under an adopted base reuse plan. FORA also negotiated an ESCA contract with the Army to complete munitions and explosives removal for 3,340 acres of former Fort Ord property. Each of these agreements require a FORA Successor-In-Interest ("Successor") be appointed and contain provisions outlining the terms and conditions for assigning FORA's responsibilities.

Discussion/Report:

As reported last month, Army BRAC Headquarters ("HQ") Chief Thomas Lederle requested FORA and City of Seaside ("Seaside") meet with BRAC and U.S. Secretary of DoD Office of Economic Adjustment ("OEA") to discuss ESCA status and FORA Successor requirements. Seaside has expressed interest in becoming FORA's Successor and sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton-Rerig and Assistant City Attorney Sheri Damon to attend those meetings with the FORA Executive Officer and Senior Program Manager.

- On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff to discuss the following ESCA Successor Issues:
 - FORA Transition/FORA Successor process/progress
 - Seaside – as the proposed ESCA Successor
 - ESCA Long-Term Obligation Management Program
 - ESCA Pollution Legal Liability Insurance
 - ESCA Successor and EDC authorities, obligations and interdependence

At the meeting, FORA staff and Special Counsel provided an ESCA status and FORA Board Members, Executive Officer and Seaside Counsel Members/staff provided Mr. Lederle with an update on the ESCA Successor efforts. Mr. Lederle and Army attorneys provided FORA and Seaside with guidance on the Army's ESCA Successor requirements.

On November 19, 2019, FORA and Seaside met with Mr. Patrick O'Brien, Director, OEA to discuss FORA's June 30, 2020 closure and FORA ESCA Successor plans. Since many of the ESCA obligations include multiple real property conveyance documentation and transfers that directly grow from the EDC, the attendees discussed the coordination required between these FORA responsibilities. An outgrowth of that conversation was the suggestion that FORA explore and conclude on the assignment of the EDC agreement obligations, the OEA LRA designation as well as the ESCA Successor issue.

Attached (**Attachment A**) is an agreement between the FORA and Seaside outlining the basic terms for Seaside to become FORA's ESCA, EDC and LRA Successor. If Seaside were to become FORA's Successor, this has implications for future potential funding.

FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for the ESCA contract is provided by the Army and funding for the 2018 transition plan are included in the 2019/2020 budget.

COORDINATION:

Administrative Committee; Executive Committee; Authority Counsel; Special Authority Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army; EPA; and DTSC.

ATTACHMENTS:

Attachment A: Draft Implementing of Agreement

Prepared by 
Stan Cook

Approved by 
Joshua Metz

1 **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**
2 **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT SUCCESSOR**
3 **TRANSITION PLAN IMPLEMENTING AGREEMENT**
4
5

6 **RECITALS**
7

8 WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a
9 Corporation of the State of California established under California State Law Government
10 Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort
11 Ord property and is acknowledged as the federally recognized local reuse authority for
12 property transfers from the Army, to the governing local jurisdictions or their designees;
13 and
14

15 WHEREAS Fort Ord, California was placed on the National Priorities List
16 (Superfund) in 1990 due to leaking underground storage tanks, contaminated
17 groundwater and a 150-acre landfill; and
18

19 WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under
20 CERCLA Section 120 outlining the Army's Comprehensive Environmental Response,
21 Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the
22 former Fort Ord. The Army remains responsible for certain actions under that FFA. The
23 FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for
24 FORA's ESCA obligations so long as FORA or its successors are in compliance with the
25 AOC; and
26

27 WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to
28 and in accordance with the Defense Base Closure and Realignment Act of 1990, as
29 amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").
30

31 WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as
32 amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.
33 No. 106-65 (1999), and the implementing regulations of the Department of Defense (32
34 CFR Parts 90 and 91), FORA acquired portions of the former Fort Ord consisting of
35 approximately five thousand two hundred (5,200) acres of land, including all buildings,
36 personal property, appurtenances, rights-of-way, and drainage areas upon and subject to
37 the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the
38 United States of America.
39

40 WHEREAS, the MOA provided for transfers of property in accordance with the
41 Army's clean-up schedule. Subsequent to the MOA execution, FORA and the local
42 communities decided to pursue an early transfer process pursuant to Title 42 United
43 States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate
44 reuse and economic recovery for the communities affected by the Fort Ord closure.
45

46 WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the

1 EPA Administrator and the concurrence of the Governor of California, transferred title of
2 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all
3 action to protect human health and the environment had been completed. Concurrent with
4 this transfer without the otherwise required CERCLA covenant mandated by Title 42
5 United States Code, section 9620 (h)(3) , FORA accepted title and agreed to perform the
6 Army's environmental remediation with funding from the Army. Excluded from FORA's
7 performance obligation are matters related to the groundwater at the former Fort Ord, as
8 well as other Army responsibilities enumerated in the ESCA and elsewhere.

