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May 1, 2020

Via email
Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: Plant Reserve 1North, CNPS contracts, and proposed projects for South Boundary Road and General Jim Moore Boulevard

Dear Chair Parker and members of the FORA Board of Directors:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS) in this matter. CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation. CNPS writes this letter to emphasize certain facts regarding the South Boundary Road widening and realignment project, the General Jim Moore project, and the proposed intersection or roundabout project at South Boundary Road and General Jim Moore Boulevard. The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is "adjacent to the Del Rey Oaks Resort" which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area. FORA did not consult with CNPS prior to adopting the EA/IS.

This letter focuses on the requirement that before FORA can proceed with its South Boundary Road project FORA must successfully negotiate with CNPS to agree "to relocate a currently identified habitat preserve area further south." (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA's EA/IS. This letter reaffirms that CNPS has not agreed to relocate the habitat preserve area.

## Executive Summary

CNPS reaffirms its comments regarding the map presented by FORA to CNPS in December 2019. The map showed the proposed South Boundary Road project and what FORA proposed as new boundaries of Plant Reserve 1North. CNPS expressed concerns and opposition to the new boundaries at the time, CNPS has expressed them since then, and CNPS does so again in this letter.

## Historic overview: the habitat reserve parcel.

In 1998 and 1999, Plant Reserve 1North was protected by an agreement between FORA, Del Rey Oaks and CNPS. The agreement was executed in 1998 and

modified by negotiated written agreement in 1999. Terms of the contract include as follows:

- The contract requires "the permanent protection" of the habitat, and that "the area will be protected from fragmentation and degradation in perpetuity."
- The contract expressly states that "the boundaries must avoid road widening that would affect the reserve" and that "any future widening which would affect the habitat would require renegotiation of this agreement."
- "No development would be permitted in the plant reserve."
- The agreement specified that a buffer must ensure no impacts on the plant reserve from the future development to the north of the dirt road that is at the northern boundary of what came to be called parcel E29a.1.

The FORA-DRO-CNPS contract is based on and reinforced in part by CEQA mitigation 3 of the final EA/IS for the General Jim Moore Boulevard project, then called the North-South Road/Highway 218 Improvements Project. Mitigation 3 was amended and strengthened in direct response to CEQA comments from the CNPS in a letter dated December 4, 1998. Mitigation 3 addressed preservation of "maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road, along with an adequate buffer to assure that golf course drainage will not impinge on the habitat, shall be preserved in perpetuity as a CNPS native plant area" and that "Requirements for this mitigation area are specified as follows. The habitat area shall be protected from fragmentation and degradation in perpetuity. No spraying or irrigation drainage shall be directed toward the habitat area. No development shall be permitted in the plant reserve . . ."

In 2003, as part of the process to transfer lands, the Army released a document called Finding of Suitability for Early Transfer, called a FOSET, in draft form. FOSET-003 was finalized in July 2004. FOSET-003 transferred some Army land to FORA, including land that was intended for Del Rey Oaks. What the Army had called "parcel E29a" was a large parcel located north of South Boundary Road. FOSET-003 transferred the bulk of parcel E29a to FORA. Knowing of the FORA-DRO-CNPS agreement and the mitigation, the Army carved out from parcel E29a the habitat reserve area at the northeast corner of South Boundary Road and General Jim Moore Boulevard corner. The small parcel was named parcel E29a.1, and it was not included in the FOSET-003 transfer. FOSET-003 specifically addresses the small parcel when it describes the "habitat reserve area" that was not part of the FOSET-003 transfer. FOSET-003 directly addresses the habitat reserve area at three different pages of the FOSET-003 document, as follows:

- "Included within Parcel E29a is a 5-acre habitat reserve area that is not included in this transfer." (FOSET-003, p. 1.)

- The large parcel E29a "includes a habitat area that is not part of the transfer." (FOSET-003, Table 1, row 1.)

- FOSET-003 site map Plate 1 shows the E29a parcel and the carved-out smaller parcel that later came to be called E29a.1. Plate 1 places the label "habitat area" on the entire parcel E29a.1. Plate 1 is attached to this letter as Exhibit A.

A U.S. Army Corps of Engineers report dated August 2004 documents a walkabout of the "5-acre parcel known as 'DRO Habitat Area'." The memo attached to the report refers to the "5 acre DRO Group Habitat area" and the attached map is labeled "Habitat site walk" and has a yellow outline around the "habitat area" that was parcel E29a.1. The map also labeled the parcel on the aerial photograph as "Habitat Area." The 2004 report is attached to this letter as Exhibit B.

The document database for the Fort Ord cleanup parcel describes parcel E29a.1 as 4.66 acres and that the "Parcel Name" is "Habitat Reserve Area." The database is accessible online at https://fortordcleanup.com/documents/administrative-record/.

<u>In 2010, FORA certified an environmental document for the South Boundary Road widening project that expressly acknowledges the fully protected status of the reserve.</u>

In 2010 FORA prepared and certified the above-referenced EA/IS for the FORA South Boundary Road realignment and widening project. The realigned road would go directly through the protected habitat area. The EA/IS requires that FORA must "renegotiate" the location of the habitat reserve area with CNPS before FORA can proceed with the South Boundary Road project, and if FORA cannot renegotiate the location then FORA cannot proceed with the project. The EA/IS language reflects the terms in the FORA-CNPS contract that require "the permanent protection" of the habitat, that the reserve "area will be protected from fragmentation and degradation in perpetuity," that "the boundaries must avoid road widening that would affect the reserve," that "any future widening which would affect the habitat would require renegotiation of this agreement," and that "No development would be permitted in the plant reserve." The EA/IS language also reflects the adopted CEQA mitigation 3 of the General Jim Moore Boulevard project. There is no dispute that a renegotiated agreement is required before FORA can proceed with the road widening project. FORA did not consult with CNPS before FORA prepared and adopted the EA/IS.

<u>In 2018 and 2019, FORA again confirmed the terms and intent of the FORA-DRO-CNPS contract when FORA made specific written and oral statements to the Monterey County Superior Court.</u>

In the brief dated November 2018 that FORA filed as part of the CEQA litigation involving South Boundary Road, FORA counsel Jon Giffen and Crystal Gaudette stated the FORA position as follows:

- "The EA/IS also addresses and provides for Project impacts upon the "reserve" created by agreement between FORA and the California Native Plant Society (CNPS), generally recognizing that the proposed project alignment can only proceed if a modification to the reserve can be negotiated with CNPS."

- The modification to the reserve and the renegotiated contract was a "mitigation."

- "[T]he CNPS preserve must remain untouched unless the agreement regarding that preserve is successfully renegotiated."

On February 11, 2019, FORA counsel Crystal Gaudette represented to Superior Court Judge Marla O. Anderson in open court as follows:

- The FORA EA/IS "says squarely that FORA is going to have to reach an agreement with the California Native Plant Society or – and that's the purpose of alternative two, that if it can't, then it [FORA] would proceed with the second alternative project analyzed under the Initial Study."

These statements and others show the position of and understanding by FORA that a modification to the agreement must be negotiated with CNPS in order for the proposed road realignment to proceed.

In December 2019 FORA made material misrepresentations when FORA proposed a new location of Plant Reserve 1North.

FORA did not attempt to contact CNPS regarding the South Boundary Road project for many years. When CNPS learned of the FORA approvals of the South Boundary Road, the CNPS president contacted the FORA Board of Directors in writing and in person at board meetings starting in 2017. FORA did not meaningfully respond until 2019.

In a letter from FORA to CNPS dated December 2, 2019, FORA made various inaccurate and self-serving claims, including that the reserve boundaries are shown in the EA/IS figure 2-3 and EA/IS sheet C8 for the South Boundary Road realignment. (Dec. 2, 2019 ltr., p. 5.) Not so. They show the proposed boundaries, as evidenced by context and other records. Figure 2-3 and sheet C8 do not show the current boundaries. The new FORA claim is not consistent with a proposal in the same December 2, 2019 letter that shows a proposed drawing of the relocated reserve labeled "HABITAT AREA NEW PARCEL," which states that the area would be a new

location. The new claim also is inconsistent with representations made in the EA/IS and other records that the habitat reserve is located "adjacent to the Del Rey Oaks Resort," which means that the reserve boundaries include the northerly portion of parcel E29a.1 which is the area that is adjacent to the Del Rey Oaks resort site. If the reserve were located where FORA newly claimed in December 2019, then there would have been no need to "relocate" the reserve to the south as the 2010 EA/IS mandates. The new FORA claim also is inconsistent with the FORA-DRO-CNPS agreements, the CEQA mitigations, the written and oral representations of FORA counsel, the public records of Del Rey Oaks, FORA and the Army, and other records. Let there be no mistake: The proposal in the EA/IS was for a proposed relocation of the plant reserve. FORA sought a relocation in order to allow FORA to construct the FORA-preferred road widening and realignment. The proposed relocated boundaries were not discussed with CNPS at the time of the EA/IS and were not presented and agreed to by CNPS then or at any point since then. To the contrary, CNPS has repeatedly expressed its opposition to the proposed "relocated" boundaries and has expressed its opposition in writing and in meetings with FORA and DRO officials.

To make matters worse, FORA recently has demonstrated that the South Boundary Road project construction would have significant biological impacts even if the reserve were to be "relocated" as FORA has proposed. The map at page 6 of the FORA letter dated December 2, 2019 shows a proposal for a relocated reserve labeled "HABITAT AREA NEW PARCEL" that FORA claims would be 2.25 acres. (The pages of the FORA letter are not numbered; the map is the penultimate page of the letter proper. The map is attached to this letter as Exhibit C.) The map shows a "HABITAT AREA NEW PARCEL" with red diagonal lines. The map shows two overlays on the red area: a construction work impact area of 11,588 square feet in blue overlay and a grading impact area of 12,224 square feet in green overlay. The construction impacts in blue and the grading impacts in green would directly affect at least 0.55 acres, according to the FORA information, including the habitat and the rare and protected species known to occur in the blue and green areas.

CNPS has not agreed to a "relocation" of Plant Reserve 1North.

CNPS has not and does not agree to a relocation of the reserve as proposed by the "new parcel" boundaries presented by FORA. In the spirit of cooperation, CNPS has explained its concerns on the matter, and again here CNPS states that its reasons include and are not limited to the following.

- Relocating the reserve would be inconsistent with the FORA-DRO-CNPS contract terms and the General Jim Moore Boulevard project mitigation 3 requirements for "permanent" protection, that "The habitat area shall be protected from fragmentation and degradation in perpetuity," and that "No development shall be permitted in the plant reserve."

- The proposed size of 2.25 acres is a materially smaller area than the historic maps and references by the Army, Del Rey Oaks and FORA to the habitat area/reserve. The historic records discussing the habitat area refer to an area that is larger than 2.25 acres. The actual size of the proposed reserve would be at most 1.7 acres, rather than 2.25 acres, as explained below.

- At least a quarter of what FORA has proposed as the "new parcel" would be irreparably harmed by the project. FORA has admitted there would be development in the reserve; construction and grading are development. FORA says there would be construction impacts and grading impacts in and on at least 0.55 acres of the proposed 2.25 acre reserve. That would reduce the habitat reserve to 1.7 acres at most, due to the unlikely assumption that the remaining area would be unharmed by the project grading, construction, and operation. A 1.7 acre reserve is not consistent with the specific language of the 1998 and 1999 agreements and of CEQA mitigation 3 for the General Jim Moore project. The agreement and mitigation specified that the reserve would be at least 2.0 acres that would be "permanently protected and "protected from fragmentation and degradation in perpetuity" and that "no development would be permitted in the plant reserve."

- The proposed smaller size and proposed relocated boundaries would violate the contract term in which FORA committed to "No further fragmentation and degradation in perpetuity" of the reserve. The FORA proposal would cause further fragmentation of the reserve, including the reduction in the total area of the habitat and the decrease of the interior:edge ratio.

- CNPS officials in their expert opinions have stated that:

  - The habitat area is unique for many reasons including slope, soils, orientation, proximate habitat and plants, wildlife, wind direction, and other reasons that biologists do not fully understand. The habitat is found in that particular location for particular reasons. A habitat area cannot be "relocated" like a house or a road. Planting rare native plants never has results as successful as when the native plants grow naturally of their own accord.

  - The proposed construction impacts and grading impacts would have significant and permanent harmful impacts on the plant reserve, even if CNPS were to agree to the proposed relocated area, which CNPS does not. These and other project impacts would degrade and fragment the habitat.

- The proposed project construction and grading would cause significant and permanent impacts of removing an existing knoll at the center of the undeveloped habitat reserve parcel and thus changing the habitat integrity forever. The proposal would require a large amount of grading and cuts that would not be replaced with the same soil, slope and orientation as currently exists.

- The December 2, 2019 proposal shows materially different and potentially misleading topography from previous plans of the parcel which show two knolls and other topography relevant to the habitat. (E.g., EA/IS sheet C8.) This is a serious omission.

- The FORA development proposals have failed to understand the topography and the extent of the potential and likely impacts to the habitat as a result of the proposed grading and other construction impacts.

- The realignment project would destroy the known species of Monterey spineflower and California Endangered Seaside bird's beak at the site. The impacts to sandmat manzanita, coast live oak and other plants typical of uncommon Maritime Chaparral habitat also would be severe. In particular, Seaside bird's beak is a hemi-parasitic plant that taps other plants for nutrients in ways that are poorly understood. These inter-plant relationships are extremely difficult to recreate.

- The proposed relocation of the reserve would cause significant and harmful impacts and changes to the drainage, forestation, and undergrowth of the habitat area.

- The proposed large amount of grading would cause significant and harmful impacts. The removal of native soils damages the soil structure and soil biology, specifically the mycorrhizal relationships between soil fungi and native plant species, particularly manzanitas, which rely on mycorrhizae to augment water and nutrient uptake. Several species of manzanitas occur in the protected habitat in Plant Reserve 1North. Replacement of the soil is not adequate mitigation to restore soil biology.

- The FORA-DRO-CNPS contract requires a buffer zone to avoid impacts on the habitat of the adjacent development to the north, proposed in the past as a resort and golf course. No such buffer has been proposed for the South Boundary Road widening and realignment project, even though the road project would be adjacent to the reserve as proposed, and it is foreseeable that the construction, development, pesticides, herbicides, rodenticides,

vehicular traffic emissions and dust, and other impacts would cause significant adverse harm to the habitat area.

- A "relocation" of the reserve as proposed by FORA would require FORA and Del Rey Oaks to approve a renegotiated contract and, in CNPS officials' opinion, the FORA proposals for relocation of the existing protected habitat would have significant and unmitigated biological impacts, for all the reasons stated above. Thus, any approval by FORA and Del Rey Oaks of a modified contract would require a prior environmental document under CEQA detailing the impacts of the new smaller and different site boundaries, and mitigating the impacts, along with other CEQA issues. This analysis and mitigation was not part of the 2010 EA/IS.

CNPS urges FORA and Del Rey Oaks to consider a project that realigns South Boundary Road to the north, either along or north of the existing dirt road that runs along the approximate northern boundary of parcel E29a.1. A northerly realignment is feasible, it could be successful in avoiding impacts to the protected habitat to the south of the dirt road, and it could be consistent with the language and intent of the FORA-DRO-CNPS contracts.

Summary.

CNPS emphasizes that CNPS has not agreed to a modification to the reserve, that no agreement with FORA has been reached regarding any "relocation" of the reserve, and that FORA's proposals to date are inconsistent with the purposes of the reserve, the binding agreements and the CEQA mitigations. FORA cannot deliver an approved South Boundary Road project to Del Rey Oaks. Even if CNPS were to agree to a boundary modification, which CNPS has not agreed to, approval of any such modification would be a discretionary act by FORA and Del Rey Oaks and thus would require prior compliance with CEQA to investigate, disclose, analyze and mitigate the significant and potentially significant environmental impacts of the boundary change.

Offer to meet.

CNPS offers to meet with you with the goal of resolving this matter. FORA controls the schedule. CNPS does not control the schedule. If you would like to meet, please contact me at erickson@stamplaw.us.

Request.

CNPS asks FORA to rescind its approvals of the EA/IS and the South Boundary Road project. If in the future an agency wants to pursue an alternative road project, that agency would be the project proponent and as should comply with CEQA and all contracts with CNPS. CNPS asks for the courtesy of a written response.

Thank you.

Sincerely,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

Attachments: Exhibits A, B and C, as described above, highlighted in pertinent parts

cc: Mayor Kerr and members of the city council, Del Rey Oaks
Kate McKenna, Executive Officer, LAFCO of Monterey County
Debbie Hale, Executive Director, Transportation Agency of Monterey County

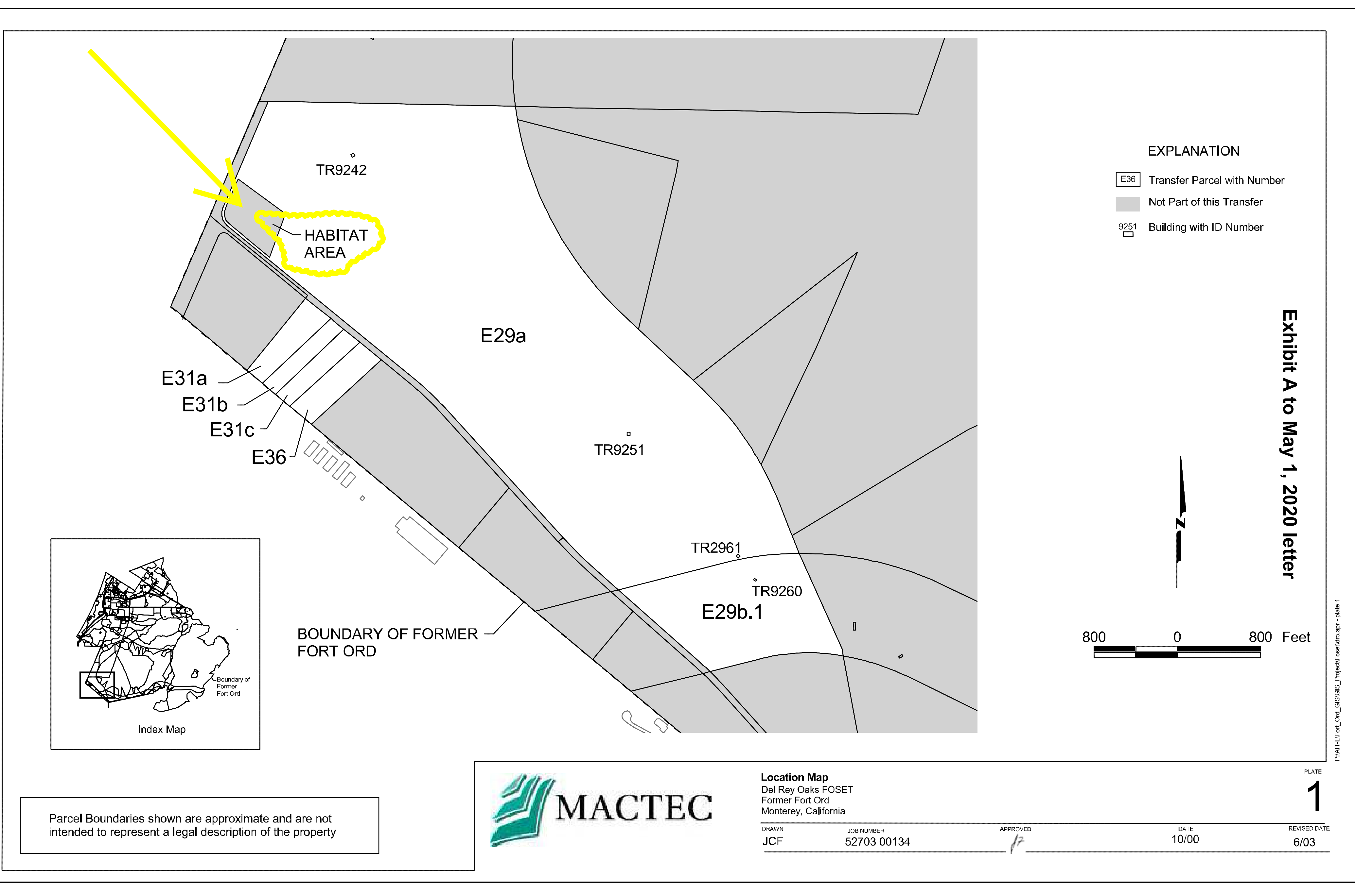


Exhibit A to May 1, 2020 letter
EXPLANATION
E36 Transfer Parcel with Number
Not Part of this Transfer
9251 Building with ID Number
N
800 0 800 Feet
TR9242
HABITAT AREA
E29a
E31a
E31b
E31c
E36
TR9251
TR2961
TR9260
E29b.1
BOUNDARY OF FORMER FORT ORD
Index Map
Boundary of Former Fort Ord
Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property
MACTEC
Location Map
Del Rey Oaks FOSET
Former Fort Ord
Monterey, California
PLATE
1
DRAWN JCF
JOB NUMBER 52703 00134
APPROVED
DATE 10/00
REVISED DATE 6/03
P:\AIT-L\Fort_Ord_GIS\GIS_Project\Fosetdro.apr - plate 1

**DEPARTMENT OF THE ARMY**
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF:

AUG 0 3 2004

CESPK-PM

MEMORANDUM FOR Ms. Gail Youngblood, Fort Ord Office, Army Base Realignment and Closure, Monterey, CA 93944

SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

1. REFERENCES:

a. U.S. Army Corps of Engineers (USACE), Sacramento District, 2001. Site Del Rey Oaks Group After Action Report Geophysical Sampling, Investigation and Removal, Former Fort Ord, Monterey, California. Final. Prepared by USA Environmental, Inc., April.

b. U.S Army Corps of Engineers (USACE), 2000. Unexploded Ordnance (UXO) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities. EP 75-1-2. Prepared by U.S. Army Engineering and Support Center, Huntsville, November.

c. Parsons, 2004. Del Rey Oaks Walk about Memorandum for Record. August.

