

ESCA EDC/LRA SUCCESSOR AGREEMENT

2nd Vote

Item 8a/5b

February 13, 2020

Kendall Flint, RGS

Motion for Consideration

- Motion made by Member Morton:

“ . . . so, I’d like to make a substitute motion, that we move forward with the empowering of the ESCA transferring for Seaside to be the Successor in FORA’s stead with regard to ESCA . . .and also with regard to any remaining transfers excepting . . .that they would step into the place of FORA as the Successor to accept, distribute, transfer title to deeds and amendments that are not accomplished prior to June 30, 2020. That’s my motion.”

Director O’Connell seconded Director Morton’s motion. Subsequently, a friendly amendment from Director Wizard was accepted by Director Morton *“that the contract as to the LRC [sic] and the transfer of real estate be to the terms of the federal government.”*¹

Motion passed 7 AYES 6 NOES

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FORA Board of Directors

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- Concern regarding connecting the roles as Economic Conveyance Successor Agency and Local Reuse Authority with Seaside's role as ESCA successor agency.
- Request for clarifying language to specifically describe Seaside's authority.
- Request to define "fair and equitable" as it pertains to distribution of possible future water allocations.

- Global change to the document title from Economic Development Agreement to Economic Development Conveyance (EDC).
- Global change from Memorandum of Agreement (MOA) to EDC Agreement.
- Changes to paragraph 2.0 and throughout the document to “nominate” Seaside as the successor the EDC and LRA.

Section 3.0 Insurance Policies. FORA will request the transfer of its two, pollution legal liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claims-related obligations. Seaside acknowledges that these insurance policies will expire in 2022 and 2024, respectively, and that Seaside's designation will be subject to approval by the insurers.

Section 3.0 Seaside's successful designation through December 31, 2024 is a condition precedent to becoming FORA's ESCA successor. Pollution legal liability insurance will be required by the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the Army.

Section 8.4 No Obligation of Other Entities. Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, the Marina Coast Water District (hereinafter collectively “Grantees”), will not be a party to the ESCA, and will not bear any financial liability as a result of the ESCA.

Section 9.0 establishes the following:

- i. Water Rights Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the water rights' allocations set forth in Exhibit A attached hereto, for Government Water Rights as defined in Subsection 5.02 of the EDC Agreement, that may be released by the Government in the future, subject to compliance with all applicable laws.

Clarifying Language

	Current Water Allocations in Acre Feet	Allocation of Future Army Water Based on Percentage of Current Water Allocation
City of Marina	1340	29%
City of Monterey	65	1%
City of Seaside	1012.5	22%
County of Monterey	720	15%
CSUMB	1035	22%
City of Del Rey Oaks	242.5	5%
CA State Parks	44.5	1%
UCMBEST	230	5%

Section 9.0 establishes the following:

- ii. Wastewater Discharge Rights. Until such time as such allocations may be amended by future agreements, Seaside agrees to establish and apply, in consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a fair process to ensure that all Grantees will enjoy equitable utilization of Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.

Section 9.0 establishes the following:

- iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or EDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's City limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.

Section 9.0 establishes the following:

- iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.

Section 20. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort Ord Reuse Authority, provided, however, that this Agreement shall survive as to the Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22, for so long as Seaside remains the successor LRA.

Section 22. Third-Party Rights. The Grantees are intended to be third-party beneficiaries of this Agreement as it relates to future transfers of property, water rights, and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the Parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

- **Admin Committee recommended Board approval of the Agreement at a Special Meeting.**
- Army requires the ESCA Successor *ALSO* be the recognized Federal Local Redevelopment Authority (LRA) and be recognized under the Economic Development Conveyance (EDC) Agreement.
- **Federal Successor Agency approval required.**
- Failure to select a successor results in loss of property transfer rights and future water allocations.

**Authorize the Executive Officer to
execute ESCA-LRA/EDC Successor
Implementing Agreement**

- A “YES” vote supports nominating the City of Seaside as the FORA Successor Agency to:
 - Environmental Services Cooperative Agreement (ESCA);
 - Local Redevelopment Authority (LRA); and
 - Economic Development Conveyance (EDC) Agreement.