9
10 WHEREAS, in 2007 an *“Administrative Order on Consent (“AOC”) [Docket No. R9-
11 2007-003] [was] entered into voluntarily by the United States Environmental Protection
12 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and
13 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of
14 potential removal actions, one or more remedial investigations and feasibility studies
15 (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for
16 contaminants present on portions of the former Fort Ord located at Monterey, California
17 (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in
18 connection with such CERCLA response actions.”*, and

19
20 WHEREAS, in 2007, the Army executed an amendment to the Federal Facilities
21 Agreement; and

22
23
24
25 WHEREAS, in 2007 the Army and FORA executed an Environmental Services
26 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United
27 States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701)
28 whereby FORA would perform the Army's environmental responsibilities as the Army
29 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with
30 the Army providing funding to perform these services; and

31
32 WHEREAS, the ESCA has been amended several times, the amendment in 2017
33 which provides approximately \$6.8 million to complete the property transfer process and
34 to perform the required long-term land management tasks, including Munitions and
35 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring
36 and reporting through June 30, 2028; and

37
38 WHEREAS, due to changes and delays in the transfer of properties, modifications
39 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA Line
40 Item Number 0004 Post Closure MEC Find Assessments \$528,651 and ESCA Line Item
41 Number 0005 for Long-Term Management and Land Use Control (LUC) management are
42 \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),
43 [need Stan and Helen to confirm these numbers. Stan/FORA/ARMY to confirm that Mods
44 10,11 and 12 do not affect the ability to fully implement the original task list of LTO which
45 were estimated to require \$6.8 to complete (i.e. that Mods 10-12 do not re-allocate a
46 portion of the 6.8 to current tasks]; and

1
2 WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that
3 specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the
4 ESCA contract, and

5
6 WHEREAS, the Successor assumes responsibility and will be tasked with
7 performing the remaining LTOs under the ESCA, including the recent amendment. It is
8 assumed that all work under the previous \$98,000,000 contract will have been
9 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action
10 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army
11 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-
13 record/](http://fortordcleanup.com/documents/administrative-
12 record/), and

14 WHEREAS, the City of Seaside is prepared, subject to Army funding, to assume
15 ESCA responsibility and attendant local reuse authority status, including the execution of
16 the AOC in order to complete the ESCA obligations and any property-related transfer
17 actions required after June 30, 2020;

18
19
20 *****

21 **NOW, THEREFORE,**

22
23 1. Incorporation of Recitals. The above recitals are hereby incorporated herein by
24 reference.

25
26 2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA
27 Successor-In-Interest under the 2018 Transition Plan.

28
29 3. Insurance Policies. FORA agrees to designate or transfer its insurance
30 coverages to Seaside under the **Coverage A under the AIG PLL and the CHUBB policy.**
31 FORA shall also transfer any self-insured retention funds to Seaside to be used
32 exclusively for ESCA and claim-related obligations. Seaside acknowledges that these
33 coverages will expire in 2022 and 2024, respectively, and that successor designations will
34 be subject to approval by the insurers. Seaside’s successful receipt of insurance
35 coverage is a condition precedent to becoming FORA’s ESCA and local reuse authority
36 successor.

37
38 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA
39 agrees to provide technical and/or financial assistance to Seaside to meet the terms
40 required by the Army, EPA, and DTSC that the Successor be a single entity and
41 demonstrate technical and financial competence to complete the work.