2. At the request of the US Army Corps of Engineers, Sacramento District, Parsons conducted a "walkabout – A Schonstedt assisted visual reconnaissance" over a 5-acre parcel known as "DRO Habitat Area" on 7 June 2004. The walkabout was limited to accessible areas only (attached map). Additional details can be found on attached letter from Parsons, 3 August 2004. The area is contained within the Impact Area which was previously used for ordnance training operations. During the walkabout no military munitions (MM) or debris (MD) were found. As result, under EP-75-1-2, the subject area can be categorized as a low probability area to encounter Unexploded Ordnance (UXO). EP-75-1-2 requires the following: (1) a UXO team consisting of a minimum of two qualified UXO personnel (one UXO Technician III and one UXO Technician II) to support construction activities including oversight and monitoring, (2) OE recognition training for all construction workers performing ground disturbing activities, and (3) on-site UXO safety briefings prior to initiation of any ground disturbing activities. The U.S. Army should make necessary arrangements for disposal of any ordnance found in the subject area.

CESPK-PM
SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

3. The U.S. Army should evaluate ground disturbing activities performed at the subject site after work is completed to determine if additional ordnance safety measures are required.

4. If you have any questions, please contact Mr. Juan Koponen, Project Manager, at (831) 884-9925 ext. 233 or Mr. Clinton Huckins at (831) 884-9925 ext 226.

George Siller
Program Manager
U.S. Army Corps of Engineers,
Sacramento District

CC (w/encls):
PM-M (George Siller) (Juan Koponen)
CO-Monterey (Clinton Huckins)

**PARSONS**
Building 4522 - 8th Avenue & Joe Lloyd Way • Ord Military Community, CA 93944

3 August 2004

**MEMORANDUM FOR RECORD, Revised**

A site walkabout was performed in accessible areas of the 5 acre DRO Group Habitat area on June 7th, 2004. Areas under accessible tree canopies and small pathways with low to moderate growth vegetation were investigated.

The personnel conducting the site walkabout consisted of two UXO QC personnel, one swept accessible areas with a Schonstedt GA52Cx flux-gate magnetometer and the second person carried a Leica Global Positioning System which documented the path walked and checked with the Schonstedt magnetometer. All 12 anomalies encountered were investigated and determined to be Range Related Debris (RRD) consisting of c-ration cans, wire, and assorted miscellaneous scrap. No Military Munitions (MM) or Munitions Debris (MD) were encountered.

As illustrated on the attached site walkabout map, access was restricted due to extremely dense vegetation.

The table shown below lists the MM/MD items that were encountered outside the 5 acre Habitat parcel during prior DRO Group Military Munitions removal action conducted in CY 2000.

| OE Type | QTY | Depth | Weight | Nomenclature | Condition | RIA Code | GRID |
|---|---|---|---|---|---|---|---|
| MD | 1 | 1 | 0 | Rocket, 2.36inch, practice, M7 | Expended | 0 | 33 E |
| MD | 0 | 0 | 1 | FRAGMENTS, UNKNOWN | Expended | 0 | 33 I |
| MD | 0 | 0 | 1 | FRAGMENT, UNKNOWN | Expended | 0 | 35 I |
| UXO | 1 | 4 | 0 | Grenade, hand, smoke, M18 series | UXO | 1 | 40 G |

The US Army Corps of Engineers requires that construction support be provided on sites where the probability of encountering UXO is low. These requirements are established in EP 75-1-2, Unexploded Ordnance (UXO) Toxic, and Radioactive Waste (HTRW) and Construction Activities, 20 November 2000.

Based on information from previous removal actions in the surrounding area, the level of construction support should include the following: (1) UXO safety support during construction activities including oversight and monitoring, (2) OE recognition training, and (3) on-site UXO safety briefings prior to initiation of any on-site intrusive activities.

Any questions regarding this site walkabout can be addressed by contacting Mike Coon (831) 884-2306 or Andreas Kothleitner (831) 884-2313.

Regards,

Gary Griffith

**Exhibit B to May 1, 2020 letter**
**p. 4 of 4**

**MRS-DRO.1 Habitat Site Walk**

Habitat Area

**MEC/MD**

- UXO
- DMM
- MD
- Habitat Area
- Site Walk Path
- MRS-DRO.1
- Fort Ord Boundary

50 25 0 50 100 feet

15 7.5 0 15 30 Meters

*Map Units: NAD 1983 StatePlane California Zone IV (US Feet)*

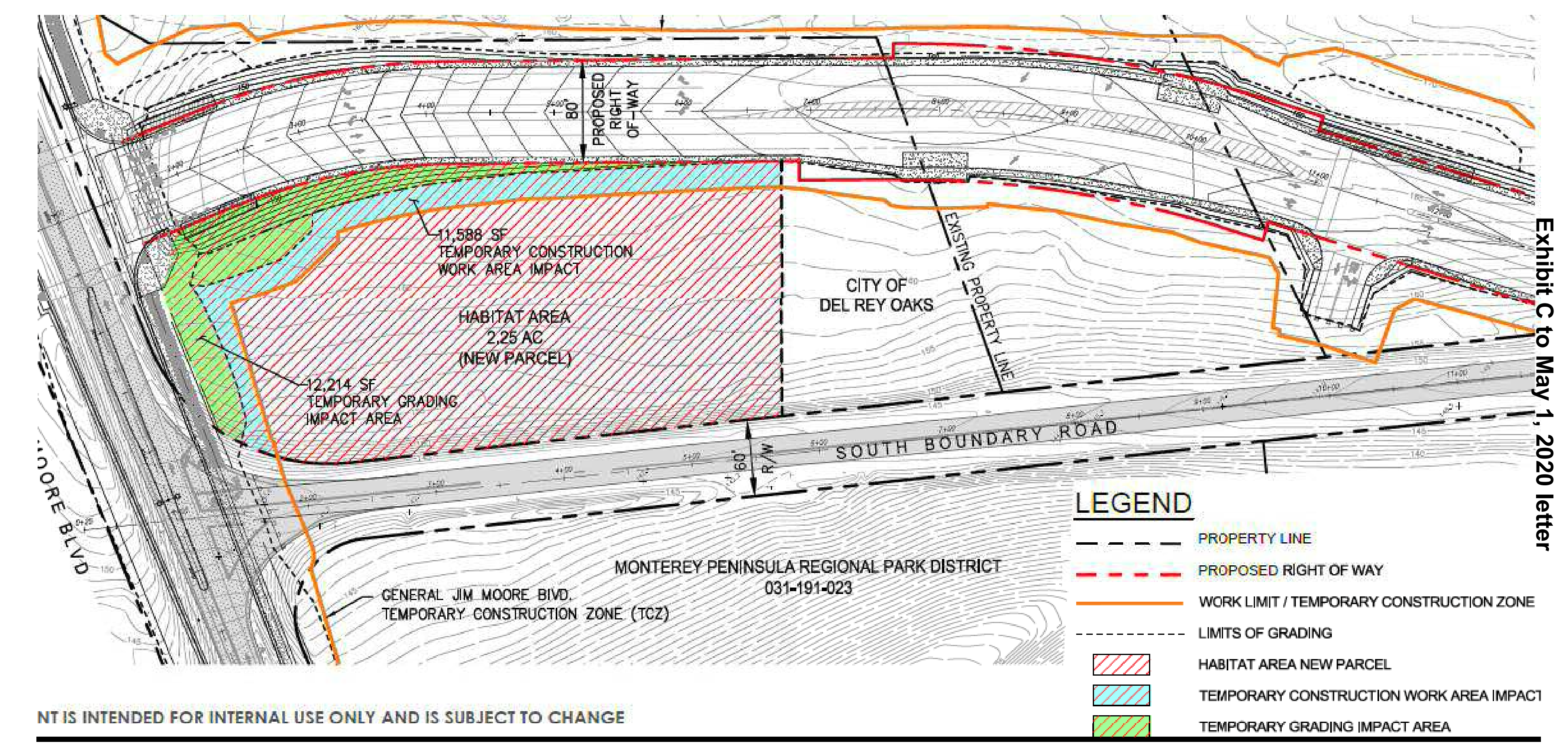
U.S. ARMY CORPS OF ENGINEERS

FORMER FORT ORD
MONTEREY, CALIFORNIA

| DESIGNED BY: | PRINT DATE: Jun 17, 2004 at 12:27 PM | CONTRACT: D |
|---|---|---|
| DRAWN BY: D | AERIAL PHOTOGRAPHY: 2003 6-in Resolution Color | SCALE: 1:1,051 |
| CHECKED BY: | SOURCE OF DATA: Fort Ord MMRP Database | |
| SUBMITTED BY: | | |

FILE: GIS_Project\Walkabouts\DRO_Habitat_History_dj.mxd

**Exhibit C to May 1, 2020 letter**



# LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

**2020 Commissioners**

**Chair**
Matt Gourley
*Public Member*

**Vice Chair**
Ian Oglesby
*City Member*

Luis Alejo
*County Member*

Joe Gunter
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Mary Ann Leffel
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Christopher Lopez
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Warren Poitras
*Special District Member*

Maria Orozco
*City Member, Alternate*

Jane Parker
*County Member, Alternate*

Steve Snodgrass
*Public Member, Alternate*

Graig R. Stephens
*Special District Member, Alternate*

**Counsel**

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**Executive Officer**

Kate McKenna, AICP

*132 W. Gabilan Street, #102*
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*Salinas, CA 93902*

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May 5, 2020

Fort Ord Reuse Authority
Executive Officer Josh Metz and Administrative Committee
920 2nd Avenue, Suite A
Marina, CA 93933

**Subject: May 6, 2020 FORA Administrative Committee Agenda Packet and related FORA Dissolution Items**

Dear Executive Officer Metz and Administrative Committee,

On behalf of the Local Agency Formation Commission, I am writing to comment on agenda items for your May 6 Administrative Committee meeting, including the draft agenda packet for the May 14 FORA Board meeting. Our comments are in the spirit of fulfilling LAFCO's responsibilities under California Government Code section 67700.

We are concerned that FORA's Transition Plan amendments, CalPERS liability funding strategy, and the allocation of FORA funds are postponed and not on these agendas. We are concerned that the FORA Board of Directors has not yet responded for the public record to substantive requests and issues raised by LAFCO and FORA stakeholders. We are concerned that FORA's dissolution schedule has slipped again and is now very compressed. In the short time available, we remain engaged in working with FORA to accomplish our respective dissolution responsibilities to the fullest extent possible.

I have attached LAFCO's April 27 Executive Officer's report on the status of the FORA dissolution (**Attachment 1**) for background, as well as recent letters from stakeholders in our Monterey Bay communities. Following are specific comments related to your Committee's agenda items and other matters in need of urgent attention by FORA and its member agencies.

### 1. Address unresolved issues identified by LAFCO.

LAFCO has requested that FORA address issues related to identification and assignment of FORA lead agency CEQA projects and their corresponding responsibilities for mitigation measures. Most recently, LAFCO transmitted a letter to the FORA Board on April 17, requesting that FORA address the successor agency assignments of FORA CEQA lead agency status projects and existing FORA contracts with the California Native Plant Society, by adding language in the 2020 Transition Plan and completing successor agreements.

The draft FORA Board Agenda packet for May 14 includes Item 7a Memoranda of Agreements for Capital Improvement Program and General Fund Project Transfers, which would appear to address successor agency assignments of FORA lead agency status Capital Improvement Program (CIP) projects to the Cities of Marina, Seaside, and Del Rey Oaks through agreements. Drafts of these agreements are not yet available for review. LAFCO seeks to coordinate with FORA on these items as they move forward.

### 2. Address unresolved issues identified by California Native Plant Society (CNPS).

In its May 1, 2020 letter (**Attachment 2**) and an earlier letter dated April 17, 2020, CNPS raised issues regarding FORA's requirement from its 2010 Environmental Assessment/Initial Study to successfully negotiate with CNPS to relocate a currently

identified habitat preserve further south before FORA can proceed with its South Boundary Road project; CNPS not agreeing to relocate the habitat preserve area; FORA's 1998 and 1999 contracts with CNPS requiring protection of the habitat preserve from fragmentation and degradation in perpetuity; and FORA's inability to deliver an approved South Boundary Road project to the City of Del Rey Oaks. These are substantial matters that must be resolved. LAFCO asks FORA to provide written responses to the issues raised in CNPS' letters.

**3. Address unresolved issues identified by Carpenters Union Local 605 (Carpenters Union).**

In its April 8, 2020 letter (**Attachment 3**), Carpenters Union raised issues urging FORA to record its Master Resolution; significant concern over language stating that the draft Multi-Agency Transition Plan Implementing Agreement (TPIA) would supersede 2001 Implementation Agreements between FORA and its member agencies; and concern that the draft TPIA makes no mention of the obligations contained in the original Implementation Agreements. Subsequently, FORA recorded its Master Resolution, but has not addressed the Carpenters Union's remaining concerns. These are substantial matters that must be resolved. LAFCO asks FORA to provide written responses to the remaining issues raised in the Carpenters Union letter.

**4. Address unresolved issues identified by Keep Fort Ord Wild (KFOW).**

In its April 17, 2020 letter (**Attachment 4**), KFOW raised issues regarding FORA's need to clearly state in its Transition Plan the status of the Fort Ord Reuse Plan going forward after FORA sunsets; FORA's need to identify the agency or agencies that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations post-FORA dissolution; FORA requirements to make a CEQA determination before acting on the Transition Plan; FORA requirements to provide public notice prior to making a CEQA determination/decision; and FORA requirements to take a second vote on the proposed amendments if the first vote is not unanimous. These are substantial matters that must be resolved. LAFCO asks FORA to provide written responses to the issues raised in KFOW's letter.

**5. Address unresolved issues identified by Monterey Peninsula College (MPC).**

In its April 9, 2020 email (**Attachment 5**), MPC raised issues related to the April 9 FORA Board Meeting Agenda Item 8b Habitat Working Group Report & Set Aside Funds Distribution Recommendation. MPC expressed concerns that the purpose of FORA's habitat funds was to manage habitat land set aside to mitigate basewide development and that this purpose would be negated if FORA only allocated shares of this funding to FORA's five land use jurisdictions and excluded MPC and other educational institutions from receiving these funds. The FORA Board approved Alternative 1, which still excluded MPC and other educational institutions from receiving FORA's habitat funds. These are substantial matters that must be resolved. LAFCO requests that FORA provide written responses to the issues raised in MPC's email.

**6. Address the definitive status of FORA agreements and plans after June 30, 2020.**

FORA's opinions on the definitive status of FORA agreements, contracts and plans after June 30, 2020 will serve as an important reference point. In this regard, LAFCO asks FORA to provide its opinions and supporting analyses on the post-dissolution status of the FORA documents including but not limited to: 2001 Implementation Agreements, 1998 FORA-Sierra Club Settlement Agreement, 2002 FORA-MPC-County of Monterey Public Safety Officers Training Facilities Agreement, FORA Transition Plan, and Fort Ord Reuse Plan and related EIR mitigation measures.

**7. Prioritize action on a 2020 Transition Plan and ensure that the Transition Plan meets specific requirements described in the FORA Act.**

LAFCO is concerned about FORA's delayed consideration of a 2020 Transition Plan. In the event that draft Transition Plan Implementing Agreements are not completed, individual local agencies will need to rely on FORA's adopted Transition Plan for guidance on dissolution items. Given these circumstances, LAFCO asks FORA to prioritize action on a 2020 Transition Plan.

The FORA Act, California Government Code section 67700, states that FORA's Transition Plan "shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations." LAFCO requests that FORA ensure its Transition Plan meets each requirement described in the FORA Act. The adopted 2018 Transition Plan includes a reference to a schedule of remaining obligations. Though not stated in the Transition Plan, it appears that FORA intends Exhibit A to the Transition Plan to serve as a schedule of obligations. LAFCO asks FORA to confirm if Exhibit A is indeed a "schedule of remaining obligations."

In previous discussions with FORA staff and consultants, FORA mentioned that it was reviewing Exhibit A to determine which agreements identified in the exhibit required assignment to a successor, additional action before June 30, or survived beyond June 30. LAFCO notes that FORA's contracts with CNPS concerning Plant Reserve 1North and the recently signed Environmental Services Cooperative Agreement (ESCA) Implementing Agreement are not listed in Exhibit A, but should be included. As mentioned in the previous section, FORA is also planning to consider additional agreements transferring its lead agency status and funds to the Cities of Marina, Seaside, and Del Rey Oaks for certain FORA CIP projects. LAFCO asks that FORA share the results of its review and provide an updated version of Exhibit A as an attachment to its draft 2020 Transition Plan.

In addition, as included in FORA's April 30, 2020 Board Packet under Item 7a Building Removal Bond Funding Agreements, FORA expects to complete actions and agreements to issue tax increment bonds in the approximate amount of $30 million and assign its responsibilities related to bond administration to the City of Marina before June 30. This item is an example of a FORA dissolution action that was not included in the Transition Plan or Exhibit A. LAFCO asks FORA to provide a complete final accounting of Transition Plan required actions, agreements and other documents that survive past June 30, and how each item is to be administered or assigned to a successor.

**8. Prioritize action to address FORA's CalPERS liability funding strategy.**

LAFCO is concerned about FORA's delayed discussion and action on a CalPERS liability funding strategy. The April 30 FORA Board Meeting Agenda included Item 7b CalPERS Liability Funding Strategy, which identified likely increased costs (estimated to be an additional $5 million) for FORA's final payment to its CalPERS termination liability, identified a requirement that the CalPERS liability needed to be satisfied in order for FORA to issue tax increment bonds for building removal, and identified a plan to include funds from FORA's bond issuance to satisfy the CalPERS liability. LAFCO requests FORA to discuss and take appropriate action on this urgent matter.

**9. Provide supplemental litigation reserve funding to LAFCO for FORA defense, in an amount of up to $1.5M.**

LAFCO has estimated an additional litigation reserve funding need of up to $1.5 million due to stakeholders' unresolved issues, newly identified CalPERS termination liability payment issues, and an existing unresolved FORA litigation matter. Also, FORA is proceeding with preparation of its Habitat Conservation Plan Environmental Impact Report (HCP EIR) for future FORA Board consideration to certify the document in June 2020, which, in LAFCO's view, has high potential to generate litigation risk. In addition, FORA has not transferred its litigation role for pending litigation matters to a successor or successors. Also, it is uncertain if FORA will address all stakeholders' unresolved issues before June 30. Furthermore, LAFCO and FORA member Agencies could face unknown unresolved issues post June 30 that increase litigation risk.

LAFCO receives annual funding from its local government agencies, most of which are not FORA members. Consequently, LAFCO has a duty to shield its non-FORA agencies from FORA-related litigation matters and corresponding financial burdens by requesting additional litigation funding from FORA.

**10. Provide $100,000 in funding for LAFCO administrative oversight post-dissolution.**

LAFCO is charged with ensuring that all of FORA's assets are properly transferred and ensuring that FORA's contracts, agreements, and pledges to pay or repay money are honored and properly administered. To accomplish its oversight tasks, LAFCO will need to complete a significant amount of work post dissolution. This work will entail:

- Oversight of FORA's fiscal year 2019-20 audit preparation process;
- Oversight of FORA's property transfers to Seaside and others, and
- Close coordination with FORA's assigned to successors or administrators on agreements that will not be completed until after June 30, 2020.

A partial list of other post-dissolution agreements includes: ESCA (Seaside); EDC Agreement (Seaside); Pollution Legal Liability Insurance CHUBB Policy (Seaside); Agreement with the California Department of Toxic Substances Control and FORA member agencies concerning Monitoring and Reporting on Environmental Restrictions (Monterey County); and the CalPERS pension contract. Unresolved issues post-dissolution may further increase LAFCO's administrative oversight workload.

Due to its post dissolution tasks, LAFCO will need $100,000 in funding to implement its administrative oversight role. LAFCO expects that its role could last up to five years with most oversight costs occurring in the first fiscal year (FY 2020-21) after FORA dissolution. In order to avoid further impact to the Commission's regular workload priorities for local agencies, LAFCO may contract for administrative services required for FORA work.

**11. Include language that provides for post-dissolution disbursement of FORA funds to LAFCO for litigation or administrative expenses, in the Multi-Agency Implementing Agreement or other agreement.**

The Multi-Agency Implementing Agreement is on the May 6 FORA Administrative Committee Agenda, which may serve as an appropriate vehicle for language assuring post dissolution funding for LAFCO from an agency holding future FORA funds, such as the County of Monterey. If this agreement is not the appropriate place to assure post dissolution funding for LAFCO, LAFCO asks FORA to identify the appropriate agreement or vehicle for this language. This is an important issue for LAFCO due to the uncertainty of receiving any funds from FORA beyond the initial $500,000 litigation reserve fund payment. This language would provide important assurances that LAFCO would have a mechanism in place to request and receive legal defense and administrative oversight funds post dissolution. Such a mechanism would provide protection to LAFCO's non-FORA members from FORA-related financial impacts.

**12. Resolve existing litigation, avoid taking on new legal risk, coordinate on matters of legal risk, and assign a successor to litigation that may not be resolved by June 30.**

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying its HCP EIR in June. This action increases the legal risk for LAFCO and FORA member agencies.

Also, existing litigation involving a building demolition contractor's dispute over damaged equipment from removal of high-density concrete is scheduled for mediation in June, but it is possible that resolution will not occur by June 30. FORA has not yet created a plan to assign FORA's litigation role and funding for these and other matters of legal risk.

Thank you for your attention to these urgent dissolution matters. Also, I would like to inform you that the Local Agency Formation Commission will conduct a public hearing on June 22 at 4:00 p.m. to consider a resolution making determinations about FORA's scheduled dissolution on June 30.

Sincerely,

Kate McKenna

Kate McKenna, AICP
Executive Officer

Attachments:

1. LAFCO April 27, 2020 Staff Report
2. Letter from the Law Offices of Stamp | Erickson dated May 1, 2020 on behalf of CNPS to FORA Board of Directors
3. Letter from the Carpenters Union Local 605 dated April 8, 2020 to FORA Board of Directors
4. Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of KFOW to FORA Board of Directors
5. Email from Vicki Nakamura dated April 9, 2020 on behalf of MPC to FORA Board of Directors

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

Attachment 1

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369 | 132 W. Gabilan Street, Suite 102
Salinas, CA 93902 | Salinas, CA 93901
Telephone (831) 754-5838 | www.monterey.lafco.ca.gov

DATE: April 27, 2020

TO: Chair and Members of the Commission

FROM: Kate McKenna, AICP, Executive Officer

PREPARED BY: Jonathan Brinkmann, Senior Analyst and Darren McBain, Principal Analyst

**SUBJECT: Consider Status Report on Fort Ord Reuse Authority (FORA) Dissolution Process (LAFCO File No. 18-06)**

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Commission:

1. Receive the Executive Officer's report;
2. Receive any public comments; and
3. Provide for any questions or follow-up discussion by the Commission.

EXECUTIVE SUMMARY:

The FORA Act, California Government Code section 67700, mandates FORA dissolution on June 30, 2020 and describes a limited LAFCO role to provide for the orderly dissolution of FORA "including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred."

Many of the FORA Board's actions to date have been consistent with an orderly dissolution in the context of LAFCO's statutory role. For example, important work is in progress to transfer assets, liabilities, and related administrative responsibilities. However, LAFCO staff remains concerned about some aspects of remaining FORA dissolution-related tasks and processes. These concerns include: Transition Plan Implementing Agreements; status of LAFCO's previous requests for additional litigation defense funds and post-dissolution administrative task funds; Transition Plan amendments; designation of successor agencies for FORA's CEQA responsibilities on FORA-approved roadway projects; successor agency assignment for existing FORA contracts; and status of the Fort Ord Reuse Plan's programs, policies, and CEQA mitigation measures post-FORA dissolution.

Staff will schedule a public hearing on FORA dissolution at the June 22 regular LAFCO meeting rather than the May 18 meeting as previously planned. The extra month will allow FORA more time to review and address issues discussed in this report. In addition, FORA has postponed until May important actions such as consideration of amendments to the 2018 Transition Plan and distribution of unassigned funds. This timing essentially requires moving LAFCO's public hearing on FORA dissolution to June in order for LAFCO to be able to appropriately address FORA's dissolution actions.

DISCUSSION:

Following is an update on current dissolution matters.

1. **<u>Transfer of Assets, Liabilities, and Related Administrative Responsibilities is in Progress.</u>**

FORA has made significant progress in the planned transfer of assets, liabilities and administrative responsibilities. These include:

- The planned transfer of Community Facilities District funds and other fund balances;

- Assigning FORA's Environmental Services Cooperative Agreement, Local Redevelopment Authority role, and Economic Development Conveyance Agreement to the City of Seaside;
- Making payment provisions to terminate FORA's CalPERS liability and contract;
- Reviewing proposed amendments to the 2018 Transition Plan to reflect current FORA dissolution plans;
- Making plans to transfer records and office equipment to the County of Monterey; and
- Taking steps to ensure transfer of remaining FORA-held real estate to local agencies.

The FORA Board took specific actions needed to transfer certain fund balances when it adopted its mid-fiscal year General and Capital Improvement Program budget, and approved distribution of approximately $17 million in habitat set-aside funds and an estimated $30 million (depending on bond market conditions) in pending building removal bond proceeds among the five land use jurisdictions. On May 14, the FORA Board will consider distribution of remaining, unassigned funds in response to requests submitted by various agencies, including LAFCO. Please see item 4, below.

2. **Implementing Agreements are Not Progressing and May Not be Completed by June 30.**

The draft Multi-Agency Implementing Agreement, and individual water and wastewater services agreements with Marina Coast Water District, are not progressing as FORA had anticipated and may not be completed before dissolution. If these agreements are not finalized, the individual local agencies will need to rely on FORA's adopted Transition Plan for guidance. Section 1.1 of the adopted 2018 Transition Plan describes that Transition Plan Implementing Agreements, or, in their absence, the other provisions of the Transition Plan will establish a fair and equitable assignment of assets and liabilities, and provide a schedule of obligations. In summary, FORA dissolution will move forward with or without these agreements.

3. **Existing Litigation is Not Resolved, Legal Risk is Increasing, and Coordination on Legal Risk is Not Resolved.**

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying an Environmental Impact Report (EIR) for a proposed Habitat Conservation Plan (HCP) in June. This action increases the legal risk for LAFCO and FORA member agencies. Matters discussed in item #5, below, also have potential to involve LAFCO in future litigation.

Also, existing litigation involving a building demolition contractor's dispute over damaged equipment from removal of high-density concrete is scheduled for mediation in June, but it is possible that resolution will not occur by June 30. FORA has not yet created a plan to assign FORA's litigation role and funding for these and other matters of legal risk.

We expect that some FORA administrative and legal matters may carry over beyond June 30. LAFCO will continue to request that FORA assign its litigation role and funding to the appropriate likely successor agencies that have a logical connection to the subject of potential litigation. The FORA Act limits LAFCO's oversight role in FORA's dissolution. LAFCO may request that FORA take certain actions. However, LAFCO cannot compel FORA to take actions.

4. **LAFCO's Requests for Additional Litigation Defense Funds and for Post-Dissolution Administrative Task Funds, Have Not Been Granted to Date.**

To date, LAFCO has received $500,000 for its litigation reserve fund from FORA. LAFCO staff continues to uphold the Commission's direction, as articulated in the March 3, 2020 letter to FORA. The letter requested an additional $1.5 million for LAFCO's litigation reserve fund, $100,000 for LAFCO administrative oversight post-June 30, and re-inclusion of funding assurance language in the Multi-Agency Implementing Agreement. FORA staff and counsel have indicated that they do not support these requests. However, LAFCO's requests remain, based on identified litigation risks and post-dissolution administrative oversight funding needs.

On May 14, 2020, the FORA Board may consider allocating $100,000 to LAFCO (based on generally supportive statements by FORA Administrative Committee members at a prior meeting). FORA has not yet responded to LAFCO's recent invoice of $10,000 for LAFCO Fee replenishment for administrative tasks through June 30. LAFCO's requests for supplemental litigation reserve funding, and language assuring

LAFCO's funding needs in the Multi-Agency Implementing Agreement have not been granted and do not appear likely to be granted. LAFCO staff and counsel have been discussing strategies to protect LAFCO in the event LAFCO's litigation reserve fund proves insufficient to address litigation matters after July 1. This matter remains under review and discussion.

5. **<u>LAFCO's Requests and Concerns related to Transition Plan Tasks, Designation of Successor Agencies for FORA CEQA Lead Agency Projects, Successor Agency Assignment for Existing FORA Contracts with the California Native Plant Society, and Other Stakeholders' Concerns are not Resolved.</u>**

Over the last several months, LAFCO – in our statutory role of providing for an orderly dissolution – has submitted several requests to FORA pertaining to:

- Implementing Transition Plan tasks, or amending the adopted Transition Plan tasks to reflect current FORA dissolution plans;
- Identification of FORA lead agency CEQA projects;
- Identification of FORA responsibilities for mitigation measures; and
- Assignment or designation of successor agencies for FORA lead agency projects.

Most recently, LAFCO staff submitted a letter to FORA on April 17, 2020 **(Attachment 1)**. Our April 17 letter also transmitted an April 14 letter from the California Native Plant Society (CNPS) to LAFCO **(Attachment 2)**. CNPS requested LAFCO assistance in ensuring that FORA name and secure agreements with successor CEQA lead agencies for FORA-approved road development projects (South Boundary Road and General Jim Moore Boulevard), as well as successors for existing FORA contracts with CNPS to protect rare plant reserve areas. In consideration of LAFCO's communications with FORA over the past few months and CNPS's letter, LAFCO's April 17 letter to the FORA Board requested that FORA address successor agency assignments of FORA CEQA lead agency status projects and the existing FORA contracts with CNPS by adding language in the 2020 Transition Plan and completing successor agreements. From LAFCO staff's perspective, these are important dissolution actions to assure assignment of FORA's duties and contractual obligations.

The FORA Board received an additional letter from CNPS on April 17 **(Attachment 3)**, expressing concerns about naming successors for FORA lead agency road projects and FORA's contracts with CNPS, as well as FORA's email statements about transfer of its lead agency status, and FORA's proposed 2020 Transition Plan language characterizing certain road projects as "in progress construction projects." CNPS's letters are pertinent to LAFCO's oversight role of ensuring that FORA's contracts and agreements are honored and properly administered.

Also, on April 17, Keep Fort Ord Wild submitted a letter to the FORA Board **(Attachment 4),** responding to FORA's April 17 agenda item for consideration of amendments to the adopted 2018 Transition Plan. The letter asserts that FORA should clearly state in its Transition Plan the status of the Fort Ord Reuse Plan going forward after FORA sunsets, and identify the agency or agencies that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations post-FORA dissolution. The letter also asserts that FORA must make a CEQA determination before acting on the Transition Plan, provide public notice prior to making a CEQA determination/decision, and take a second vote on the proposed amendments if the first vote is not unanimous. Staff notes that Section 1.1 of the 2018 Transition Plan includes ambiguous wording as to the status of the Fort Ord Reuse plan post-dissolution, stating that the "Transition Plan assigns all assets and liabilities relating to FORA's programs, policies, and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA." Staff views the requests in Keep Fort Ord Wild's letter as substantive policy matters that must be addressed with the FORA Board and requests a written summary of FORA's responses to the issues raised.

The Carpenters Union Local 605 transmitted a letter to the FORA Board on April 8 **(Attachment 5)** requesting that FORA: 1) retain Transition Plan language directing FORA to record the FORA Master Resolution; 2) record the FORA Master Resolution, which includes requirements for paying prevailing wages to workers on former Fort Ord construction projects; and 3) remove language stating the draft Multi-Agency Transition Plan Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. FORA counsel confirmed recordation of the FORA Master Resolution on April 14. However, the Carpenters Union remains concerned about proposed Transition Plan

language stating that the Multi-Agency Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. As mentioned under item #2, above, it is currently unclear if the Multi-Agency TPIA will be approved. If FORA and its member agencies enter into a new agreement that replaces a previous agreement, LAFCO would need to ensure that the new agreement is honored and properly administered, in accordance with LAFCO's statutory role. The extent to which doing so could present an ongoing administrative burden, or involve LAFCO in future litigation, is unknown and is under discussion with counsel.

It is currently unclear whether and how FORA plans to address the issues raised in these recent letters. FORA is in the process of amending its adopted 2018 Transition Plan to reflect FORA's current understandings of its dissolution-related needs and goals. The FORA Board deferred action on a proposed set of Transition Plan amendments on the April 17 FORA Board agenda, and directed staff to discuss the various comments with LAFCO and others prior to the FORA Board meeting on May 14. FORA staff has indicated that the FORA Board may also consider agreements assigning FORA CEQA lead agency successors on May 14.

**NEXT STEPS:**

Given the requests and concerns expressed in the letters above, and elsewhere in this report, along with FORA postponing consideration of Transition Plan amendments until next month, staff is postponing LAFCO's public hearing on the dissolution of FORA until the June 22 regular meeting. This timing will allow FORA more time to address the identified issues and finalize documents related to its dissolution, and will afford LAFCO time to include these additional FORA actions as part of the public hearing record.

At the Commission's public hearing, staff will bring forward FORA's adopted Transition Plan as amended, along with any finalized implementing agreements, and a draft resolution making determinations on the orderly dissolution of FORA. LAFCO's oversight role of the FORA dissolution will officially end on December 31, 2020, since the FORA Act, which established LAFCO's oversight role, will be repealed on that date.

Throughout the FORA dissolution process, staff is continuing to work closely with FORA and its member agencies. Our objective is to collaborate with FORA representatives to address LAFCO and Monterey Bay community concerns and to achieve an orderly and efficient dissolution.

Respectfully Submitted,

Kate McKenna

Kate McKenna, AICP
Executive Officer

Attachments:

1) Letter from LAFCO to FORA Board of Directors dated April 17, 2020
2) Letter from the Law Offices of Stamp | Erickson dated April 14, 2020 on behalf of CNPS
3) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of CNPS to FORA Board of Directors
4) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of Keep Fort Ord Wild to FORA Board of Directors
5) Letter from the Carpenters Union Local 605 dated April 8, 2020 to FORA Board of Directors

CC: Josh Metz, FORA Executive Officer
Molly Erickson, Esq., Stamp | Erickson, Attorneys at Law
Sean Hebard, Field Representative, Carpenters Local 605

**STAMP | ERICKSON**
**Attorneys at Law**

Monterey, California
T: (831) 373-1214

Attachment 2

May 1, 2020

Via email
Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: Plant Reserve 1North, CNPS contracts, and proposed projects for South Boundary Road and General Jim Moore Boulevard

Dear Chair Parker and members of the FORA Board of Directors:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS) in this matter. CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation. CNPS writes this letter to emphasize certain facts regarding the South Boundary Road widening and realignment project, the General Jim Moore project, and the proposed intersection or roundabout project at South Boundary Road and General Jim Moore Boulevard. The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is "adjacent to the Del Rey Oaks Resort" which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area. FORA did not consult with CNPS prior to adopting the EA/IS.

This letter focuses on the requirement that before FORA can proceed with its South Boundary Road project FORA must successfully negotiate with CNPS to agree "to relocate a currently identified habitat preserve area further south." (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA's EA/IS. This letter reaffirms that CNPS has not agreed to relocate the habitat preserve area.

## Executive Summary

CNPS reaffirms its comments regarding the map presented by FORA to CNPS in December 2019. The map showed the proposed South Boundary Road project and what FORA proposed as new boundaries of Plant Reserve 1North. CNPS expressed concerns and opposition to the new boundaries at the time, CNPS has expressed them since then, and CNPS does so again in this letter.

## Historic overview: the habitat reserve parcel.

In 1998 and 1999, Plant Reserve 1North was protected by an agreement between FORA, Del Rey Oaks and CNPS. The agreement was executed in 1998 and

modified by negotiated written agreement in 1999. Terms of the contract include as follows:

- The contract requires “the permanent protection” of the habitat, and that “the area will be protected from fragmentation and degradation in perpetuity.”
- The contract expressly states that ”the boundaries must avoid road widening that would affect the reserve” and that “any future widening which would affect the habitat would require renegotiation of this agreement.”
- “No development would be permitted in the plant reserve.”
- The agreement specified that a buffer must ensure no impacts on the plant reserve from the future development to the north of the dirt road that is at the northern boundary of what came to be called parcel E29a.1.

The FORA-DRO-CNPS contract is based on and reinforced in part by CEQA mitigation 3 of the final EA/IS for the General Jim Moore Boulevard project, then called the North-South Road/Highway 218 Improvements Project. Mitigation 3 was amended and strengthened in direct response to CEQA comments from the CNPS in a letter dated December 4, 1998. Mitigation 3 addressed preservation of “maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road, along with an adequate buffer to assure that golf course drainage will not impinge on the habitat, shall be preserved in perpetuity as a CNPS native plant area” and that “Requirements for this mitigation area are specified as follows. The habitat area shall be protected from fragmentation and degradation in perpetuity. No spraying or irrigation drainage shall be directed toward the habitat area. No development shall be permitted in the plant reserve . . .”

In 2003, as part of the process to transfer lands, the Army released a document called Finding of Suitability for Early Transfer, called a FOSET, in draft form. FOSET-003 was finalized in July 2004. FOSET-003 transferred some Army land to FORA, including land that was intended for Del Rey Oaks. What the Army had called “parcel E29a” was a large parcel located north of South Boundary Road. FOSET-003 transferred the bulk of parcel E29a to FORA. Knowing of the FORA-DRO-CNPS agreement and the mitigation, the Army carved out from parcel E29a the habitat reserve area at the northeast corner of South Boundary Road and General Jim Moore Boulevard corner. The small parcel was named parcel E29a.1, and it was not included in the FOSET-003 transfer. FOSET-003 specifically addresses the small parcel when it describes the “habitat reserve area” that was not part of the FOSET-003 transfer. FOSET-003 directly addresses the habitat reserve area at three different pages of the FOSET-003 document, as follows:

- "Included within Parcel E29a is a 5-acre habitat reserve area that is not included in this transfer." (FOSET-003, p. 1.)
- The large parcel E29a "includes a habitat area that is not part of the transfer." (FOSET-003, Table 1, row 1.)
- FOSET-003 site map Plate 1 shows the E29a parcel and the carved-out smaller parcel that later came to be called E29a.1. Plate 1 places the label "habitat area" on the entire parcel E29a.1. Plate 1 is attached to this letter as Exhibit A.

A U.S. Army Corps of Engineers report dated August 2004 documents a walkabout of the "5-acre parcel known as 'DRO Habitat Area'." The memo attached to the report refers to the "5 acre DRO Group Habitat area" and the attached map is labeled "Habitat site walk" and has a yellow outline around the "habitat area" that was parcel E29a.1. The map also labeled the parcel on the aerial photograph as "Habitat Area." The 2004 report is attached to this letter as Exhibit B.

The document database for the Fort Ord cleanup parcel describes parcel E29a.1 as 4.66 acres and that the "Parcel Name" is "Habitat Reserve Area." The database is accessible online at https://fortordcleanup.com/documents/administrative-record/.

<u>In 2010, FORA certified an environmental document for the South Boundary Road widening project that expressly acknowledges the fully protected status of the reserve.</u>

In 2010 FORA prepared and certified the above-referenced EA/IS for the FORA South Boundary Road realignment and widening project. The realigned road would go directly through the protected habitat area. The EA/IS requires that FORA must "renegotiate" the location of the habitat reserve area with CNPS before FORA can proceed with the South Boundary Road project, and if FORA cannot renegotiate the location then FORA cannot proceed with the project. The EA/IS language reflects the terms in the FORA-CNPS contract that require "the permanent protection" of the habitat, that the reserve "area will be protected from fragmentation and degradation in perpetuity," that "the boundaries must avoid road widening that would affect the reserve," that "any future widening which would affect the habitat would require renegotiation of this agreement," and that "No development would be permitted in the plant reserve." The EA/IS language also reflects the adopted CEQA mitigation 3 of the General Jim Moore Boulevard project. There is no dispute that a renegotiated agreement is required before FORA can proceed with the road widening project. FORA did not consult with CNPS before FORA prepared and adopted the EA/IS.

<u>In 2018 and 2019, FORA again confirmed the terms and intent of the FORA-DRO-CNPS contract when FORA made specific written and oral statements to the Monterey County Superior Court.</u>

In the brief dated November 2018 that FORA filed as part of the CEQA litigation involving South Boundary Road, FORA counsel Jon Giffen and Crystal Gaudette stated the FORA position as follows:

- "The EA/IS also addresses and provides for Project impacts upon the "reserve" created by agreement between FORA and the California Native Plant Society (CNPS), generally recognizing that the proposed project alignment can only proceed if a modification to the reserve can be negotiated with CNPS."

- The modification to the reserve and the renegotiated contract was a "mitigation."

- "[T]he CNPS preserve must remain untouched unless the agreement regarding that preserve is successfully renegotiated."

On February 11, 2019, FORA counsel Crystal Gaudette represented to Superior Court Judge Marla O. Anderson in open court as follows:

- The FORA EA/IS "says squarely that FORA is going to have to reach an agreement with the California Native Plant Society or – and that's the purpose of alternative two, that if it can't, then it [FORA] would proceed with the second alternative project analyzed under the Initial Study."

These statements and others show the position of and understanding by FORA that a modification to the agreement must be negotiated with CNPS in order for the proposed road realignment to proceed.

<u>In December 2019 FORA made material misrepresentations when FORA proposed a new location of Plant Reserve 1North</u>.

FORA did not attempt to contact CNPS regarding the South Boundary Road project for many years. When CNPS learned of the FORA approvals of the South Boundary Road, the CNPS president contacted the FORA Board of Directors in writing and in person at board meetings starting in 2017. FORA did not meaningfully respond until 2019.

In a letter from FORA to CNPS dated December 2, 2019, FORA made various inaccurate and self-serving claims, including that the reserve boundaries are shown in the EA/IS figure 2-3 and EA/IS sheet C8 for the South Boundary Road realignment. (Dec. 2, 2019 ltr., p. 5.) Not so. They show the proposed boundaries, as evidenced by context and other records. Figure 2-3 and sheet C8 do not show the current boundaries. The new FORA claim is not consistent with a proposal in the same December 2, 2019 letter that shows a proposed drawing of the relocated reserve labeled "HABITAT AREA NEW PARCEL," which states that the area would be a new

location. The new claim also is inconsistent with representations made in the EA/IS and other records that the habitat reserve is located "adjacent to the Del Rey Oaks Resort," which means that the reserve boundaries include the northerly portion of parcel E29a.1 which is the area that is adjacent to the Del Rey Oaks resort site. If the reserve were located where FORA newly claimed in December 2019, then there would have been no need to "relocate" the reserve to the south as the 2010 EA/IS mandates. The new FORA claim also is inconsistent with the FORA-DRO-CNPS agreements, the CEQA mitigations, the written and oral representations of FORA counsel, the public records of Del Rey Oaks, FORA and the Army, and other records. Let there be no mistake: The proposal in the EA/IS was for a proposed relocation of the plant reserve. FORA sought a relocation in order to allow FORA to construct the FORA-preferred road widening and realignment. The proposed relocated boundaries were not discussed with CNPS at the time of the EA/IS and were not presented and agreed to by CNPS then or at any point since then. To the contrary, CNPS has repeatedly expressed its opposition to the proposed "relocated" boundaries and has expressed its opposition in writing and in meetings with FORA and DRO officials.