42
43 5. ESCA records and contracts funds. FORA and Seaside shall establish a
44 mechanism for transfer of all ESCA records, back-up documents, computer files and
45 accounting records, and contract funds to Seaside for meeting FORA’s ESCA obligations.
46

1 6. Technical Assistance. FORA agrees to continue to provide technical assistance
2 and funding to complete the ESCA transfer process through June 30, 2020, including
3 specialized legal, drafting and other staff or contract support.
4

5 7. Obligations. Seaside agrees to assume the local reuse authority designation
6 and the remaining reporting, monitoring, and stewardship or other identified
7 responsibilities associated with the FORA-Army 2007 ESCA as FORA's Successor
8 through the end of the ESCA Contract June 30, 2028 in order to complete property
9 transfers and the ESCA to the extent that ESCA performance does not obligate or put at
10 risk Seaside's municipal non-ESCA funds. Exhaustion or unavailability of ESCA funds
11 with which to compensate Seaside for the performance of ESCA obligations will constitute
12 a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations
13 to perform the surviving FORA obligations.
14

15 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside
16 agrees to provide evidence of its fiduciary and technical capability to comply with the
17 terms of the ESCA and manage the contract financial assets with associated invoicing
18 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA
19 fiduciary capability.
20

21 a. To assume FORA's ESCA Long Term Obligations Management Program,
22 as approved by the US Army, EPA and DTSC
23

24 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required
25 under the contract provisions as currently amended through 2028, but
26 with allowances for indirect administrative overhead to assure the Army,
27 EPA and DTSC of continued ESCA technical capacity.
28

29 ii. ESCA Long-Term Obligation Support Services Contract. Enter into
30 Support Services Contracts through 2028 with specialists Arcadis,
31 Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified
32 vendors), including allowances for indirect administrative overhead to
33 assure the Army, EPA and DTSC of continued ESCA technical capacity.
34

35 iii. Representation. Contract with Counsel reasonably qualified on
36 environmental issues with experience in working with state and federal
37 entities (Army, EPA and DTSC) for review and compliance as noted in
38 the ESCA and the AOC.
39

40 9. Coordination. Enter into agreements with the ESCA underlying jurisdictions
41 (Monterey Peninsula College, California State University Monterey Bay, Monterey County,
42 the cities of Del Rey Oaks and Monterey and Marina Coast Water District) for the property
43 transfers and other necessary property-related rights to effectuate the reuse and the
44 oversight, reporting, response, and other long-term stewardship obligations listed in the
45 ESCA through 2028 on behalf of the Army.
46

1 10. ESCA Amendment. The parties agree to work cooperatively to successfully
2 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor
3 and execute the ESCA upon review and approval of terms and conditions. Seaside
4 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army
5 Corps of Engineers (“USACE”) oversight and grant management requirements for funding
6 to Seaside under the ESCA terms, provided however, that the Successor activities are
7 fully funded, including without limitation provision for PLL insurance coverage, funding
8 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the
9 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a
10 reimbursement funded by the Army through the end of the ESCA obligations.

11
12 11. Administrative Order on Consent. The parties agree to work cooperatively to
13 successfully receive EPA and DTSC approval that Seaside is the formal Successor to
14 execute an AOC upon review of terms and conditions.

15
16 12. Amendment. This Agreement or any provision hereof may be changed,
17 waived, or terminated only by a statement in writing signed by the Party against which
18 such change, waiver or termination is sought to be enforced.

19
20 13. No Waiver. No delay in enforcing or failing to enforce any right under this
21 Agreement will constitute a waiver of such right. No waiver of any default under this
22 Agreement will operate as a waiver of any other default or of the same default on a future
23 occasion.

24
25 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or
26 conditions of this Agreement are to any extent declared invalid, unenforceable, void or
27 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or
28 order or decree of which becomes final, the Parties agree to amend the terms in a
29 reasonable manner to achieve the intention of the Parties without invalidity. If the terms
30 cannot be amended, the invalidity of one or several terms will not affect the validity of the
31 Agreement as a whole, unless the invalid terms are of such essential importance to this
32 Agreement that it can be reasonably assumed that the Parties would not have contracted
33 this Agreement without the invalid terms. In such case, the Party affected may terminate
34 this Agreement by written notice to the other Party without prejudice to the affected Party’s
35 rights in law or equity.

36
37 15. Entire Agreement. This Agreement is intended by the Parties as a final
38 expression of their agreement and is intended as a complete and exclusive statement of
39 the terms and conditions thereof. Acceptance of or acquiescence in a course of
40 performance rendered under this Agreement shall not be relevant to determine the
41 meaning of this Agreement even though the accepting or acquiescing Party had
42 knowledge of the nature of the performance and opportunity for objection.