To make matters worse, FORA recently has demonstrated that the South Boundary Road project construction would have significant biological impacts even if the reserve were to be "relocated" as FORA has proposed. The map at page 6 of the FORA letter dated December 2, 2019 shows a proposal for a relocated reserve labeled "HABITAT AREA NEW PARCEL" that FORA claims would be 2.25 acres. (The pages of the FORA letter are not numbered; the map is the penultimate page of the letter proper. The map is attached to this letter as Exhibit C.) The map shows a "HABITAT AREA NEW PARCEL" with red diagonal lines. The map shows two overlays on the red area: a construction work impact area of 11,588 square feet in blue overlay and a grading impact area of 12,224 square feet in green overlay. The construction impacts in blue and the grading impacts in green would directly affect at least 0.55 acres, according to the FORA information, including the habitat and the rare and protected species known to occur in the blue and green areas.

CNPS has not agreed to a "relocation" of Plant Reserve 1North.

CNPS has not and does not agree to a relocation of the reserve as proposed by the "new parcel" boundaries presented by FORA. In the spirit of cooperation, CNPS has explained its concerns on the matter, and again here CNPS states that its reasons include and are not limited to the following.

- Relocating the reserve would be inconsistent with the FORA-DRO-CNPS contract terms and the General Jim Moore Boulevard project mitigation 3 requirements for "permanent" protection, that "The habitat area shall be protected from fragmentation and degradation in perpetuity," and that "No development shall be permitted in the plant reserve."

- The proposed size of 2.25 acres is a materially smaller area than the historic maps and references by the Army, Del Rey Oaks and FORA to the habitat area/reserve. The historic records discussing the habitat area refer to an area that is larger than 2.25 acres. The actual size of the proposed reserve would be at most 1.7 acres, rather than 2.25 acres, as explained below.

- At least a quarter of what FORA has proposed as the "new parcel" would be irreparably harmed by the project. FORA has admitted there would be development in the reserve; construction and grading are development. FORA says there would be construction impacts and grading impacts in and on at least 0.55 acres of the proposed 2.25 acre reserve. That would reduce the habitat reserve to 1.7 acres at most, due to the unlikely assumption that the remaining area would be unharmed by the project grading, construction, and operation. A 1.7 acre reserve is not consistent with the specific language of the 1998 and 1999 agreements and of CEQA mitigation 3 for the General Jim Moore project. The agreement and mitigation specified that the reserve would be at least 2.0 acres that would be "permanently protected and "protected from fragmentation and degradation in perpetuity" and that "no development would be permitted in the plant reserve."

- The proposed smaller size and proposed relocated boundaries would violate the contract term in which FORA committed to "No further fragmentation and degradation in perpetuity" of the reserve. The FORA proposal would cause further fragmentation of the reserve, including the reduction in the total area of the habitat and the decrease of the interior:edge ratio.

- CNPS officials in their expert opinions have stated that:

    - The habitat area is unique for many reasons including slope, soils, orientation, proximate habitat and plants, wildlife, wind direction, and other reasons that biologists do not fully understand. The habitat is found in that particular location for particular reasons. A habitat area cannot be "relocated" like a house or a road. Planting rare native plants never has results as successful as when the native plants grow naturally of their own accord.

    - The proposed construction impacts and grading impacts would have significant and permanent harmful impacts on the plant reserve, even if CNPS were to agree to the proposed relocated area, which CNPS does not. These and other project impacts would degrade and fragment the habitat.

- The proposed project construction and grading would cause significant and permanent impacts of removing an existing knoll at the center of the undeveloped habitat reserve parcel and thus changing the habitat integrity forever. The proposal would require a large amount of grading and cuts that would not be replaced with the same soil, slope and orientation as currently exists.

- The December 2, 2019 proposal shows materially different and potentially misleading topography from previous plans of the parcel which show two knolls and other topography relevant to the habitat. (E.g., EA/IS sheet C8.) This is a serious omission.

- The FORA development proposals have failed to understand the topography and the extent of the potential and likely impacts to the habitat as a result of the proposed grading and other construction impacts.

- The realignment project would destroy the known species of Monterey spineflower and California Endangered Seaside bird's beak at the site. The impacts to sandmat manzanita, coast live oak and other plants typical of uncommon Maritime Chaparral habitat also would be severe. In particular, Seaside bird's beak is a hemi-parasitic plant that taps other plants for nutrients in ways that are poorly understood. These inter-plant relationships are extremely difficult to recreate.

- The proposed relocation of the reserve would cause significant and harmful impacts and changes to the drainage, forestation, and undergrowth of the habitat area.

- The proposed large amount of grading would cause significant and harmful impacts. The removal of native soils damages the soil structure and soil biology, specifically the mycorrhizal relationships between soil fungi and native plant species, particularly manzanitas, which rely on mycorrhizae to augment water and nutrient uptake. Several species of manzanitas occur in the protected habitat in Plant Reserve 1North. Replacement of the soil is not adequate mitigation to restore soil biology.

- The FORA-DRO-CNPS contract requires a buffer zone to avoid impacts on the habitat of the adjacent development to the north, proposed in the past as a resort and golf course. No such buffer has been proposed for the South Boundary Road widening and realignment project, even though the road project would be adjacent to the reserve as proposed, and it is foreseeable that the construction, development, pesticides, herbicides, rodenticides,

vehicular traffic emissions and dust, and other impacts would cause significant adverse harm to the habitat area.

- A “relocation” of the reserve as proposed by FORA would require FORA and Del Rey Oaks to approve a renegotiated contract and, in CNPS officials’ opinion, the FORA proposals for relocation of the existing protected habitat would have significant and unmitigated biological impacts, for all the reasons stated above. Thus, any approval by FORA and Del Rey Oaks of a modified contract would require a prior environmental document under CEQA detailing the impacts of the new smaller and different site boundaries, and mitigating the impacts, along with other CEQA issues. This analysis and mitigation was not part of the 2010 EA/IS.

CNPS urges FORA and Del Rey Oaks to consider a project that realigns South Boundary Road to the north, either along or north of the existing dirt road that runs along the approximate northern boundary of parcel E29a.1. A northerly realignment is feasible, it could be successful in avoiding impacts to the protected habitat to the south of the dirt road, and it could be consistent with the language and intent of the FORA-DRO-CNPS contracts.

Summary.

CNPS emphasizes that CNPS has not agreed to a modification to the reserve, that no agreement with FORA has been reached regarding any “relocation” of the reserve, and that FORA’s proposals to date are inconsistent with the purposes of the reserve, the binding agreements and the CEQA mitigations. FORA cannot deliver an approved South Boundary Road project to Del Rey Oaks. Even if CNPS were to agree to a boundary modification, which CNPS has not agreed to, approval of any such modification would be a discretionary act by FORA and Del Rey Oaks and thus would require prior compliance with CEQA to investigate, disclose, analyze and mitigate the significant and potentially significant environmental impacts of the boundary change.

Offer to meet.

CNPS offers to meet with you with the goal of resolving this matter. FORA controls the schedule. CNPS does not control the schedule. If you would like to meet, please contact me at erickson@stamplaw.us.

Request.

CNPS asks FORA to rescind its approvals of the EA/IS and the South Boundary Road project. If in the future an agency wants to pursue an alternative road project, that agency would be the project proponent and as should comply with CEQA and all contracts with CNPS. CNPS asks for the courtesy of a written response.

Thank you.

Sincerely,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

Attachments: Exhibits A, B and C, as described above, highlighted in pertinent parts

cc: Mayor Kerr and members of the city council, Del Rey Oaks
Kate McKenna, Executive Officer, LAFCO of Monterey County
Debbie Hale, Executive Director, Transportation Agency of Monterey County

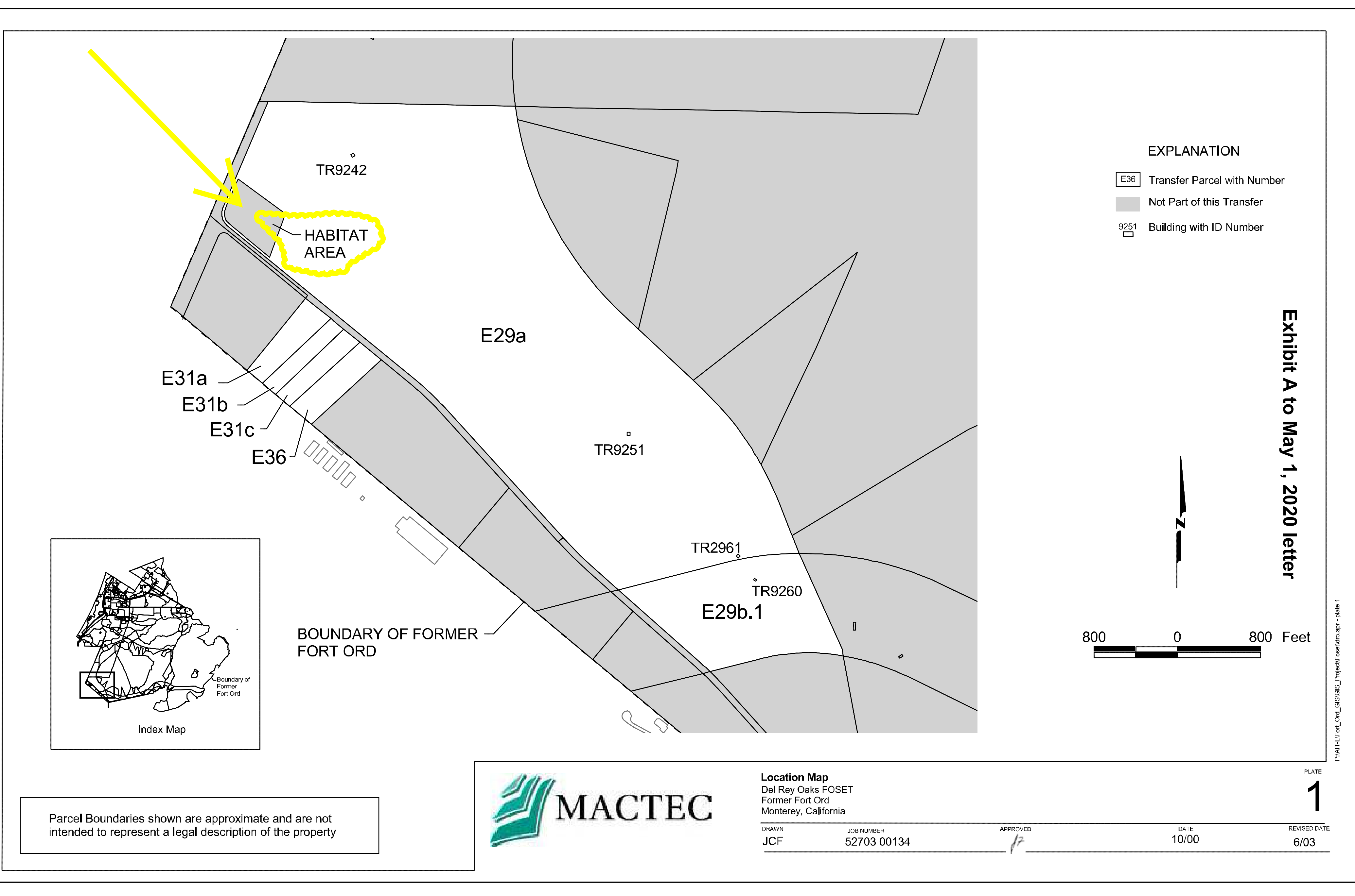


Exhibit A to May 1, 2020 letter
EXPLANATION
E36 Transfer Parcel with Number
Not Part of this Transfer
9251 Building with ID Number
TR9242
HABITAT AREA
E29a
E31a
E31b
E31c
E36
TR9251
TR2961
TR9260
E29b.1
BOUNDARY OF FORMER FORT ORD
N
800 0 800 Feet
Index Map
Boundary of Former Fort Ord
Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property
MACTEC
Location Map
Del Rey Oaks FOSET
Former Fort Ord
Monterey, California
DRAWN JCF
JOB NUMBER 52703 00134
APPROVED
DATE 10/00
REVISED DATE 6/03
PLATE 1
P:\AIT-L\Fort_Ord_GIS\GIS_Project\Fosetdro.apr - plate 1

**DEPARTMENT OF THE ARMY**
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF:

AUG 0 3 2004

CESPK-PM

MEMORANDUM FOR Ms. Gail Youngblood, Fort Ord Office, Army Base Realignment and Closure, Monterey, CA 93944

SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

1. REFERENCES:

   a. U.S. Army Corps of Engineers (USACE), Sacramento District, 2001. Site Del Rey Oaks Group After Action Report Geophysical Sampling, Investigation and Removal, Former Fort Ord, Monterey, California. Final. Prepared by USA Environmental, Inc., April.

   b. U.S Army Corps of Engineers (USACE), 2000. Unexploded Ordnance (UXO) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities. EP 75-1-2. Prepared by U.S. Army Engineering and Support Center, Huntsville, November.

   c. Parsons, 2004. Del Rey Oaks Walk about Memorandum for Record. August.

2. At the request of the US Army Corps of Engineers, Sacramento District, Parsons conducted a "walkabout – A Schonstedt assisted visual reconnaissance" over a 5-acre parcel known as "DRO Habitat Area" on 7 June 2004. The walkabout was limited to accessible areas only (attached map). Additional details can be found on attached letter from Parsons, 3 August 2004. The area is contained within the Impact Area which was previously used for ordnance training operations. During the walkabout no military munitions (MM) or debris (MD) were found. As result, under EP-75-1-2, the subject area can be categorized as a low probability area to encounter Unexploded Ordnance (UXO). EP-75-1-2 requires the following: (1) a UXO team consisting of a minimum of two qualified UXO personnel (one UXO Technician III and one UXO Technician II) to support construction activities including oversight and monitoring, (2) OE recognition training for all construction workers performing ground disturbing activities, and (3) on-site UXO safety briefings prior to initiation of any ground disturbing activities. The U.S. Army should make necessary arrangements for disposal of any ordnance found in the subject area.

CESPK-PM
SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

3. The U.S. Army should evaluate ground disturbing activities performed at the subject site after work is completed to determine if additional ordnance safety measures are required.

4. If you have any questions, please contact Mr. Juan Koponen, Project Manager, at (831) 884-9925 ext. 233 or Mr. Clinton Huckins at (831) 884-9925 ext 226.

George Siller
Program Manager
U.S. Army Corps of Engineers,
Sacramento District

CC (w/encls):
PM-M (George Siller) (Juan Koponen)
CO-Monterey (Clinton Huckins)

**PARSONS**
Building 4522 - 8th Avenue & Joe Lloyd Way • Ord Military Community, CA 93944

3 August 2004

**MEMORANDUM FOR RECORD, Revised**

A site walkabout was performed in accessible areas of the 5 acre DRO Group Habitat area on June 7th, 2004. Areas under accessible tree canopies and small pathways with low to moderate growth vegetation were investigated.

The personnel conducting the site walkabout consisted of two UXO QC personnel, one swept accessible areas with a Schonstedt GA52Cx flux-gate magnetometer and the second person carried a Leica Global Positioning System which documented the path walked and checked with the Schonstedt magnetometer. All 12 anomalies encountered were investigated and determined to be Range Related Debris (RRD) consisting of c-ration cans, wire, and assorted miscellaneous scrap. No Military Munitions (MM) or Munitions Debris (MD) were encountered.

As illustrated on the attached site walkabout map, access was restricted due to extremely dense vegetation.

The table shown below lists the MM/MD items that were encountered outside the 5 acre Habitat parcel during prior DRO Group Military Munitions removal action conducted in CY 2000.

| OE Type | QTY | Depth | Weight | Nomenclature | Condition | RIA Code | GRID |
|---|---|---|---|---|---|---|---|
| MD | 1 | 1 | 0 | Rocket, 2.36inch, practice, M7 | Expended | 0 | 33 E |
| MD | 0 | 0 | 1 | FRAGMENTS, UNKNOWN | Expended | 0 | 33 I |
| MD | 0 | 0 | 1 | FRAGMENT, UNKNOWN | Expended | 0 | 35 I |
| UXO | 1 | 4 | 0 | Grenade, hand, smoke, M18 series | UXO | 1 | 40 G |

The US Army Corps of Engineers requires that construction support be provided on sites where the probability of encountering UXO is low. These requirements are established in EP 75-1-2, Unexploded Ordnance (UXO) Toxic, and Radioactive Waste (HTRW) and Construction Activities, 20 November 2000.

Based on information from previous removal actions in the surrounding area, the level of construction support should include the following: (1) UXO safety support during construction activities including oversight and monitoring, (2) OE recognition training, and (3) on-site UXO safety briefings prior to initiation of any on-site intrusive activities.

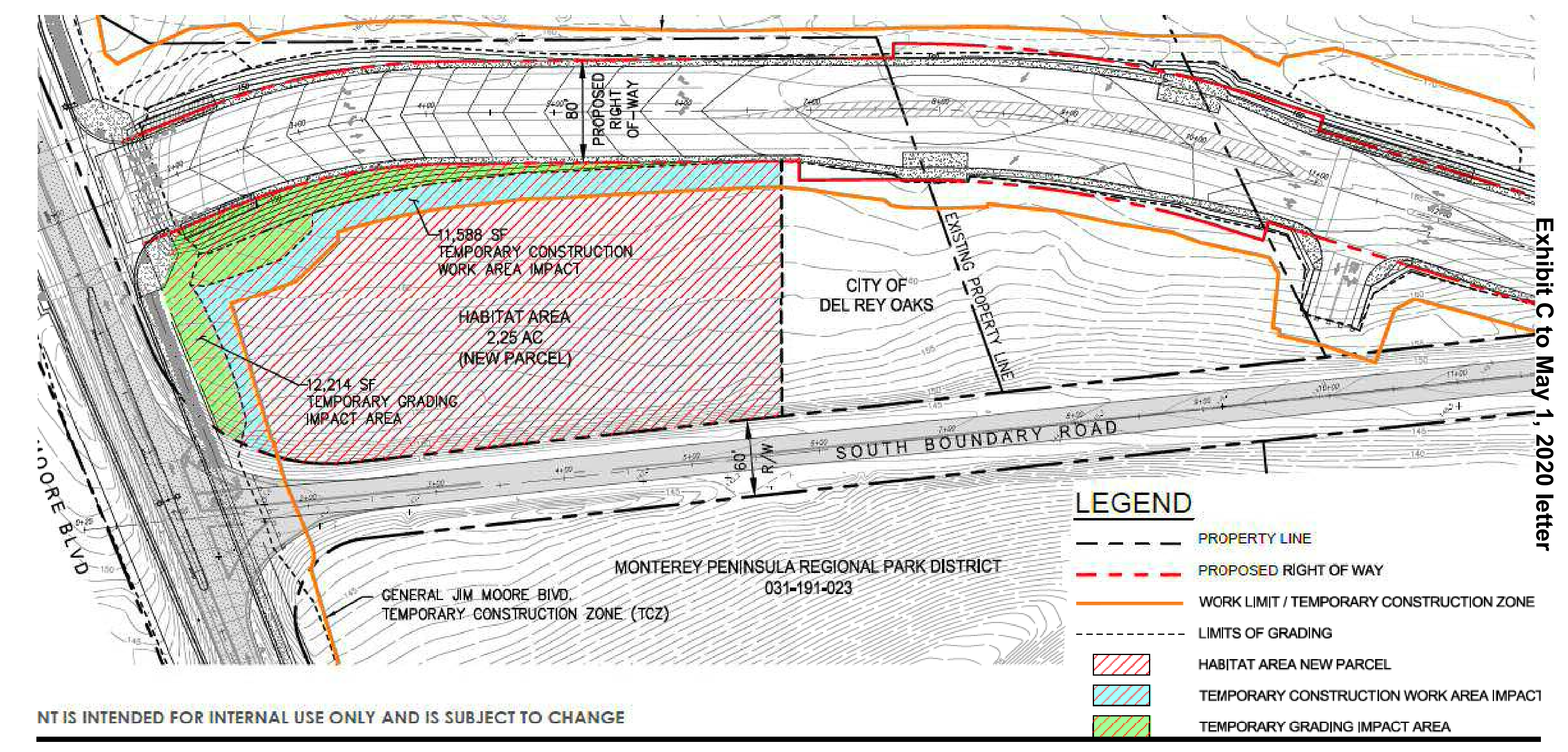
Any questions regarding this site walkabout can be addressed by contacting Mike Coon (831) 884-2306 or Andreas Kothleitner (831) 884-2313.

Regards,

Gary Griffith

**Exhibit B to May 1, 2020 letter**
**p. 4 of 4**

Exhibit C to May 1, 2020 letter



Local 605

Attachment 3

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA
910 2nd Avenue • Marina, CA 93933 • (831) 883-1931 • FAX (831) 883-1902

April 8, 2020

Board Chair Jane Parker and Board Members
Fort Ord Reuse Authority
920 2nd Avenue
Marina, CA 93933

**Re: Fort Ord Reuse Authority Transition Plan and Recordation of the Master Resolution**

Dear FORA Chair Parker and Board Members,

On behalf of Carpenters Locals 605, I am writing to comment on the Fort Ord Reuse Authority (FORA) Transition Plan, specifically concerning the need to clarify and maintain the community benefit standards enshrined in the FORA Master Resolution. This letter follows on public comments made by Carpenters Local 605 officer Tony Uzzle at the FORA Board meeting on March 12, 2020.