43
44 16. Choice of Law. This Agreement will be construed in accordance with the
45 laws of the State of California.

1 17. Further Assurances. Each Party agrees to execute and deliver all further
2 instruments and documents and take all further action that may be reasonably necessary
3 to complete performance of its obligations hereunder and otherwise to effectuate the
4 purposes and intent of this Agreement.

5
6 18. Headings. The headings of the sections hereof are inserted for convenience
7 only and shall not be deemed a part of this Agreement.

8
9 19. Notices. Any notice, demand, offer, or other written instrument required or
10 permitted to be given pursuant to this Agreement shall be acknowledged by the Party
11 giving such notice, and shall to the extent reasonably practicable be sent by hand
12 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,
13 overnight courier, electronic mail, or registered mail, in each case to the other Party at the
14 address for such Party set forth below (Note: A Party may change its place of notice by a
15 notice sent to all other Parties in compliance with this section):

16
17 City of Seaside
18 Attn. City Manager
19 440 Harcourt Avenue
20 Seaside, CA 93955

Fort Ord Reuse Authority
Attn: Executive Officer
920 2nd Avenue, Suite A
Marina CA

21
22 w/ an email copy to cityattorney@ci.seaside.ca.us

23
24 20. Term of Agreement: This Agreement shall be effective on the Effective Date
25 specified at the beginning of the Agreement and shall remain in effect unless and until
26 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort
27 Ord Reuse Authority. [Do we need to provide for survival beyond 30 June 2020? And
28 expiration in 2028?] [Not sure what/who would take the survivorship beyond FORA?
29 LAFCO?]

30
31 21. Authorization. Each party affirms that it is fully authorized to enter into this
32 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to
33 review and approval of documents by the City Attorney, to enter into the terms and
34 conditions of this Memorandum of Agreement, the AOC and the ESCA and sign related
35 ESCA and AOC reporting and financial documents.

36
37
38
39 *****

40 IN WITNESS WHEREOF, each Party has executed the Agreement with the
41 approval of its governing body as of the date first written above.

42
43 CITY OF SEASIDE:

44
45
46 _____

Date: _____

1 Craig Malin
2 City Manager

3
4 APPROVED AS TO FORM:

5
6
7 _____

8 CITY ATTORNEY

9
10
11 FORT ORD REUSE AUTHORITY:

12
13
14 _____ Date: _____

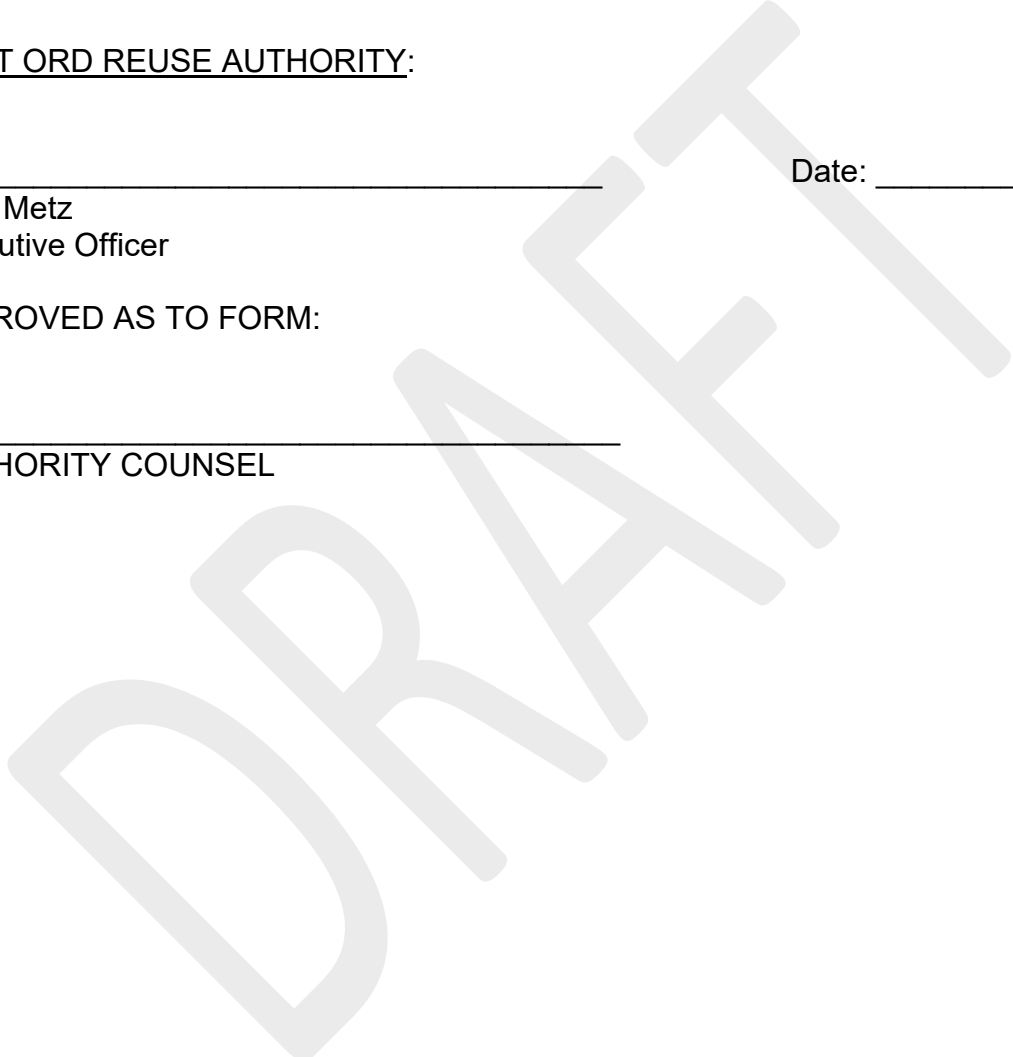
15 Josh Metz
16 Executive Officer

17
18 APPROVED AS TO FORM:

19
20
21 _____

22 AUTHORITY COUNSEL

23
24



FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: 2020 Elect Board Officers	
Meeting Date: January 10, 2020 Agenda Number: 8b	ACTION

RECOMMENDATION:

1. Receive a report from the 2020 Nominating Committee.
2. Approve Nominating Committee's proposed slate or seek Board nominations, Executive Officer will conduct an election.

BACKGROUND/DISCUSSION:

The FORA Master Resolution states that the Board Chair and Vice-Chair shall be elected annually at the end of the first regular Board meeting in January. The Board officers serve for a term of one year and may be reelected for no more than one consecutive, additional term in the same office. Under that policy, the current Board officers are eligible for re-election to their current positions. The Master Resolution also establishes a Board policy of succession from 1st Vice Chair to Chair. The Board may appoint other officers as deemed necessary. The Nominating Committee met on December 31, 2019 and provides the attached Nominating Committee report. (**Attachment A**).

It is expected that the election will address the following either by slate or subsequent nomination/vote as follows:

- i. Two voting Fort Ord Reuse Authority (FORA) Board members to serve as Board Chair and Vice-Chair and FORA Executive Committee members for a one year term.
- ii. Two voting FORA Board members to serve as members-at-large on the FORA Executive Committee for a one year term.
- iii. Elect a past Board Chair to serve on the Executive Committee for a one year term.
- iv. Elect one ex-officio Board member to serve as a non-voting member of the Executive Committee for a one year term.

VOTING PROCEDURE: A summary nomination covering all offices is offered by the Nominating Committee Chair or any Board member before voting for the individual offices commences. In the absence of a summary nomination, or in the event of additional nominations from the Board, the Chair will accept nominations for each office, starting with the Chair, and conduct an election as noted in **Attachment B**. A majority of votes cast confirms election.

POTENTIAL FUTURE ACTION: In 2017 some of the FORA Board members inquired if the Officer and Executive Committee selection process could be revised to consider rotation or other methods of selection. Those methods were staff recommended and considered by the nominating committee.