First, we wish to thank the Board of Directors for reaffirming FORA's commitment to the maintenance and enforcement of the Master Resolution at its March 12th meeting. We appreciate that the proposed Transition Plan that will be presented at the April 9th meeting reflects the will of the Board on this matter.[i]

Local 605 is also appreciative of the efforts by the Authority Counsel to have the Master Resolution recorded at the County Recorder's Office.[ii] To the extent possible in these challenging times, we respectfully urge the Board to take all steps necessary to record the Master Resolution as soon as practicable. Given past instances of prevailing wage and labor compliance issues on Fort Ord projects, every effort should be made to underscore and clarify the existing obligations that apply to Fort Ord development, in order to support the local construction industry, avoid ambiguity, and forestall potential legal challenges which would be to the detriment of the Monterey Bay community.

As you are aware, the California Legislature created the Fort Ord Reuse Authority in 1994 to oversee the reuse and development of the decommissioned Fort Ord military base and tasked FORA with ensuring that development at Fort Ord would benefit the Monterey Bay community. Toward this end, FORA adopted a Master Resolution that includes commitments to build affordable housing, protect the environment, and pay prevailing wages to workers on First Generation Construction.

FORA included the prevailing wage policy in the Master Resolution in order to provide economic opportunity for local laborers and contractors.[iii] The prevailing wage policy (as well as the other policies in the Master Resolution) also reflected the desire of federal legislators to use base redevelopment to generate jobs for the regional economy, help address homelessness in the region, and promote environmental restoration and mitigation.[iv]

The requirements in the FORA Master Resolution were incorporated into the Implementation Agreements executed between FORA and the local jurisdictions/agencies and recorded as deed covenants at the time of transfer.[v] **As courts have noted, the responsibility to comply with the Master Resolution carries over to new owners.**[vi]

Although the Fort Ord Reuse Authority is due to sunset on June 30, 2020, the obligations under the deed covenants and Implementation Agreements do not. Therefore, in 2018, the Board of Directors enacted a Transition Plan that directed staff to record the Master Resolution in its entirety prior to FORA's sunset, should the local jurisdictions fail to take all necessary legal steps to adopt these policies.[vii] As the Board has noted, recording the Master Resolution does not create new obligations but rather is intended to make a clear record of ones that already exist.[viii] In addition, as indicated in a recent report presented to the Local Agency Formation Committee of the County of Monterey, failure to record the Master Resolution would likely result in litigation that would delay or even halt the development of decommissioned land.[ix]

Unfortunately, in early March 2020, FORA staff recommended that the Board reverse its decision to record the Master Resolution.[x] This is extremely alarming. Local 605 is concerned that staff urged the Board to take the drastic step of rescinding the Master Resolution as a result of pressure from developers who are looking for a way to get around commitments attached to the redevelopment of Fort Ord land. Such efforts should be roundly and publicly rejected.

In addition, a Transition Plan Implementation Agreement (TPIA) will be presented to the Board and local agencies and jurisdictions for adoption prior to June 30, 2020. The latest publicly available draft TPIA states that it will supersede the Implementation Agreements referenced in the quitclaim deeds transferring former base lands to local jurisdictions and agencies.[xi] The draft TPIA makes no mention of the obligations contained in the original Implementation Agreements. This is additionally very concerning.

**We strongly urge the Board to expedite recording the Master Resolution and add a clear provision in the TPIA that reaffirms the obligations the local jurisdictions and agencies undertook when they were given former Fort Ord land.**

If you would like to discuss our comments further, please do not hesitate to contact me by phone: (408) 472-5802 or email at shebard@nccrc.org.

Yours sincerely,

Sean Hebard
Field Representative
Carpenters Local 605

**Sent by Email and by Post**

cc: FORA Ex-Officio Officers
FORA Executive Officer Josh Metz
FORA Deputy Clerk Natalie Van Fleet
AICP Executive Officer Kate McKenna

---

[i] Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, April 9, 2020, p. 132.

[ii] Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, April 9, 2020, p. 17.

[iii] Fort Ord Reuse Authority Prevailing Wage Program, accessed March 2, 2020.

[iv] National Defense Authorization Act for Fiscal Year 1994 (amended);
Defense Base Closure and Realignment Act of 1990

Section 2905 (4)(A) 1990 Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65 (1999), Section 2905 1 (A) (C)

[v] E.g., Quitclaim Deed for Parcels E 15.1, L 19.2, L 19.3, L 19.4 on the Former Fort Ord, Monterey, California, # 2005108853, p.16; Implementation Agreement Between Fort Ord Reuse Authority and the City of Seaside, entered into on May 31, 2001, ps 3 an 4 and Exhibit F, p. 19 and 20.

[vi] *Monterey/Santa Cruz County Bldg. and Construction Trades Council v. Cypress Marina Heights LP,* Judgement, California Sixth Appellate District Court of Appeal, H034143, January 10, 2011

[vii] Fort Ord Reuse Resolution No. 18-11, adopted by the Fort Ord Reuse Authority Board of Directors on December 19, 2018.

[viii] Fort Ord Reuse Resolution No. 18-11, adopted by the Fort Ord Reuse Authority Board of Directors on December 19, 2018.

[ix] Item 13, August 27, 2018, Memo from AICP EO Kate McKenna to Board and Commissioners, LAFCO of the County of Monterey, p.2.

[x] Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, March 12, 2020, ps. 41 and 51

[xi] Committee Packet, Fort Ord Reuse Authority Administrative Committee Meeting, March 4, 2020, p.3 and 7-17.

**STAMP | ERICKSON**
**Attorneys at Law**

Monterey, California
T: (831) 373-1214

Attachment 4

April 17, 2020

Via email
Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: Agenda item 6c; Keep Fort Ord Wild objections to new draft transition plan and failure by FORA to adequately consider mitigations, CEQA, and due process

Dear Chair Parker and members of the FORA Board of Directors:

This office represents Keep Fort Ord Wild, which reiterates each and every of its objections and reminds you of KFOW's past comments provided to FORA on the FORA actions with regard to the Reuse Plan, the Reuse Plan EIR, CEQA mitigations, and consistency determinations, including but not limited to the KFOW letters and evidence submitted to FORA on November 8, 2018, October 29, 2018, September 28, 2018, March 9, 2018, December 7, 2017, April 7, 2017, December 22, 2016, July 1, 2016, February 13, 2014, March 6, 2013, and March 12, 2013.

Objections to transition plan

CEQA requires implementation of the Reuse Plan programs, policies and mitigations, and FORA has not taken steps to ensure that implementation. These are "remaining obligations" of FORA that FORA is required to assign and has not assigned. Abandonment of the many approved Reuse Plan programs, policies and mitigations is a project subject to CEQA. For each and every of the reasons described in KFOW letters and the concerns stated by others, the proposed transition plan would result in direct or indirect physical changes in the environment, and the plan does not fit within any CEQA exemption.

As FORA senior staff has stated, FORA was created because of the parochial views of disparate communities, each of which considered its own concerns in a vacuum. Sadly, the FORA board members have continued that behavior – each jurisdiction considers its own concerns in a parochial manner, which has led to many of FORA's failures.

The transition plan should unambiguously state the status of the Reuse Plan going forward after FORA sunsets, and identify the agency(ies) that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations, after FORA sunsets. These are existing powers of FORA that FORA has not identified and assigned.

Examples of Reuse Plan mitigations, programs and policies that land use jurisdictions have not adopted as required.

The city and county plans do not reflect the mitigations and policies required by the Reuse Plan, the Master Resolution, and CEQA. The problem stems from FORA's fundamental failure to implement the Reuse Plan policies and CEQA mitigations and FORA's failure to follow its own Master Resolution. FORA's actions on consistency determinations cannot be relied on because the FORA actions have violated the FORA Master Resolution requirement that states as follows: "Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord Territory by including the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, into their respective general, area, and specific plans." The land use agencies have not adopted the applicable open space and conservation policies into their respective plans, and the FORA acts as to consistency have been improper and inconsistent with the FORA Master Resolution.

The cities of Seaside and Del Rey Oaks have not substantially adopted or incorporated verbatim all applicable requirements of the Reuse Plan into their own general plan and zoning codes. To the contrary, Seaside has not adopted many of the required Reuse Plan policies and CEQA mitigations, as shown in the Reassessment Report and in comments to FORA, and Del Rey Oaks also has failed, as shown in the FORA records.

The oak woodlands mitigation still has not been implemented. The County and Seaside have not adopted the mitigation into their plans applicable to Fort Ord. If the Reuse Plan goes away, it is foreseeable that the County and Seaside will abandon any pretense and implementing the mitigation.

The cities of Del Rey Oaks and Monterey have not adopted the following requirements as stated in the Reuse Plan EIR documents and that are applicable to the land designated to those cities:

> Page 4-202. Amend Program A-8.2 to read as follows: "The County shall require installation of appropriate firebreaks and barriers sufficient to prevent unauthorized vehicle access along the border of Polygon 31a and 31b. A fuel break maintaining the existing tree canopy (i.e., shaded fuel break) shall be located within a five acre primary buffer zone on the western edge of Polygon 31b. No buildings or roadways will be allowed in this buffer zone with the exception of picnic areas. trailheads. interpretive signs. drainage facilities. and park district parking. Firebreaks should be designed to protect structures in Polygon 31b from potential wildfires in Polygon 31a. Barriers shall ~~should~~ be designed to prohibit unauthorized access into Polygon 3la." [341-34]
>
> Page 4-204. Amend Program C-2.1 to read as follows:

> "Program C-2.2: The County shall ~~encourage~~ cluster ~~ing of~~ development wherever possible so that contiguous stands of oak trees can be maintained in the non-developed natural land areas." [328-2]

Page 4-134. Amend Biological Resources Program A-8.1 to read as follows:

> "The County shall prohibit development in Polygons 31b, 29a, 29b, 29c, 29d, 29e and 25 from discharging storm water or other water into the ephemeral drainage that feeds into the Frog Pond." [341-24]

Page 4-134. Amend Program A-8.2 to read as follows:

> "The County shall ... along the border of Polygons 31a and 31b. A fuel break maintaining the existing tree canopy (i.e. shaded fuel break) shall be located within a five acre primary buffer zone on the western edge of Polygon 31b. No buildings or roadways will be allowed in this buffer zone with the exception of picnic areas. trailheads. interpretive signs. drainage facilities. and park district parking. Firebreaks should be designed to protect structures in Polygon 31b from potential wildfires in Polygon 31a. Barriers shall ~~should~~ be designed to prohibit unauthorized access into Polygon 31a." [341-34]

Page 4-135. Add the following mitigation measure to impact #1.

> "Mitigation: Because of the unique character of Fort Ord flora, the County shall use native plants from on-site stock shall be used in all landscaping except for turf areas. This is especially important with popular cultivars such as manzanita and ceanothus that could hybridize with the rare natives. All cultivars shall be obtained from stock originating on Fort Ord". [298-3]

The County and Del Rey Oaks (which took some land that had been designated for the County) have not adopted the following programs and policies applicable to the land in their respective jurisdictions, and Del Rey Oaks has approved large projects (e.g., the resort, the RV park) and has not applied these required mitigations to them:

> Program C-2.1: The County shall ~~encourage~~ cluster~~ing~~ of development wherever possible so that contiguous stands of oak trees can be maintained in the non-developed natural land areas.
>
> Program C-2.2: The County shall apply ~~certain~~ restrictions for the preservation of oak and other protected trees in accordance with Chapter 16.60 of Title 16 of the Monterey County Code (Ordinance 3420). Except as follows: No oak or madrone trees removed [sic]
>
> Program C-2.3: The County shall require the use of oaks and other native plant species for project landscaping. To that end, the County shall collect~~ion~~ and propagate~~ion of~~ acorns and other plant material from former Fort Ord oak woodlands to be used for restoration areas or as landscape material.
>
> Program C-2.5: The County shall require that paving within the dripline of preserved oak trees be avoided wherever possible. To minimize paving impacts, the surfaces around tree trunks shall ~~should~~ be mulched, paving materials shall ~~should~~ be used that are permeable to water, aeration vents shall ~~should~~ be installed in impervious pavement, and root zone excavation shall ~~should~~ be avoided. [328-2]

Impact 1 addressed the FORA Reuse Plan project's vast impacts on biological resources.

> 1. Impact: Loss of Sensitive Species and Habitats Addressed in the Habitat Management Plan (HMP)
> The proposed project would result in the loss of up to approximately 2,333 acres of maritime chaparral, zero acres of native coastal strand, two acres of dune scrub, and the potential loss of special-status species associated with these habitats.

Comment letter 298 from the Sierra Club included this comment:

> "Because of the unique character of flora of Fort Ord as well as the need to conserve water, native plants from on-site stock should be used in exterior landscaping, and cultivars or manzanita and ceanothus that could hybridize with the rare natives must not be planted. Any annual wildflower plantings should be from seeds collected on sire. not from commercial wildflower mixes. Bermuda. Kikuyu. and Ehrhana grasses must not be used."

In response, the Final EIR made the following change to the Reuse Plan:

> Final EIR Page 4-135. Add the following mitigation measure to impact #1.
>
> "Mitigation: Because of the unique character of Fort Ord flora, the County shall use native plants from on-site stock shall be used in all landscaping except for turf areas. This is especially important with popular cultivars such as manzanita and ceanothus that could hybridize with the rare natives. All cultivars shall be obtained from stock originating on Fort Ord". [298-3]

The cities and county have not adopted this mitigation measure as required, and FORA has not required its implementation. There are many other examples of similar omissions and failures with regard to the Reuse Plan and its EIR requirements.

KFOW reminds you of the FORA Board meeting agenda and packet for November 2016 regarding the Del Rey Oaks RV Park resort. The Board packet and staff report did not discuss the fact that the Reuse Plan includes mitigations with which Del Rey Oaks must comply. Instead, Del Rey Oaks and FORA call the Reuse Plan a "framework for development". In other words, the actions of Del Rey Oaks and FORA show that they want Del Rey Oaks to have only the benefit, rather than also shoulder the accompanying burden of the required mitigations. In fact, Del Rey Oaks has not complied with the Reuse Plan policies applicable to the land it has received or will receive. The jurisdictions' general plans applicable to the territory of Fort Ord are intended to be fully in conformity with the Reuse Plan. Instead, FORA has a pattern and practice of applying a much lower and incorrect standard of substantial evidence. FORA also has a pattern and practice of failing to require the county and cities to timely implement their zoning and other implementing actions.

<u>A CEQA determination is required before acting on the transition plan</u>.

As stated in the KFOW letter to FORA dated November 8, 2018, FORA cannot proceed with action on the transition plan until FORA first makes a CEQA determination. There is no CEQA action stated on the agenda today. The Board cannot find that the action is exempt from CEQA because there is no evidence that FORA provided the public notice required by Master Resolution section 8.03.060, "PUBLIC NOTICE OF ENVIRONMENTAL DECISION":

> "Notice of decisions to prepare an environmental impact report, negative declaration, <u>or project exemption</u> shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County."

The Master Resolution controls here, because it states that "Where conflicts exist between this Article [Master Resolution] and State [CEQA] Guidelines, the State Guidelines shall prevail except where this Article is more restrictive." Absent proper notice under the Master Resolution, FORA cannot even proceed with a first vote.

The Fort Ord Reuse Plan is the plan for the future use of Fort Ord adopted pursuant to Section 67675. That future use will continue after FORA sunsets. The plan programs, policies and mitigations are still viable, to a significant extent. The Reuse Plan is the official local plan for the reuse of the base for all public purposes, including all discussions with the Army and other federal agencies, and for purposes of planning, design, and funding by all state agencies. FORA should not abandon the Reuse Plan when FORA sunsets, as the FORA transition plan appears to propose. The approach that FORA proposes is illegal and fraught with foreseeable problems. FORA has admitted that many of the policies and mitigations have not yet been adopted and implemented. It is, as the Legislature directed, the plan for the reuse of Fort Ord. Thus, FORA should ensure that the Reuse Plan and its EIR are binding on all Fort Ord land, and FORA should assign to each land use jurisdiction all applicable programs, policies and mitigations, with specificity, and the land use jurisdiction must accept all of the assignments. The public should be able to review and comment on the proposed specific assignments because the public can then assist FORA by providing comments as to accidental omissions, accidental inclusions, misstatements and other errors. The process is already filled with errors, as shown by the Reassessment Report. Most of those errors have not been corrected. That is the only that the mission can continue – the reuse of Fort Ord in compliance with the mandated Reuse Plan and its adopted CEQA review. FORA has failed to carry out and complete that mission. That is not a reason to abandon the mission now. But that is what FORA's transition plan proposes. FORA has not proposed to ensure that the Reuse Plan stay in effect after FORA transitions. FORA has not proposed to ensure that the Reuse Plan would be effectively enforced by any particular entity. FORA still has not identified with specificity what is considers a "mitigation" and how it would be enforceable in FORA's absence. This is a critical issue because of the multiple and inconsistent ways that FORA uses the word "mitigation."

KFOW and others repeatedly have challenged the FORA notion that the FORA CIP is a Reuse Plan requirement that must be implemented and developed. Instead, they are projects and costs that FORA voluntarily took on, and which FORA is not required to complete or pay for. One example is the South Boundary Road project that is not in the Reuse Plan or the EIR. Rather, FORA proposed a South Boundary Road project approximately ten years after the Reuse Plan was adopted. The circumstances are that Fort Ord development is far behind what was expected in 1997 Reuse Plan. The development that has occurred has gone in a different direction, and the economy and circumstances have materially changed, and even more so now there have been and will be changes of untold magnitude and type due to the coronavirus pandemic. Thus, the big public works projects that FORA has claimed are "necessary" are neither necessary nor wise. It remains unclear what FORA means by "mitigations". It is not

defined and the jurisdictions and FORA have many different and inconsistent uses and interpretations of the word "mitigations." Most of the Reuse Plan/EIR mitigations are not capital improvements.

The draft plan fails to address numerous foreseeable situations. For example, a land use jurisdiction that has not adopted a Reuse Plan EIR mitigation, or has not adopted a Reuse Plan policy or program, could and foreseeably would continue not to adopt the mitigation, policy or program. The question remains whether that is an action subject to CEQA if the Reuse Plan has been allowed to go away. If a land use jurisdiction considers a project on Fort Ord that would have been subject to the mitigation, policy or program, but is not subject to it because the jurisdiction failed to adopt it, there is a significant question as to what remedies are available to the other jurisdictions and KFOW if the Reuse Plan is no longer in place.

The whole of the action includes FORA's abandonment of the Reuse Plan policies and procedures and the EIR mitigations, and the enforcement and implementation thereof. Viewed from that perspective, FORA, once dissolved, will never again be able to protect the environment through its adopted programs, policies and mitigations that were designed to protect the environment. And FORA proposes no other entity to take over those roles. That is a change to the existing baseline and that would affect the environment.

Inadequate notice.

FORA cannot proceed with action on the transition plan until FORA first makes a CEQA determination. The Board cannot find that the action is exempt from CEQA because there is no evidence that FORA provided the public notice required by Master Resolution section 8.03.060, "PUBLIC NOTICE OF ENVIRONMENTAL DECISION":

> "Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County."

Please provide to me as soon as possible the evidence that FORA provided this prior notice. The Master Resolution controls here, because it states that "Where conflicts exist between this Article [Master Resolution] and State [CEQA] Guidelines, the State Guidelines shall prevail except where this Article is more restrictive." Absent proper notice under the Master Resolution, FORA cannot even proceed with a first vote on this item, because the first vote would be invalid and void. FORA has not responded to this request that I made on October 29, and I ask it again here.

Proposed resolution is subject to second vote requirement.

Master Resolution section 2.02.040(b) states that "A resolution, ordinance, or other action of the Board will not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration." This requirement applies to the action on the transition plan, which is the first time the board will vote on this version of the plan, and this version was introduced less than 72 hours before the Board meeting. These are important rules adopted in the interest of fair public process and justice. Before you act today, each of you should consider that "The provisions of this Master Resolution and all proceedings under this Master Resolution are to be construed so as to give effect to the objectives of the Authority Act, this Master Resolution, and the promotion of justice" (Master Resolution, § 1.01.100(f)) and "This chapter contains the minimum requirements of the protection of the public convenience, safety, health, and general welfare" (Master Resolution, § 1.01.100(a)).

Offer to meet.

As KFOW has offered numerous times in the past, KFOW again offers to meet with you to discuss these issues in the hope of a resolution before FORA acts. You, the FORA Board members, control the schedule. KFOW does not. KFOW urges you to carefully consider all of the information provided before you vote on the CEQA determination and the transition plan.

Summary.

For each of the concerns and issues identified here, in the public process, and in FORA's records, KFOW urges that you consider all of these issues carefully before you act to adopt any transition plan. The plan is not exempt from CEQA and the newly proposed draft plan would have unanalyzed and unmitigated impacts and unintended consequences. Thank you.

Very truly yours,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

Attachment: July 1, 2016 KFOW letter to FORA board identifying specific problems with regard to the failure to implement Reuse Plan policies, programs and mitigations.

Michael W. Stamp
Molly Erickson

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July 1, 2016

Via E-mail
Frank O'Connell, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: Keep Fort Ord Wild's objections to failure by Fort Ord Reuse Authority to adequately enforce the mitigations for the Fort Ord Reuse Plan, including Reuse Plan programs and policies, and the Master Resolution; objections to acceptance of Michael Baker International report on Reassessment Report Categories I and II – July 8, 2014 FORA Board meeting.

Dear Chair O'Connell and members of the FORA Board of Directors:

This Office represents Keep Fort Ord Wild (KFOW). Keep Fort Ord Wild is a coalition of individuals dedicated to the preservation of trails, recreation, wildlife and habitat on Fort Ord. Keep Fort Ord Wild supports sensible, economically viable, redevelopment of the extensive blight within the urban footprint of the former base. Keep Fort Ord Wild supports conservation of existing undeveloped open space for the enjoyment of current and future generations.

On June 10, 2016, KFOW informed FORA in writing that KFOW objected to the Michael Baker International (MBI) opinion, and provided reasons. KFOW also objected to FORA's failure to adequately monitor and enforce the mitigations required pursuant to the Reuse Plan and its EIR. FORA has an independent duty to enforce the mitigations, independent of FORA consistency determinations. As of the finalizing of this letter at 2 PM on July 1, KFOW has not received a response from FORA.

Keep Fort Ord Wild again expresses its serious concerns about the failure of FORA to adequately enforce the mitigations for the development and redevelopment of the former Fort Ord, including the Fort Ord Reuse Plan policies and programs. The California Environmental Quality Act requires that "A public agency shall provide the measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." (Pub. Resources Code, § 21081.6, subd. (b), emphasis added.)

The Reuse Plan, as modified by the Final EIR, contains policies and programs that are mitigations for the impacts of development of the former Fort Ord. The Reuse

Plan is a document binding on FORA. It is not merely a document to be set on a shelf, or be misread by FORA for FORA's convenience. "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.) The mitigations adopted in the Reuse Plan are mandatory. Adopted mitigations "are not mere expressions of hope." (*Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) Once incorporated, mitigation measures cannot be defeated by ignoring them or by "attempting to render them meaningless by moving ahead with the project in spite of them." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 450.) Yet that is what FORA has tried to do for years.

KFOW has expressed and here reiterates serious concerns, including these:

- **FORA has failed to include Reuse Plan mitigations including policies, programs and other mitigations in the Reuse Plan that FORA relied on – the version "republished" in 2001**. The 2001 "republished" document is the version of the Reuse Plan that FORA and all public agencies rely on; the failure to require public agencies to adopt the Reuse Plan policies and programs that were required in the Reuse Plan, including EIR mitigations intended to address the impacts of the Reuse Plan. These omitted policies, programs and mitigations include, e.g., Seaside hydrology and water quality programs A-1.2, B-1.4 through B-1.7, and C-6.1. These are provided as examples to assist FORA. There are other policies and programs that FORA also has not ensured have been implemented by the jurisdictions, as required by the Reuse Plan and its EIR. The underlying EIR documents consistently imparted an understanding to public officials reviewing the Reuse Plan project, and to the general public, that mitigation measures to address the environmental concerns would accompany the build out of Fort Ord. However, FORA has omitted material mitigation measures from the 2001 Reuse Plan that is the primary version of the Reuse Plan that FORA and the land use agencies rely on. FORA has been regularly violating the mandates of its own Fort Ord Reuse Plan and its EIR. An agency may not say that it is going to implement mitigation measures, then simply defer those measures unilaterally, as it chooses.

- Although **FORA's 2012 Reassessment Report identified some for the policies and programs that the jurisdictions had not adopted, but not all, FORA has not taken prompt and effective steps to remedy the identified problems**. The Reassessment Report identified some of the numerous unmet and unfulfilled Reuse Plan policies, programs and other mitigations at pages 3-34 through 3-41. That was only a partial list. The Reassessment Report acknowledged that "Policies and programs

identified as ongoing are not included in this table." (Report, p. 3-41.) At the time of the Reassessment Report in 20112, FORA admitted that many of the listed Reuse Plan "policies or programs are not contingent on triggering events, and should be implemented as soon as feasible." (*Id.* at p. 3-41.) Now, four years later, many of the policies, programs and other mitigations still have not been implemented. These unmet requirements include controversial and important issues including, for example, oak tree protection (e.g., Seaside biological resources program 2.1 and recreation policy C-1), noise (e.g., Seaside noise policies A-1, B-1, B-3 and their implementing programs), pedestrian and bicycle access (e.g., Seaside policy A-1 and its implementing program), trails (Seaside recreation program F-2.1, policies G-1, G-2 and G-4), open space (e.g., Seaside recreation/open space land use policy B-1 and its implementing program, and program D-1.3), residential land use (Seaside policies E-1, E-3, I-1 and programs E-1.1, E-3.2, I-1), homeless (Seaside policy F-1 and implementing programs), streets and roads (e.g., Seaside policy B-1, program B-1.2), and County biological resources policy A-2. As other and additional examples, the City of Marina General Plan fails to include Reuse Plan City of Marina Residential Land Use Objective F, Program F-1 and implementing policies F-1 and F-2 to address the needs of the homeless, Residential Land Use program G-1.3 regarding reduction in barriers to accessibility, Commercial Land Use Policy B-2 and Program B-2.1 regarding prohibition of card rooms or casinos for gambling as acceptable land uses on the former Fort Ord, Recreation/Open Space Land Use Policy A-1 requiring the City of Marina to "protect irreplaceable natural resources and open space at former Fort Ord," Program B-2.4 and C-1.1, policies D-1, D-1.1, and D-1.2, and Recreation policy B-1, as a few examples. This partial list has been very time-consuming, complex, and resource-intensive to prepare, due to the multiple lengthy and inconsistent documents involved. These are provided as examples. There are other policies and programs that FORA also has not ensured that the jurisdictions have implemented, as required by the Reuse Plan and its EIR. FORA decided to defer and not enforce many of the omissions that the Reassessment Report identified when FORA decided to not proceed with the omissions identified in the Reassessment Report Category III, "Implementation of Policies and Programs." That category listed Reuse Plan policies and programs determined in an earlier report (the Reassessment Scoping Report) to be incomplete.

- The **Reassessment Report approved by FORA was incomplete. The Reassessment Report failed to identify key Reuse Plan policies and programs including Reuse Plan EIR mitigations and key portions thereof that have not been adopted and implemented by FORA and the jurisdictions**. There are many examples, including, for example, for

Seaside: biological resources policies A-4, B-1, B-2, C-3, D-1, E-1 and the implementing programs to those policies, policy E-2, programs B-3.2 and C-2.1 through 2.6, and D-2.1 and 2.3; commercial land use policies A-1, B-1 through B-3, C-1, D-1, E-1 and E-2, F-1 and F-2, and the implementing programs to those policies; hydrology and water quality policies A-1, B-1, C-1, C-2, C-4 through C-6 and the implementing programs to those policies, and program C-3.1; institutional land use policies A-1, B-1, C-1, D-1, D-2 and the implementing programs to those policies; noise policies B-2, B-4 through B-8, and the implementing programs to those policies, programs B-1.2; pedestrian and bicycle policy B-1 and the implementing programs to those policies; recreation policies A-1, B-1, D-1 through D-4, F-1 , G-3, H-1 and the implementing programs to those policies, and program E-1.1; recreation/open space policies A-1, B-1, C-3 and the implementing programs for those policies, and the implementing programs for policies B-1, C-1, C-2, C-3 and D-1; residential land use policies A-1, B-1, C-1, D-1, E-2. G-1, H-1, I-2 and the implementing programs for those policies, and programs E-1.2, E-1.3, E-3.1, F-1.2, H-1.1, I-1.2), streets and roads policies A-1, C-1, C-2, D-1 and the implementing programs for those policies, and programs B-1.1)' and, for the County, commercial land use policy B-1, hydrology and water quality program A-1.2, noise policy B-3, recreation and open space programs B-2.2 and E-1.4, recreation policies E-1.1 through E-1.6 and programs E-2.2 and E-3.1, residential land use programs C-1.1, I-1.1, transit programs A-1.4 and A-1.5. These are examples. There are other policies, programs, and other mitigations that FORA also has not ensured have been implemented by the jurisdictions, as required by the Reuse Plan and its EIR.

- CEQA requires that if a lead agency finds that mitigation measures have been incorporated into the project to mitigate or avoid a project's significant effects, the "agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation." (Pub. Resources Code, § 21081.6, subd. (a)(1).) The Reuse Plan mitigation monitoring and reporting program (MMRP) adopted by FORA in 1997 is inadequate and has not ensured compliance as required. FORA placed in the MMRP only some of the mitigations added by the final EIR. The MMRP did not include all mitigations added by the final EIR and did not include the mitigations that were part and parcel of the draft Reuse Plan as policies and programs. FORA also failed to implement all mitigations, including those listed on the MMRP in the final EIR, as explained in this letter. FORA has acted continually for years as the implementation of BRP

> policies or programs is primarily the responsibility of local jurisdictions, instead of the responsibility of FORA. (See, e.g., the statements in the Reassessment Report, at p. 1-7.)

At the same time, while FORA has been failing to fulfill its mandatory duties, FORA and the land use jurisdictions have proceeded to approve projects and make consistency determinations, thus improperly allowing plans and projects to proceed that have not demonstrated compliance with the Reuse Plan policies and programs. FORA has the ability to stop that and has not prevented it from happening. As a result, projects and plans have been approved that do not adequately respect, follow and implement the Reuse Plan and its policies and programs.

This is particularly important now, while the Monterey Downs project is going through the review process by Seaside, the County and FORA. The Monterey Downs project is being processed and reviewed pursuant to Seaside documents, County documents, and FORA documents that are not in compliance with the mitigations, mitigating policies and mitigating programs of the Reuse Plan and its EIR. It also is particularly important now because FORA will sunset in 2020. FORA has failed to ensure that the land use jurisdictions have adopted many key policies, programs, and other protections that were put in place by FORA nearly 20 years ago in certifying the Reuse Plan EIR and adopting the Reuse Plan based on that certification.

The Reuse Plan policies and programs, along with other Reuse Plan EIR mitigations are CEQA mitigations that FORA has a mandatory duty to enforce. FORA has failed on a continuing basis to fulfill that duty.

FORA has made a confusing jumble of what FORA calls its "governing documents." FORA does not use the original documents adopted by FORA. FORA regularly refers to the Reuse Plan that was "republished" in 2001, even though the FORA Board never adopted the 2001 version, there was no environmental review performed on the 2001 version, and the 2001 version was different in material ways from the 1997 Reuse Plan adopted by the FORA Board in 1997. The 2001 "republished" Reuse Plan does not accurately reflect the FORA adopted 1997 Reuse Plan. The 2001 version contains material omissions and misstatements. As one example, the "republished" 2001 plan adds the veterans cemetery, without environmental review. As another example, the "republished" plan includes policies and programs that are materially different from the Reuse Plan and EIR documents approved and adopted by the FORA Board in 1997. (E.g., Biological Resources County policy C-2 and program C-1 [see our March 6, 2014 letter, exhs. J and K].) We have addressed this issue in the past, including, for example, in our March 6, 2014 letter.

To make matters worse, FORA's website provides only the 2001 republished version of the Reuse Plan and what FORA calls a"Final EIR" but which is not the Final EIR. Instead, it is a hodgepodge of the 1996 Draft EIR with some but not all the

changes made in the 1997 Final EIR response to comments as a result of public comments. FORA's webpage for "Base reuse plan" states that "The FORA Base Reuse Plan is made up of four volumes. All files are available in electronic format as Adobe Acrobat files (pdf):" The claim is not accurate because FORA makes only three of the four volumes available, stating that "Volume 3 – Appendices (not yet available for download)."

This problem is exacerbated by FORA's refusal to acknowledge the fundamental problems that KFOW and others have identified in the past. As one example, FORA has repeatedly insisted that the 2001 version of the Reuse Plan is the valid governing document, and that the land use jurisdictions and KFOW should rely on it. However, the 2001 versions of the Reuse Plan and the EIR are not accurate and not complete.

FORA's past acts do not create confidence in FORA's abilities. As one example, in March 2010, the Executive Director proposed making changes to the FORA Master Resolution. The changes were numerous and material. There were many hundreds of changes proposed, including to the language of Chapter 8 of the Master Resolution. Chapter 8 governs the consistency determinations that are required to be made by FORA. More than a hundred word changes were proposed for Chapter 8, primarily changing the word "shall" to the word "may." FORA's Executive Director and Authority Counsel recommended adopting the changes. The FORA Board approved the changes. The changes were significant and material because they changed specific actions that FORA was required to perform – what FORA "shall" do – to permissive actions that FORA "may" fulfill at FORA's discretion.

FORA had no authority to unilaterally change Chapter 8. Chapter 8 had been created when in 1998 FORA approved the settlement agreement with the Sierra Club; pursuant. In 2013, members of the public realized that FORA had made drastic changes to Chapter 8. They alerted the Sierra Club. The Sierra Club promptly put FORA on notice that FORA was in violation of the 1998 settlement agreement that required the original language using the word "shall" throughout. FORA had been required to give the Sierra Club prior notice of the changes to Chapter 8 and perform environmental review (pursuant to CEQA) on the proposed changes. (Settlement Agreement, p. 2, term 4.) FORA had violated both requirements: FORA had failed to notify the Sierra Club and FORA had failed to perform a CEQA review.

As another example of FORA's history of lack of compliance with its own rules, FORA has a pattern and practice of failing to apply the proper standard for its consistency determinations. According to the Master Resolution, the proper test for determining consistency is whether "there is substantial evidence" that the General Plan "is <u>not</u> in substantial conformance" with the Reuse Plan. (Master Resolution, § 8.02.010, emphasis added.) Instead, FORA has looked only to whether there is substantial evidence to support a finding of consistency, and FORA has largely ignored substantial evidence to the contrary – that the plan is not consistent. The FORA staff

memo dated December 19, 2000 stated the very deferential standard used by FORA then and now to make consistency determinations. That memo states in pertinent part as follows: "The standard provided then, is that of substantial compliance between the Reuse Plan and submitted document. The manner in which substantial compliance might be demonstrated is more flexible than a verbatim restating of the Reuse Plan, but would need to be backed up with substantial evidence read into the record, and with findings made relative to the evidence presented." That standard is not consistent with FORA's Master Resolution Chapter 8 or the intent and language of the Reuse Plan and the Reuse Plan EIR. That lenient standard is still used today, according to FORA staff. Instead of doing an independent and stringent analysis of whether consistency should be found, FORA staff defers to the land use jurisdiction to present an argument for consistency. The December 19, 2000 memo reveals this when it says "The basic philosophy behind this approach is that, although FORA has been assigned regulatory authority over these matters by the State Legislature, it is appropriate to place the burden on the jurisdiction making the request to make their best case in favor of consistency." And if there is substantial evidence to support the jurisdiction's argument, ten FORA has adopted to the jurisdiction's claim of consistency. As a result of FORA's failure to properly implement its Reuse Plan and its Master Resolution, FORA has applied a loose, lax, and deferential standard of review to the consistency determinations made by the land use agency. That approach is not consistent with the required rigorous analysis of whether "there is substantial evidence" that the plan or project "is not in substantial conformance" with the Reuse Plan, which is the mandatory analysis under the Master Resolution.

The Monterey County General Plan follows the weak language of the draft reuse plan, instead of the adopted and approved Reuse Plan. That weak language that would allow for unmitigated and unanalyzed environmental impacts, and would not achieve the goals and objectives of the adopted Reuse Plan. There are many examples of this. We provide examples here, which are the same examples FORA has ignored in the past when KFOW has provided them. KFOW is prepared to provide other examples, which FORA can easily identify on its own by reviewing the draft reuse plan, the Final EIR, and the adopted 1997 Reuse Plan. As one example, Draft EIR public comment letter 328 was from the Watershed Institute at California State University at Monterey Bay. The Watershed Institute made thoughtful expert comments on the draft reuse plan policies. The Watershed Institute stated that the draft EIR's claim that effects on coast live oak woodland "would be reduced" was "an unjustifiable claim given the inadequacies" of the proposed policies and programs in the draft reuse plan. The Watershed Institute stated that the policy language was "far too weak to provide any reasonable protection, and criticized the draft plan's use of ineffectual words such as "encourage", "wherever possible," and "should be avoided." In response to this and other similar comments, the Final EIR made changes to the text in the reuse plan policies and programs to make the language stronger. For example, the Final EIR replaced the weak language, "the County shall encourage the preservation and enhancement of oak woodland elements," with the stronger language, "The County

shall preserve and enhance the woodland elements." As another example, in response to comments the Final EIR replaced the weak language "the County shall encourage clustering of development," with the stronger language, "the County shall cluster development." The response to comments (which were part of the Final EIR) added stronger language to many policies and programs throughout the reuse plan. The Final EIR version of the plan text showed this improved stronger language. The stronger language was part of the final 1997 Reuse Plan that was adopted by the FORA Board when it certified the EIR. As stated above, the 2010 County General Plan/Fort Ord Master Plan uses the weaker 1996 draft Reuse Plan text and should not be found consistent with the Reuse Plan, and the Reuse Plan should not be amended based on the County General Plan.

FORA adopted the Reuse Plan in 1997, nearly 20 years ago, and since then has failed to ensure that the land use jurisdictions have adopted the Reuse Plan mitigations as required. Instead, FORA has made consistency determinations for plans and projects that are not consistent with the Reuse Plan requirements and mitigations, and allowed those plans and project to proceed. FORA is scheduled to sunset in the year 2020. It is now the second half of the year 2016, and FORA has shown no indication that it is going to change its pattern and practice.

The Reassessment process FORA followed was fundamentally flawed, as KFOW and others have explained in past letters. FORA ignored material changes in circumstances and increases in knowledge such as the unsustainability of the Deep Aquifer, which is the water source for Fort Ord, and the creation of the Fort Ord national Monument. Instead of adapting the Plan to current realities, FORA plowed ahead with the same unsustainable and outdated plan. As we have told FORA in the past, nobody knows how long the Deep Aquifer will last. Nobody knows how much water is in the Deep Aquifer. Only recently has it been acknowledged that the Deep Aquifer is subject to contamination - for example, from the contaminated shallower aquifers or other sources. Under the circumstances, it is irresponsible for FORA to allow any development that is supplied by water from the Deep Aquifer. Fort Ord is getting its water from the overdrafted deep aquifers approximately 800 to 1400 feet below ground. These water sources are unsustainable, because they are not being recharged. Existing Fort Ord development relies on those unsustainable sources. New development at Fort Ord also would rely on these unsustainable water sources. FORA's Reassessment Report failed to investigate or disclose this serious problem.

FORA has taken minor steps following the Reassessment to take some actions, but not nearly the amount of action required to bring FORA and the land use jurisdictions into compliance with the Plan. The Reassessment categories I and II changes have been handled in ways that do not comply with the applicable laws or follow an adequate public process.

The MBI opinion and the FORA staff report of June 8, 2016 failed to disclose the fact that at least several of the consistency determinations were made by the FORA Board during the time that the illegal amendments to Master Resolution Chapter 8 were in place. In March 2010, FORA illegally and improperly amended the chapter 8 requirements to replace many of the "shall" to "may," thus making permissive what the settlement agreement required to be mandatory. It appears that these changes were made to benefit specific projects, including Monterey Downs. FORA called those changes to the Master Resolution as follows: "Amended March 12, 2010 [Minor corrections throughout the document to add clarity]." When the illegal changes were brought to light by KFOW and the Sierra Club in 2013, the Board reversed the illegal changes. FORA called those changes to the Master Resolution: "Amended April 12, 2013 [ . . . 23 typographical corrections to Chapter 8]." In FORA's opinion, the fundamental change from "may" to "shall" was a mere "typographic" change. FORA did not review the actions taken by FORA while the illegal language was in effect from 2010 to 2013. Thus, FORA does not know for certain that those determinations were proper or supported. These determinations included the County housing element in 2010, the Seaside housing element in 2011, the Seaside Local Coastal Program in March 2013, and at least two projects, and possibly more.

The 1996 draft Reuse Plan and the 1997 final Reuse Plan did not assign policies and programs to Del Rey Oaks and the City of Monterey because those agencies were not intended to receive land at the former Fort Ord. Later, Del Rey Oaks and the City of Monterey were assigned land that had been intended to go to the County. All the land was at the southern end of the former Fort Ord. The Reuse Plan had assigned Monterey County numerous policies and program to ensure that the land designated for the County, when developed, would be mitigated. FORA has failed to understand this. FORA failed to ensure that the policies applicable to the County were made applicable to Del Rey Oaks (DRO) and the City of Monterey. The applicable Reuse Plan policies have not been adopted by Del Rey Oaks and the City of Monterey. Multiple important and material policies applicable to the County are applicable to DRO and the City, including the water supply policies, the drainage policies, and natural resource protection policies, including the oak woodlands protection policies, and the social issues including affordable housing and recreation and other land use issues. Del Rey Oaks' land at Fort Ord has oak woodlands, and Monterey's has dense pine trees. (See Exhibits A and B to this letter.) FORA has taken the apparent position that those trees, resources and habitats on Del Rey Oaks and Monterey lands are not protected by the Reuse Plan policies. FORA's positions are inconsistent with the Reuse Plan and its EIR and with the fundamentals of good regional planning.

FORA has not directly communicated to DRO and the City about the Reuse Plan policies and programs are applicable to them, according to FORA's response to my recent California Public Records Act request for those communications. In FORA's opinion, not even the Reuse Plan objectives – which applied to the County, Marina and Seaside – apply to Del Rey Oaks and Monterey. No past or future FORA consistency

determinations as to DRO and City of Monterey plans and projects are proper due to this material failure. No changes to the Reuse Plan to reflect DRO and City of Monterey plans and projects should be made due to these material omissions. One example of why this is urgent is the Del Rey Oaks City Council approval of an RV park on the former Fort Ord land, without taking any steps to ensure that the project complies with the Reuse Plan. The project does not comply.

These issues were raised in past years by KFOW and by others, including during the Reassessment process and also when considering certification of Fort Ord Master Plan and the County General Plan. KFOW has expressed its concerns on these issues in the past, including but not limited to those provided in comments to FORA on or around June 15, 2012, September 2013, February 13, 2014, March 6, 2014, and March 12, 2014. FORA has on a recurring basis failed to perform its ongoing statutory duties.