FISCAL IMPACT:

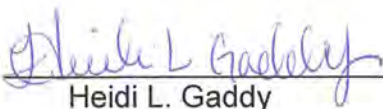
Reviewed by FORA Controller 

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

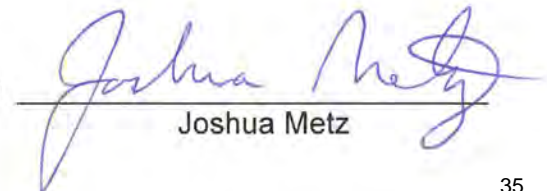
COORDINATION

Nominating Committee and Executive Committee

Prepared by


Heidi L. Gaddy

Approved by


Joshua Metz



FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

MEMORANDUM

TO: FORA Board of Directors
FROM: Chair Jane Parker
RE: 2020 Nominating Committee Report
DATE: December 31, 2019

The 2020 FORA Nominating Committee met on December 31, 2019.

On January 10, 2019, the Board will consider Item 8b, 2020 Board Officers Election, for Board Chair and Vice Chair positions, including the four additional members of the Executive Committee (EC), which include Past Chair, two Members-at-large, and an Ex-Officio/Non-Voting member.

The Nominating Committee unanimously recommended the following EC slate for Board consideration:

Chair: Supervisor Jane Parker

Vice Chair: Ian Oglesby

Past Chair: Frank O'Connell

Member-at-Large: John Gaglioti

Member-at-Large: Allan Haffa

Ex-Officio (Non-Voting) Member: CSUMB President Eduardo Ochoa

FORA VOTING PROCEDURES

Election of Officers and Executive Committee

1. The Executive Officer opens the election by confirming that the Nominating Committee slate and nominations are received.
2. The Board may elect the Chair, Vice-Chair, Past Chair, two “at-large” Executive Committee Members and an Ex Officio Member by a summary nomination, wherein a motion to fill all six positions is made (typically by the Nominating Committee Chair) and seconded, and carries with majority support. The summary nomination may be moved in whole or part by appropriate motion and second.
3. If there is no summary nomination or if the summary nomination fails to receive majority approval, the Executive Officer will request nominations from the other Board members. The order of any outstanding positions not filled by summary nomination and election shall be the Chair, Vice-Chair, Past Chair, at-large positions and finally the Ex Officio Member.
4. The Chair will receive all nominations for a given position and allow nominees to make a short statement before ordering a roll-call vote¹. Each nomination must pass with majority Board approval before the next position is considered. Voting results are announced by the Deputy Clerk. The Executive Officer, as designated FORA Elections Official, will verify and confirm the election.

¹ The Chair may allow public comment on each nomination prior to vote or alternatively, may require all public comments prior to the Board’s consideration of slate nominations for officers and Executive Committee members.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEM

Subject:	Economic Planning Systems ("EPS") Contract Amendments	
Meeting Date:	January 10, 2020	ACTION
Agenda Number:	8c	

RECOMMENDATION(S):

Approve EPS contract amendments for:

1. additional habitat management fiscal analysis requested by potential permittees not-to-exceed ("NTE") fifty-eight thousand dollars (\$58,000); and
2. additional building removal bond fiscal analysis requested by Administrative Committee, NTE twenty-five thousand dollars (\$25,000).

BACKGROUND:

i) Habitat planning fiscal analysis

In support of HCP implementation, EPS prepared a cash flow model documenting the strategy to fund habitat management costs over the permit term and in perpetuity in the post-permit term. The financing model established a framework by which habitat management costs would be funded via development-related revenues and through the capitalization of an endowment.

With the anticipated sunset of FORA in June 2020, many questions remain regarding how habitat management obligations will be funded. As the FORA jurisdictions consider implementation of a Joint Powers Authority ("JPA") that would assume responsibility for HCP implementation, the FORA jurisdictions are seeking additional information regarding many pertinent elements of the HCP and the supporting financial modeling completed by EPS. Specifically, questions relating to EPS's work include the basic framework of the proposed endowment funding strategy, habitat management and endowment fund capitalization cost responsibilities for each jurisdiction, and jurisdictional responsibilities and options related to replacement funding mechanisms.

Over the last several months, EPS has been supporting discussions surrounding HCP implementation by conducting numerous sensitivity analyses related to the HCP financial model as well as cost allocation scenarios related to jurisdictional responsibilities for endowment capitalization requirements. EPS has also conducted a detailed review of the existing HCP cost model that establishes the projected habitat management costs associated with HCP implementation.