Conclusion and Request

FORA has a mandatory duty to enforce the Fort Ord Reuse Plan policies and programs and the mitigations of the Reuse Plan. These actions are overdue now. Every day is a continuing violation. This issue requires prompt remedial action. KFOW asks the Board to act promptly. KFOW intends to pursue all available remedies to ensure that FORA fulfills its duties and follows the law. KFOW urges you to carefully review this letter. You control the time frame. We suggest that the Board meet immediately to address this issue, and then tell us promptly what FORA is going to do to address the problems. We offer to meet with you to discuss the problems and hear about your proposed response and action. Thank you.

Very truly yours,

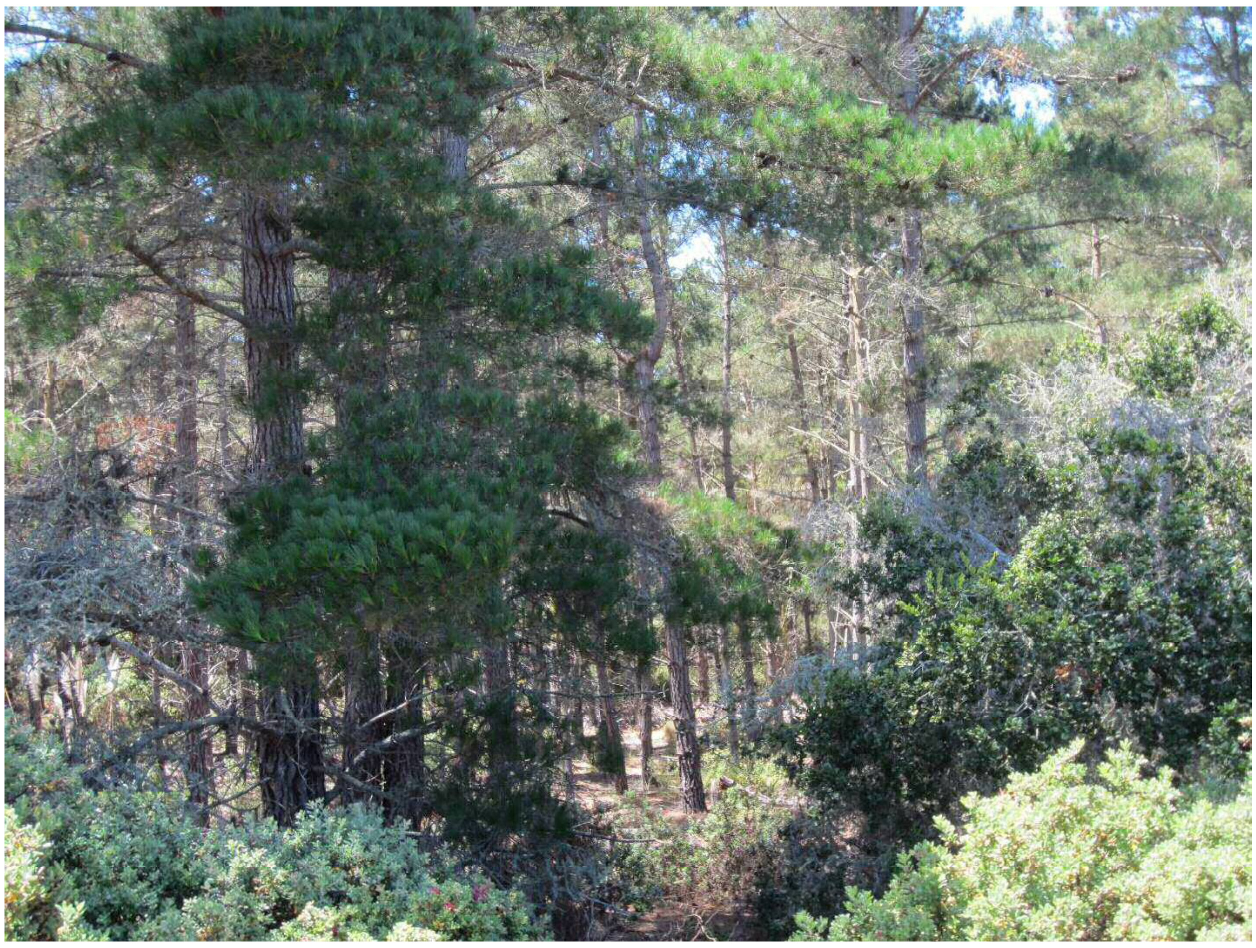
STAMP | ERICKSON

Molly Erickson

Exhibit A -- Del Rey Oaks' oak woodlands on former Fort Ord land, p. 11 of 15

City of Del Rey Oaks
Property
NO TRESPASSING
No admittance without prior
authorization from the
City of Del Rey Oaks
394-8511

Exhibit B -- Monterey's pine forest on former Fort Ord land, p. 14 of 15



**Jen Simon <jen@fora.org>**

Attachment 5

# April 9 Board Meeting - Agenda Item 8b

1 message

**Vicki Nakamura** <vnakamura@mpc.edu> Thu, Apr 9, 2020 at 4:19 PM
To: Board@fora.org
Cc: David Martin <dmartin@mpc.edu>, Brian Finegan <brian@bfinegan.com>, Michael Harrington <michael@bfinegan.com>, Shawn Anderson <sanderson@mpc.edu>

FORA Board Members:

I have been involved with Fort Ord development issues on behalf of MPC since 1992. I was there when the Agreement with FORA and the County regarding the East Garrison land swap was negotiated. The conflict between MPC and the County over two very different visions for the East Garrison was difficult, and reaching an agreement took several years. But in 2002, an agreement was reached. MPC gave up the East Garrison for land in the Parker Flats area for its future public safety training facility. Included was a 200-acre habitat reserve that surrounded a potential site for a firing range. MPC did not want to manage habitat, this was not something we do, or which we are funded for. But the habitat reserve was part of a regional approach to mitigating development across the base, forming the basis for both the habitat management and habitat conservation plan. MPC has been a partner with the other jurisdictions in this planning effort, which has finally come to fruition in FORA's final year. With FORA's imminent dissolution; however, commitment to this approach has also seemed to evaporate.

The habitat funding allocation decision before the FORA Board has been characterized at the Habitat Working Group meetings as a worst case scenario, in the event a replacement JPA is not formed before FORA sunsets. However, discussions regarding a JPA have ended for now. It seems likely this worst case scenario will go into effect. And, if you approve Alternative 5, with the premise that all land use jurisdictions should get a share, then the purpose of the funds, which was to manage habitat land set aside to mitigate basewide development will have been negated.

Alternative 5 does not acknowledge Monterey County's extensive habitat lands. Alternative 5 leaves out MPC and the other educational institutions. Alternative 5 does not recognize the mutual benefit of these habitat lands to all jurisdictions and their development interests over the long-term.

Thank you for the opportunity to comment.

Vicki Nakamura

**Jen Simon <jen@fora.org>**

# Prioritize what must be done before June 30. Please.

1 message

**Michael DeLapa** <execdir@landwatch.org> Thu, May 7, 2020 at 9:58 AM
To: board@fora.org
Cc: Josh Metz <josh@fora.org>

May 7, 2020

Supervisor Jane Parker, Chair
Fort Ord Reuse Authority (FORA) Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Dear Chair Parker and Board of Directors:

LandWatch previously urged FORA not to certify a Final EIR for the draft Habitat Conservation Plan ("HCP") because there is no consensus on the scope or timing of that HCP, and no agency is foreseeably in place to implement it. LandWatch urged FORA not to commit another $224,000 to complete the EIR.

Despite this, FORA's consultant is drafting responses to comments so that FORA certify the EIR for an HCP that no agency is willing to adopt. The consultants are not in fact preparing an amended HCP that could be adopted. For the reasons set out in our February 10, 2020 letter, the certified EIR will have no utility without an agreed and adopted HCP.

There are three compelling additional reasons that FORA should table consideration of the HCP EIR.

First, certification of the HCP EIR will consume even more of FORA's scarce resources. LAFCO has asked FORA to fund an additional $1 million for the litigation reserve, in part because certifying the HCP EIR will increase litigation risk:

> FORA is proceeding with preparation of its Habitat Conservation Plan Environmental Impact Report (HCP EIR) for future FORA Board consideration to certify the document in June 2020, which, in LAFCO's view, has high potential to generate litigation risk. In addition, FORA has not transferred its litigation role for pending litigation matters to a successor or successors.

(Kate McKenna, LAFCO, letter to FORA Board, May 5, 2020, p. 3 [emphasis added].)

Second, certification of the HCP EIR will increase litigation risk not just to FORA, but to FORA's member agencies.

> LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying an Environmental Impact Report (EIR) for a proposed Habitat Conservation Plan (HCP) in June. This action increases the legal risk for LAFCO and FORA member agencies.

(Id., p. 2 [emphasis added].)

Third, FORA does not have the time or bandwidth to complete the HCP EIR in light of its more pressing transition obligations. LAFCO's May 5, 2020 letter and its April 27, 2020 staff report outline just some of the critical tasks that remain, including:

- transferring assets, liabilities, and administrative responsibilities;
- distribution of remaining, unassigned funds;
- amending the Transition Plan;
- completing the Multi-Agency Transition Plan Implementing Agreement;
- completing the MCWD services agreement;
- resolving existing litigation where possible;
- assigning future litigation role and funding for existing and potential litigation;
- implementing Transition Plan tasks;
- identifying FORA lead agency projects;
- identifying FORA responsibilities for incomplete mitigation;
- assigning successor agencies for FORA lead agency projects;
- providing an opinion as to the ongoing force of Reuse Plan programs, policies, and mitigation and as to the post-dissolution status of numerous FORA agreements that have not been liquidated;
- resolving disputes with California Native Plant Society regarding road projects;
- resolving disputes with Keep Fort Ord Wild regarding incomplete mitigation;
- resolving disputes with Monterey Peninsula College regarding habitat funding;
- resolving disputes with the Carpenters Union regarding conflicts between the Transition Plan Implementing Agreement and the 2001 Implementing Agreements;
- resolving CalPERS liability funding;
- reaching an agreement with LAFCO and member agencies to fund post-dissolution litigation and administrative expenses.

FORA's Board will hold only four more meetings, and many of these items will require a second vote. FORA does not have the Board time to consider carefully whether to assume the costs and risks of certifying an unnecessary HCP EIR.

Finally, if the consultants' comment responses have any utility, that utility does not depend on certifying the Final EIR. Accordingly, we recommend that FORA forego the additional costs and risks of certification and instead simply make the draft documents and comment responses available to all agencies that may in the future seek to use the documents in connection with a different HCP.

Please, do what needs to be done -- what your staff and board have identified as mission critical – and avoid wasting time and money.

Thank you for your consideration.

Sincerely,

Michael D. DeLapa
Executive Director

**Michael D. DeLapa**
Executive Director
LandWatch Monterey County
execdir@landwatch.org

650.291.4991 m

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May 7, 2020

Supervisor Jane Parker, Chair
Fort Ord Reuse Authority (FORA) Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Dear Chair Parker and Board of Directors:

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Please, do what needs to be done -- what your staff and board have identified as mission critical – and avoid wasting time and money.

Thank you for your consideration.

Sincerely,

Michael D. DeLapa
Executive Director

# Monterey/Santa Cruz Counties Building & Construction Trades Council

11445 Commercial Parkway, Castroville, CA 95012
Phone 831.884-8413
Email: Office@MSCBCTC.com
www.MSCBCTC.com
FPPC No. 850048

John Papa
President

Mark Van Den Heuvel
Vice President

Rod Smalley
Treasurer

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Manuel Pinheiro
CEO

Boilermakers #549
Bricklayers #3
Carpenters #505
Carpenters #605
Carpet, Lin. & Soft Tile #12
Elevator Constructors #8
Glaziers #1621
IBEW #234
Insulators & Asbestos #16
Ironworkers #155
Ironworkers #377
Laborers #270
Millwrights #102
OP & CMIA #300
Operating Engineers #3
Painters & Tapers #272
Plumbers & Steamfitters #62
Roofers & Waterproofers #95
Sheet Metal Workers #104
Sprinklerfitters #669
Teamsters #890
UA #355

May 6, 2020

To – FORA Board and Monterey County LAFCO

**Comments on the Transition Plan and Implementation Agreements**

The Monterey/Santa Cruz Counties Building and Construction Trades Council ("BTC") has been involved with the Ft Ord Base Closure, the formation of FORA, and the FORA process since the report of 1990 announcing there would be a BRAC Commission to determine whether base closures were needed and which bases were to be closed or downsized within the U.S. Military.

As a labor organization, we have fought to implement and preserve meaningful labor protections on redevelopment projects at former Fort Ord, which have been supported by the good people on the Fort Ord Reuse Authority ("FORA") Board. Unfortunately, now at the eleventh hour before FORA sunsets, we are seeing serious attempts to eliminate those important protections, to the great detriment of the Monterey Bay community. Such attempts should be roundly rejected.

In particular, the new draft "Transition Plan Implementation Agreement" ("TPIA") contains language attempting to terminate the landmark 2001 Implementation Agreements, which would otherwise remain as part of the deed restrictions and covenants attached to former Fort Ord property, to which the jurisdictions would otherwise remain bound. This is unfortunate, to say the least. What took a community years to accomplish through its representatives, public participation, and hard work is being flanked by those who were only recently involved, do not know the history of the effort, or fail to understand the significance of FORA's Master Resolution. This along with a great amount of

existing contracts are not honored and the deed restrictions and covenants are flouted following the transition.

The Authority Act states, in section **67700:**

*(a) This title shall become inoperative when the board determines that 80 percent of the territory of Fort Ord that is designated for development or reuse in the plan prepared pursuant to this title has been developed or reused in a manner consistent with the plan adopted or revised pursuant to Section 67675, or June 30, 2020, whichever occurs first, and on January 1, 2021, this title is repealed.*

*(b) (1) The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred.*

*(2)The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations. The transition plan shall be approved only by a majority vote of the board.*

Although FORA is to become inoperative the plain language indicates that the State intended for its Reuse Plan to survive:

**67657**(c) *The Legislature finds and declares that the planning, financing, and management of the reuse of Fort Ord is a matter of statewide importance.....*

**67655**(d) *"Fort Ord Reuse Plan" means <u>the plan for the future use of Fort Ord</u> adopted pursuant to Section 67675.*

**67675.8** (b) (1) *Notwithstanding any provision of law allowing any city or county to approve development projects, no local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is not consistent with the plan as adopted or revised pursuant to this title.*

**67678** (f) *Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675 (the reuse plan).*

We contend that many of FORA's contracts and agreements will survive along with their conditions and requirements. We note, that the Monterey County LAFCO is charged with ensuring that all contracts and agreements entered into by the Authority (FORA) are honored and properly administered.

The Settlement Agreement between the Sierra Club and FORA in 1998, Monterey Superior Court case number 112014 (see attached) is one such agreement. The Settlement Agreement is the genesis for Exhibit F – Deed Restrictions and Covenants in the current Implementation Agreements between FORA and the Jurisdictions. The Settlement Agreement requires recording of the Deed Restrictions and Covenants which shall run with the land. It also requires all future development to be consistent with the Reuse Plan, the programs and policies of FORA, and the Master Resolution. The Settlement Agreement sets a legal format as to how future development is to proceed on the lands conveyed by FORA within its jurisdiction, even after FORA itself sunsets.

We also note the Memorandum of Agreement (see attached) between the Army and FORA for sale of property, which reads in part as follows:

***Article 2. - No Cost Economic Development Conveyance***
*2.01 F. The Authority shall prepare and submit to the Government the Authority's annual statement and an annual financial statement certified by an independent*

*Certified Public Accountant that identifies the use of the Sale or Lease Proceeds ("Accounting System"). The Authority shall enter into individual agreements with each Authority member jurisdiction ("Implementation Agreements") to insure that Authority member jurisdictions shall use the Accounting System* ***and otherwise comply with this Agreement for all matters related to the Property.***

We concur with the letter of April 3, 2020 from Carpenters Local 605 in Monterey County. Clear language affirming the obligations the local jurisdictions and agencies undertook when accepting former Fort Ord land, as reflected in the irrevocable deed restrictions and covenants, must be a part of any Transition Plan or TPIA. They cannot be ignored or omitted.

FORA Board members and LAFCO -- our greater community spent decades investing in a Plan, with our time, money, and human resources to benefit our area. Now, at the eleventh hour, the FORA Board is being thrust into making a decision to meet a deadline. We cannot let the maneuvering of a last minute decision cancel all that we worked so hard for and obligated ourselves to. On behalf of the community members we represent, the Building Trades Council respectfully asks that you stand strong, and reject any effort to invalidate the 2001 Implementation Agreements as to land already conveyed, which is subject to lawful, binding, and continuing deed covenants. Uphold the Reuse Plan, and the Programs and Policies of FORA including the Master Resolution. Reject language superseding the current Implementation Agreements in their totality. Honor those agreements or risk violation of the Public Trust and opening the doors to needless and draining litigation.

We very much appreciate your serious consideration of our concerns.

Best regards,

Manuel Pinheiro, CEO
Monterey/Santa Cruz Counties Building and Construction Trades Council

**To: Local Agency Formation Commission of Monterey County**

**From: Carpenters Local 605**

**Date: May 7, 2020**

**Overview**:

On May 6, 2020, the FORA Administrative and Executive Committees considered an updated Transition Plan Implementation Agreement (TPIA) that could come before the FORA board at its next meeting on May 14, 2020. The draft TPIA states that it will supersede the 2001 Implementation Agreements between FORA and the local jurisdictions.[i] For the reasons that follow, this language should be removed in order for both FORA and LAFCO to fulfill their legislative mandates.

The 2001 Implementation Agreements include commitments to meet community benefit obligations adopted under the FORA Master Resolution, including environmental protections, affordable housing quotas, and payment of prevailing wages on first generation construction work. The Implementation Agreements were incorporated as part of the deed restrictions and covenants that attached to the transfer of former base land. They continue to run with the land and apply to any development of former base property. **Crucially, the sunsetting of FORA does not terminate these deed restrictions and covenants.** According to our research and the analysis of our legal counsel, they will remain in place after FORA sunsets unless there is affirmative action to terminate them.

The Carpenters are concerned, however, that FORA Board members may not fully understand the legal efficacy of the deed restrictions and covenants, and may approve new agreements that potentially would supersede the Authority's prior commitments.

During the FORA Board meeting on April 17, 2020, on several occasions, FORA board members either expressed confusion about whether the terms of the deed covenants could be maintained or stated that they had been told by FORA's staff and consultant Kendall Flint that the agreements were no longer in effect after FORA sunsets. FORA chair Jane Parker stated, "I thought we had determined these agreements don't survive FORA so I don't see why we don't just state this." FORA consultant Kendall Flint affirmed this interpretation at several points during the board discussion of the FORA transition plan. Notably, Ms. Flint answered the Directors' questions about the legal efficacy of the Implementation Agreements even when questions were put directly to their counsel rather than to her.[ii] Ms. Flint is not an attorney, as far as we are aware.

If the Directors are incorrect in their current understanding that with or without action on their part, the 2001 Implementation Agreements will become moot on July 1, 2020, then the Board's ability to exercise its oversight authority has been wrongly impeded during these last few crucial months, as it considers whether to approve TPIAs that affirmatively terminate the community benefit obligations adopted in the Fort Ord Reuse Authority Master Resolution.

This decision will have significant impacts on residents of Monterey County and should be made by a Board that is fully apprised of its options. FORA's counsel should be required to provide, in writing, the legal analysis underpinning the view propounded by FORA's outside consultant, and this should be done well in advance of any Board vote to allow time for the public to examine and, if necessary, challenge the analysis.

**Deed Restrictions and Covenants:**

The community obligations adopted under the FORA Master Resolution were incorporated into Implementation Agreements signed by the Authority and local jurisdictions and agencies. These agreements in turn were recorded in deed restrictions and covenants that attached to land the Authority transferred from former Fort Ord to local jurisdictions for reuse.[iii]

As one example, in 2005, FORA executed a quitclaim deed that granted the Redevelopment Agency of the City of Seaside roughly 61.98 acres of land for $1 plus considerations.[iv] The deed covenants included:

> *Grantee covenants for itself, its successors, and assigns and every successor in interest to the Property, or any part thereof, that Grantee and such successors and assigns shall comply with all provisions of the Implementation Agreement as if the Grantee were the referenced jurisdiction under the Implementation Agreement and specifically agrees to comply with the Deed Restrictions and Covenants as set forth in Exhibit F of the Implementation Agreement as if such Deed Restrictions and Covenants were separately recorded prior to the recordation of this deed.*[v]

The deed references an Implementation Agreement between FORA and the City of Seaside (on behalf of its Redevelopment Agency) entered into on May 31, 2001, which sets forth specific terms and conditions upon which the Grantee agrees to accept title. The Agreement states in Section 2, Compliance with Other Agreements:

> *The Jurisdiction shall use or transfer any Jurisdiction-Owned Jurisdiction Property in compliance with the EDC Agreement, the Base Reuse Plan, the Settlement Agreement in Sierra Club v. FORA, Monterey Superior Court Case Number 112014, executed November 30, 1998,* ***the Fort Ord Master Resolution*** *and the deed restrictions, attached as Exhibit F.*[vi] *[Emphasis added]*

The Implementation Agreement stipulates that in disposing of Jurisdiction-Owned Jurisdiction Property (essentially, land transferred from FORA to a local jurisdiction), the local jurisdiction must include in the disposition documents a promise by the transferee and its successors-in-interest that they will comply with deed restrictions in Exhibit F.[vii]

Exhibit F to the Implementation Agreement states:

> *Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan,* ***the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution****, and other applicable general plan and land use ordinances and regulations of the local government entity on which the property is located and compliance with CEQA. [Emphasis added]*

And:

> *This Deed Restriction and Covenants shall remain in full force and effect immediately and shall be deemed to have such full force and effect upon the first conveyance of the property from FORA, and is hereby deemed and agreed to be a covenant running with the land binding all of the Owner's assigns or successors in interest.*[viii]

Exhibit F to the Implementation Agreement states, in no uncertain terms, that the deed restriction and covenants agreed upon in the transfer of the land, including the Master Resolution, are **irrevocable** and run with the land *(for the full text of Exhibit F, see below).*

**EXHIBIT F**
**DEED RESTRICTION AND COVENANTS**

The Deed Restriction and Covenants is made this _____ day of ___________, 200__, by the Fort Ord Reuse Authority ("Owner"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances.