With consideration to the magnitude of outstanding issues and remaining questions related to HCP implementation and JPA formation, the FORA Board directed staff to implement an ad hoc committee (Habitat Working Group) whereby representatives of the FORA jurisdictions meet on a weekly basis to discuss HCP and JPA related issues.

ii) Building removal bond issuance fiscal analysis

FORA is pursuing a bond issuance to fund building removal projects and has authorized NHA Advisors to coordinate the completion of all preparatory work in support of the bond issuance. Over the last several months, NHA Advisors has worked closely with FORA, the FORA member jurisdictions, and the County Auditor-Controller's office to develop key assumptions relating to the bond issuance and estimated property tax revenue, including development absorption, property tax allocations, and estimated bond proceeds.

In the process of conducting the bond issuance feasibility work, NHA Advisors analysis indicated a potential negative impact to the Monterey County Regional Fire District ("MCRFD") annual operating budgets in the early years of bond repayment. Board members have provided direction to ensure the MCRFD budgets are not harmed.

Administrative Committee members working to resolve the MCRFD question have requested EPS be contracted to provide an in-depth analysis of potential negative MCRFD fiscal impacts from bond issuance, and develop recommendations on fiscal mitigation measures to resolve those impacts.

DISCUSSION:

i) Habitat planning fiscal analysis

The attached Task 1 Scope of Work (**Attachment A**) describes EPS's anticipated effort to support the Habitat Working Group's discussion, deliberation, and decision-making process. It is important to recognize that anticipated efforts will evolve based on the needs of the Habitat Working Group, and this scope represents EPS's best effort to provide an informed scope of work and budget estimate based on currently anticipated needs. As described in **Attachment A**, EPS estimates a total NTE cost for this work of fifty-eight thousand dollars (\$58,000).

ii) Building removal bond issuance fiscal analysis

The attached Task 2 Scope of Work (**Attachment A**) describes EPS's anticipated effort to support in-depth assessment of potential MCRFD fiscal impacts from building removal bond issuance, and develop fiscal mitigation measure recommendations to address any negative impacts. This scope represents EPS's best effort to provide an informed scope of work and budget estimate based on currently anticipated needs. As described in **Attachment A**, EPS estimates a total NTE cost for this work of twenty-five thousand dollars (\$25,000).

FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for staff time is included in the approved FORA budget.

COORDINATION:

Administrative and Executive Committees, NHA Advisors

Prepared & Approved by 
Joshua Metz

Attachment A

Fort Ord Reuse Authority

Scope of Work

Economic & Planning Systems, Inc. (EPS) appreciates the opportunity to assist the Fort Ord Reuse Authority (FORA) with various items relating to the reuse of the former Fort Ord as well as various matters relating to the anticipated sunset of FORA, including the capital improvement program, habitat management, and building removal bond issuance. EPS is currently undertaking significant work related to evaluating habitat management implementation as well as conducting analysis supporting the proposed building removal bond issuance. This scope of work describes additional work needed to support these efforts that were not anticipated under **EPS's currently approved contract.**

Scope of Work

Task 1: Habitat Working Group Support

Under this task, EPS will provide technical support to inform discussions surrounding HCP implementation and JPA formation. While the precise scope of analysis under this task will be informed by ongoing discussions of the Habitat Working Group, several specific elements are anticipated at this time:

- **Supporting Technical Analysis.** EPS anticipates providing additional technical analysis in support of specific questions on the part of working group members. For example, one request includes evaluating the financial capacity of remaining, unentitled development by jurisdiction to support endowment capitalization requirements. EPS has budgeted approximately 70 hours of technical analysis (an average of 6 hours per week distributed evenly between EPS project management and technical staff) to provide supporting technical analysis. *Estimated Budget: \$15,000.*
- **HCP Cost Modeling.** To better understand the origin of projected annual habitat management costs, a substantive effort to update the HCP cost model may be warranted. This update would include reconstruction of the existing cost model, escalation of costs to reflect current dollars throughout the source tables as well as summary tables, elimination of unused data, and integration of model navigation features. Note that this effort does *not* include updating any cost assumptions in the model, other than the aforementioned escalation to current dollars using the currently applied Consumer Price Index adjustment factor. EPS anticipates that this effort would require the full attention of an EPS technical analyst with project management oversight for approximately 2 weeks. *Estimated Budget: \$15,000.*
- **Policymaker Presentations.** EPS anticipates participating in several public presentations to policymakers of the respective FORA jurisdictions to review outcomes from the Habitat Working Group or other elements of the HCP financial modeling and funding strategy. EPS will prepare presentation materials for, attend, and participate in up to 3 public presentations. *Estimated Budget: \$10,500.*

- Response to Comments. Several comments received on the Draft HCP and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) pertain to elements of the funding model and financing strategy. EPS anticipates assisting the EIS/EIR consultant and FORA staff with response to these comments and has budgeted approximately 25 hours of project management staff time in this regard. *Estimated Budget: \$7,500.*
- Meeting Attendance. The Habitat Working Group is expected to meet on a weekly basis from January through March, with an anticipated meeting duration of 2 hours. Of the 12 anticipated meetings, EPS anticipates attending up to 4 in person meetings (with associated travel expenses) and up to 4 meetings via conference call. *Estimated Budget: \$10,000.*

Task 2: Evaluate Fiscal Implications of Building Removal Bond Issuance on the Monterey County Regional Fire District

Under this expanded scope of work, EPS will evaluate how the proposed bond issuance may affect the fiscal position of MCRFD, and develop recommendations on compensation strategies to resolve those any negative impacts. This analysis is expected to include the following steps:

- Evaluate Current MCRFD Budget. EPS will work with MCRFD to obtain the most current budget documents available to understand the status quo with regard to current revenues, expenditures, service population and other necessary elements. As part of this analysis, EPS will seek to understand revenue and expenditure drivers related to development activity in unincorporated Monterey County. A key aspect of this initial task will be to understand and model the current property tax revenues that MCRFD receives in order to provide a baseline understanding of the impact of FORA dissolution and the potential building removal bond issuance.
- Evaluate Revenue Scenarios. Leveraging information prepared by NHA Advisors, EPS will prepare estimates of the revenue impacts associated with FORA dissolution and the potential building removal bond issuance. EPS anticipates that this analysis will evaluate two scenarios:
 - Scenario 1: Building Removal Bond Issuance. Assuming the building removal bond issuance moves forward, this scenario will evaluate the residual property tax revenues received by MCRFD after consideration of debt service. This scenario will assume development activity (and associated property tax revenues) commensurate with expectations should the building removal program proceed.
 - Scenario 2: No Building Removal Bond Issuance. This scenario will assume that building removal bonds are not issued, estimating property tax revenues available to the district in accordance with post-FORA property tax revenue allocations. It is important to **note that this scenario will also incorporate “dialed-down” development expectations** reflecting the absence of a funding source for building removal. EPS will work with FORA staff and NHA to develop those reduced development projections.
- Compare Revenue Scenarios to Baseline Revenues. EPS will then prepare an analysis comparing the outcomes of Scenarios 1 and 2 to the baseline revenue estimates. It is important to note that both scenarios will assume the dissolution of FORA and associated changes in property tax allocations.

- Conduct Expenditure Analysis. Depending on the outcome of the revenue analysis, a full understanding of the fiscal position of MCRFD under a bond issuance versus no bond issuance scenario may require additional analysis relating to projected expenditures to provide needed fire services. This analysis would consider service population changes as well as potential liability reductions should a building removal program be implemented.
- Develop Fiscal Mitigation Measures. To the extent that the above analysis suggests that revenues to MCRFD will be substantially reduced by implementation of the building removal bond, EPS will work with other participating jurisdictions (e.g., Marina and Seaside) to develop proposed fiscal mitigation measures to ensure adequate funding for MCRFD to fulfill their fire protection responsibilities.
- Prepare and Present Analysis to MCRFD Staff. EPS will summarize the outcomes of the analysis for review by FORA and MCRFD staff. EPS will attend an in-person meeting with MCRFD and FORA staff to review the results of the fiscal analysis.

Estimated Budget: \$25,000

Staffing and Budget

All work will be overseen by Managing Principal David Zehnder or Principal Ellen Martin. Principal Ellen Martin will serve as Project Manager and will be responsible for the day-to-day work associated with this assignment. Other EPS staff will assist with research and technical analysis.

The estimated budget for all scope elements is estimated to be \$83,000. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount. **EPS's Hourly Billing Rates are attached as part of this Scope of Work.**