A. Owner is the owner of the real property described in Exhibit A to this Deed Restriction and Covenants ("the property"), by virtue of a conveyance of the property from the United States Government and/or the United States Department of the Army to Owner in accordance with state and federal law, the Fort Ord base Reuse Plan ("the Reuse Plan"), and the policies and programs of the Fort Ord Reuse Authority.
B. Future development of the property is governed under the provisions of the Reuse Plan and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located consistent with the Reuse Plan.
C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.
D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services and by other residual effects of a former military reservation, including unexploded ordinance.
E. It is the desire and intention of Owner, concurrently with its acceptance of the conveyance of the property, to recognize and acknowledge the existence of these development constraints on the property and to give due notice of the same to the public and any future purchaser of the property.
F. It is the intention of the Owner that this Deed Restriction and Covenants is irrevocable and shall constitute enforceable restrictions on the property.

NOW, THEREFORE, Owner hereby irrevocably covenants that the property subject to this Deed Restriction and Covenants is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following restrictions and covenants on the use and enjoyment of the property, to be attached to and become a part of the deed to the property. The Owner, for itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

4. This Deed Restriction and Covenants shall remain in full force and effect immediately and shall be deemed to have such full force and effect upon the first conveyance of the property from FORA, and is hereby deemed and agreed to be a covenant running with the land binding all of the Owner's assigns or successors in interest.
5. If any provision of this Deed Restriction and Covenants is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.
6. Owner agrees to record this Deed Restriction and Covenants as soon as possible after the date of execution.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above-written.

***Owner***

---

[i] Fort Ord Reuse Authority Administrative Committee Packet, May 6, 2020, ps 22-23. https://fora.org/Admin/2020/Packet/050620AdminPacket.pdf?utm_source=FORA+Master+Email+List&utm_campaign=1ac7ebf08d-EMAIL_CAMPAIGN_TWAF_COPY_01&utm_medium=email&utm_term=0_a433a9736b-1ac7ebf08d-199792473

[ii] Special Meeting of the Fort Ord Reuse Authority Board of Directors, April 17, 2020. Discussion concerning the Transition Plan update and 2001 implementation agreements begins at roughly 1:04:00. Video Link: https://www.youtube.com/watch?v=1qZ2NlhLFJw&feature=youtu.be

[iii] Quitclaim Deed for Parcels E 15.1, L 19.2, L 19.3, L 19.4 on the Former Fort Ord, Monterey, California, #2005108853, p.16
Implementation Agreement Between Fort Ord Reuse Authority and the City of Seaside, entered into on May 31, 2001, ps 3 an 4 and Exhibit F, p. 19 and 20.

[iv] Quitclaim Deed for Parcels E 15.1, L 19.2, L 19.3, L 19.4 on the Former Fort Ord, Monterey, California, # 2005108853, p.2.

[v] Ibid, p.2

[vi] Implementation Agreement Between Fort Ord Reuse Authority and the City of Seaside, entered into on May 31, 2001, ps 3-4.

[vii] Ibid, p. 6

[viii] Ibid, Exhibit F, p. 19 and 20.

# IMPLEMENTATION AGREEMENT

THIS IMPLEMENTATION AGREEMENT (this "Agreement") is made as of May 31, 2001, between the Fort Ord Reuse Authority ("FORA") and the City of Seaside (the "Jurisdiction") with reference to the following facts:

RECITALS:

A. FORA is a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the "Army") to the governing local jurisdictions or their designee(s).

B. FORA will acquire portions of the former Fort Ord from the Army, under an Economic Development Conveyance Memorandum of Agreement (hereinafter the "EDC Agreement") between FORA and the Army and dated June 20, 2000. FORA has delivered to the Jurisdiction a complete copy of the EDC Agreement, which includes a conveyance schedule and terms for property transfers.

C. The Jurisdiction intends to acquire former Fort Ord property conveyed to FORA under the EDC Agreement. Such property is described in the attached Exhibit A (the "Jurisdiction Property").

D. FORA, as a regional agency, adopted a Base Reuse Plan in June 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the "Basewide Mitigation Measures"), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the "Basewide Costs").

E. FORA is obligated by the California Environmental Quality Act, the Base Reuse Plan and the Authority Act (as defined in Section 1 below) to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA intends to arrange a financing mechanism to apply to all former Fort Ord properties.

F. In the Base Reuse Plan, FORA identified land sale and lease (or "property based") revenues, redevelopment revenues, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.

G. The Authority Act requires all revenues received by FORA and/or the Jurisdiction for the Jurisdiction Property to be divided equally between FORA and the Jurisdiction.

H. In September 1999, Congress passed Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65), otherwise known as No-Cost Economic Development Conveyance Legislation. This legislation allows the Army to transfer property to FORA under the EDC Agreement without monetary consideration. Under this legislation any Sale or Lease Proceeds [as defined in Section 1r below] must be applied to the economic development of the former Fort Ord.

I. FORA and the Jurisdiction (the "Parties") wish to enter into this Agreement to achieve orderly reuse of the Jurisdiction Property and to meet the mutual financial obligations of the Parties.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Parties agree as follows:

Section 1. Definitions.

The following capitalized and underscored terms have the following meanings when used in this agreement:

a. Agreement means this Implementation Agreement.

b. Army means the United States Army.

c. Authority Act means, collectively, SB 899 and AB 1600 adopted in 1994, as codified at (i) Government Code Title 7.85, Chapters 1 through 7, commencing with Section 67650, and (ii) selected provisions of the California Redevelopment Law, including Health and Safety Code Sections 33492 et seq. and 33492.70 et seq.

d. Base Closure Act means Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, No-Cost EDC Legislation - Public Law 106-65.

e. Base Reuse Plan means the Fort Ord Base Reuse Plan and its accompanying environmental impact report adopted and certified by the FORA Board in June 1997 to guide the reuse of the former Fort Ord, all as amended from time to time.

f. Basewide Costs means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan.

g. Basewide Mitigation Measures means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water line and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1(f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.

h. Direct Leasing Expenses means those leasing expenses actually and reasonably incurred by the Jurisdiction or FORA for purposes of Section 4(d) in the leasing out and operating, as landlord, of a portion of the Jurisdiction-Owned Jurisdiction Property. Such expenses include (without limitation): utilities; administrative overhead; police and fire protection services, to the extent that the need for such services is created by the leasing; insurance; depreciation of capital investments in the leased property in accordance with reasonable depreciation schedules; reasonable contributions to maintenance and replacement reserves; and maintenance.

i. Direct Sale Expenses means those expenses actually and reasonably incurred by the Jurisdiction or FORA for purposes of Section 4(e) in selling Jurisdiction-Owned Jurisdiction Property to a *bona fide* purchaser for value.

j. EDC Agreement means the Economic Development Conveyance Memorandum of Agreement between FORA and the Army by which FORA acquires portions of the former Fort Ord from the Army, including Jurisdiction Property.

k. Fair and Equitable Share means a financial contribution to FORA to be applied toward a Jurisdiction's share of Basewide Mitigation Measures and Basewide Costs. The Fair and Equitable Share is calculated in connection with a particular parcel of Jurisdiction Property, consisting of the sum of the following:

(A) Fifty percent (50%) of the Sale or Lease Proceeds of the particular parcel of Jurisdiction-Owned Jurisdiction Property at the time of its permanent use, to be paid to FORA in accordance with Section 5(g) below; plus

(B) (i) FORA's allocation of tax increment revenue, under California Health and Safety Code Sections 33492.70 and following, generated by the particular parcel of Jurisdiction Property, if there is in effect with respect to the particular parcel of Jurisdiction Property a redevelopment plan adopted in accordance with California Health and Safety Code Sections 33492.70; or

(ii) Such alternate revenue as may be provided under any mechanism established in accordance with Section 10c below, if such a redevelopment plan is not in effect; plus payment of FORA fees and assessments as may be required for the development of the particular parcel of Jurisdiction Property in accordance with FORA's fee policy levied by the Jurisdiction in accordance with Section 6(a) below, subject to reduction on account of Jurisdiction performance and implementation of Basewide Mitigation Measures and Basewide Costs in accordance with Section 6(d) below. FORA's fee policy is attached to this Agreement as Exhibit C.

l. Fort Ord Master Resolution means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended. As of the date of this Agreement, the Fort Ord Master Resolution consists of the Resolution adopted March 14, 1997, and amended November 20, 1998, February 19, 1999, and January 21, 2000.

m. FORA means the Fort Ord Reuse Authority.

n. Jurisdiction means the City of Seaside.

o. Interim Use means the Jurisdiction's use of transferred property prior to the Jurisdiction's establishment of a permanent use.

p. Jurisdiction-Owned Jurisdiction Property means all of the Jurisdiction Property that the Jurisdiction acquires through FORA.

q. Jurisdiction Property means the portions of the former Fort Ord located within the jurisdictional limits of the Jurisdiction.

r. Sale or Lease Proceeds means the consideration received by the Jurisdiction or FORA for purposes of Sections 4d and 4e when leasing or selling a portion of the Jurisdiction-Owned Jurisdiction Property, minus any Direct Leasing Expenses and/or Direct Sale Expenses.

s. Transaction Worksheet means a report from the Jurisdiction to FORA (in the form attached as Exhibit B) on the details of a proposed lease, sale, or equivalent use transaction involving Jurisdiction-Owned Jurisdiction Property. The Jurisdiction agrees to deliver a Transaction Worksheet to FORA before consummating any lease, sale, or equivalent use transaction, as more particularly described in Section 5 below. An equivalent use transaction is a transaction, other than a lease or sale transaction, through which the Jurisdiction permits third party use of Jurisdiction-Owned Jurisdiction Property in a manner that confers direct or indirect financial benefit to the Jurisdiction.

Section 2. Compliance With Other Agreements.

a. The Jurisdiction shall use or transfer any Jurisdiction-Owned Jurisdiction Property in compliance with the EDC Agreement, the Base Reuse Plan, the Settlement Agreement in Sierra Club v.

FORA, Monterey County Superior Court Case Number 112014, executed November 30, 1998, the Fort Ord Master Resolution, and the deed restrictions, attached to this Agreement as Exhibit F.

b. FORA and the Jurisdiction shall spend Sale or Lease Proceeds in compliance with the EDC Agreement.

c. At least annually, commencing with the year in which the Army transfers a particular parcel of Jurisdiction Property to FORA and ending on the seventh (7th) anniversary of such transfer, the Jurisdiction shall submit to FORA a written report of the Jurisdiction's uses of all Sale or Lease Proceeds received by the Jurisdiction in connection with such parcel of Jurisdiction-Owned Jurisdiction Property and not shared with FORA under Section 5 (i) below. The Jurisdiction shall have forty-five (45) days from the anniversary of each transfer to prepare and submit its report to FORA.

d. Any liability caused by either Party's failure to spend Sale or Lease Proceeds in compliance with the EDC Agreement shall be borne by the Party who causes such liability.

Section 3. Compliance with Water/Waste Water Allocations.

a. In using, developing, or approving development on the Jurisdiction Property, the Jurisdiction shall not commit (or cause the commitment of) water resources that are unavailable to the Jurisdiction (whether through FORA allocations or otherwise).

b. FORA's current water allocations are set forth in the attached Exhibit E. On June 13, 1997, FORA adopted its Development and Resource Management Plan. Section 3.11.54 of that plan includes procedures for adjusting water allocations. That reallocation procedure is subject to FORA's general operating procedures in Chapter 8 of the FORA Master Resolution. Any such reallocation shall be reviewed by the FORA Water/Wastewater Oversight Committee prior to consideration by the FORA Board.

c. If FORA allocates wastewater discharge capacity rights to the Jurisdiction, any reallocation to these capacity rights shall be made in the same manner as provided in this section for adjustments to water allocations.

Section 4. Acquisition from Army; Disposition to Jurisdiction.

a. FORA shall diligently seek to acquire the portions of Jurisdiction Property from the Army identified within the EDC Agreement.

b. Concurrently with FORA's acquisition of Jurisdiction Property from the Army (or at such other times as the Parties may agree in writing), FORA shall transfer such property to the Jurisdiction, and the Jurisdiction shall accept such property. Upon transfer, such property shall become Jurisdiction-Owned Jurisdiction Property. Each transfer shall include the deed restrictions and notices found in Exhibit F.

c. FORA shall keep the Jurisdiction informed about any conveyance of Jurisdiction Property from the Army to FORA. FORA shall also prepare documents needed to convey property from FORA to the Jurisdiction.

d. If FORA decides to lease portions of the Jurisdiction Property to a third party after transfer from the Army to FORA, but prior to its transfer to the Jurisdiction, FORA agrees to obtain the Jurisdiction's prior written consent to such lease. FORA also agrees to distribute to the Jurisdiction fifty percent (50%) of the Sale or Lease Proceeds as defined in Section 1r.

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Stewart Title

CRKATHLEEN
10/13/2005
8:00:00

DOCUMENT: 2005108853

Titles: 1/ Pages: 222

Fees...
Taxes...
Other...
AMT PAID

**WHEN RECORDED MAIL TO:**

City of Seaside
440 Harcourt Ave.
Seaside, CA 93955
Attn: Ray Corpuz

**THIS SPACE FOR RECORDER'S USE ONLY**

Documentary Transfer Tax $ EXEMPT
_____Computed on Full Value of Property conveyed
_____or Computed on Full Value less liens and
encumbrances remaining at time of sale.
As declared by the Undersigned.

**TITLE(S) OF DOCUMENT**

**QUITCLAIM DEED FOR PARCELS E 15.1, L 19.2, L 19.3, L 19.4 ON THE FORMER FORT ORD, MONTEREY, CALIFORNIA**
**(Fort Ord Reuse Authority of the Redevelopment Agency of the City of Seaside)**

1
2 WHEN RECORDED RETURN TO:
3
4 KUTAK ROCK LLP
5 1101 CONNECTICUT AVENUE, NW
6 WASHINGTON, DC 20036
7 ATTN: GEORGE SCHLOSSBERG
8
9
10
11 RECORDER STAMP
12

13 **QUITCLAIM DEED FOR PARCELS E15.1, L19.2, L19.3, L19.4 ON THE**
14 **FORMER FORT ORD, MONTEREY, CALIFORNIA**
15 **(Fort Ord Reuse Authority to the Redevelopment Agency of the City of Seaside)**
16
17 THIS QUITCLAIM DEED ("Deed") is made as of the 30th day of March, 2005,
18 among the **FORT ORD REUSE AUTHORITY (the "Grantor")**, created under Title 7.85 of
19 the California Government Code, Chapters 1 through 7, inclusive, commencing with Section
20 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division
21 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with
22 Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, and
23 recognized as the Local Redevelopment Authority for the former Fort Ord Army Base,
24 California, by the Office of Economic Adjustment on behalf of the Secretary of Defense, and the
25 **REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE (the "Grantee")**.
26
27 **WHEREAS**, The United States of America ("Government") was the owner of certain real
28 property, improvements and other rights appurtenant thereto together with all personal property
29 thereon, located on the former Fort Ord, Monterey County, California, which was utilized as a
30 military installation;
31
32 **WHEREAS**, The military installation at Fort Ord was closed pursuant to and in
33 accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public
34 Law 101-510; 10 U.S.C. § 2687 note);
35
36 **WHEREAS**, section 2859 of the National Defense Authorization Act for Fiscal Year
37 1996, (Public Law 104-106), authorized the Government to sell portions of the former Fort Ord
38 to the **Grantor** as surplus property;
39
40 **WHEREAS**, the **Grantor** and the Government entered into the Memorandum of
41 Agreement Between the United States of America Acting By and Through the Secretary of the
42 Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of
43 Portions of the former Fort Ord, California, dated the 20th day of June 2000, ("MOA") and MOA

1 Amendment No. 1, dated the 23rd day of October 2001, which sets forth the specific terms and
2 conditions of the sale of portions of the former Fort Ord located in Monterey County, California;
3
4 **WHEREAS**, pursuant to the MOA, the Government conveyed the property known as
5 Parcels E15.1, L19.2, L19.3, and L19.4 on the former Fort Ord by quitclaim deed to the **Grantor**
6 on April 21, 2004 ("Government Deed");
7
8 **WHEREAS**, the **Grantor** and the City of Seaside, on behalf of **Grantee**, have entered into
9 the Implementation Agreement dated May 31, 2001 and recorded in the Office of the Monterey
10 County Recorder as Document: 2001088381 ("Implementation Agreement"), which sets forth the
11 specific terms and conditions upon which the **Grantor** agrees to convey and the **Grantee** agrees to
12 accept title to Parcels E15.1, L19.2, L19.3, and L19.4.
13
14
15 WITNESSETH
16
17 The **Grantor**, for and in consideration of the sum of one dollar ($1.00) plus other good and
18 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, releases
19 and quitclaims to the **Grantee**, its successors and assigns forever, all such interest, right, title,
20 and claim as the **Grantor** has in and to Parcels E15.1 (49.18 acres); L19.2 (3.9 acres); L19.3 (1.5
21 acres); and L19.4 (7.4 acres); totaling approximately 61.98 acres (the "Property") and buildings,
22 more particularly described in Exhibits "A" and "B", attached hereto and made a part hereof and
23 including the following:
24
25 A. All buildings, facilities, roadways, and other improvements, including the storm
26 drainage systems and the telephone system infrastructure, and any other improvements thereon,
27
28 B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and
29 privileges not otherwise excluded herein, and
30
31 C. All hereditaments and tenements therein and reversions, remainders, issues, profits,
32 privileges and other rights belonging or related thereto.
33
34 **Grantee** covenants for itself, its successors, and assigns and every successor in interest to
35 the Property, or any part thereof, that **Grantee** and such successors and assigns shall comply with
36 all provisions of the Implementation Agreement as if the **Grantee** were the referenced
37 Jurisdiction under the Implementation Agreement and specifically agrees to comply with the
38 Deed Restrictions and Covenants set forth in Exhibit F of the Implementation Agreement as if
39 such Deed Restrictions and Covenants were separately recorded prior to the recordation of this
40 Deed.
41

1 The Government Deed conveying the Property to the **Grantor** was recorded prior to the
2 recordation of this Deed. In its transfer of the Property to the **Grantor**, the Government provided
3 certain information regarding the environmental condition of the Property. The **Grantor** has no
4 knowledge regarding the accuracy or adequacy of such information.
5
6 The italicized information below is copied verbatim (except as discussed below) from the
7 Government deed conveying the Property to the **Grantor**. The **Grantee** hereby acknowledges
8 and assumes all responsibilities with regard to the Property placed upon the **Grantor** under the
9 terms of the aforesaid Government deed to **Grantor** and **Grantor** grants to **Grantee** all benefits
10 with regard to the Property under the terms of the aforesaid Government deed. Within the
11 italicized information only, the term "Grantor" shall mean the Government, and the term
12 "Grantee" shall mean the Fort Ord Reuse Authority ("FORA"); to avoid confusion, the words
13 "the Government" have been added in parenthesis after the word "Grantor", and "FORA" has
14 been added in parenthesis after the word "Grantee".
15
16 ***II. EXCLUSIONS AND RESERVATIONS***
17
18 *This conveyance is made subject to the following* ***EXCLUSIONS*** *and*
19 ***RESERVATIONS:***
20
21 *A. The Property is taken by the Grantee ("FORA") subject to any and all*
22 *valid and existing recorded outstanding liens, leases, easements, and any other*
23 *encumbrances made for the purpose of roads, streets, utility systems, rights-of-*
24 *way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and*
25 *agreements of record, and any unrecorded leases, easements and any other*
26 *encumbrances made for the purpose of roads, streets, utility systems, rights-of-*
27 *way, pipelines, and/or covenants, exceptions, interests, reservations and*
28 *agreements of record between Grantor ("the Government") and other*
29 *government entities.*
30
31 *B. The Grantor ("the Government") reserves a perpetual unassignable*
32 *right to enter the Property for the specific purpose of treating or removing any*
33 *unexploded shells, mines, bombs, or other such devices deposited or caused by the*
34 *Grantor ("the Government").*
35
36 *C. Access to USA Media Group, LLC, or its successor in interest, to TV*
37 *cable lines is reserved until expiration of its existing franchise agreement,*
38 *November 19, 2005.*
39
40 *D. The reserved rights and easements set forth in this section are subject*
41 *to the following terms and conditions:*

*(1) to comply with all applicable Federal law and lawful existing regulations;*

*(2) to allow the occupancy and use by the Grantee ("FORA"), its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Grantor ("the Government"), so long as such occupancy and use does not compromise the ability of the Grantor ("the Government") to use the easements for their intended purposes, as set forth herein;*

*(3) that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;*

*(4) that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;*

*(5) that, unless otherwise provided, no interest granted shall give the Grantor ("the Government") any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and*

*(6) to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the then owner of the Property.*

*E. Grantor ("the Government") reserves mineral rights that Grantor ("the Government") owns with the right of surface entry in a manner that does not unreasonably interfere with Grantee's ("FORA") development and quiet enjoyment of the Property.*

***TO HAVE AND TO HOLD** the Property unto the Grantee ("FORA") and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the Grantee ("FORA"), its successors and assigns, in perpetuity, as follows:*

1 *III. "AS IS, WHERE IS"*
2
3 *The Property is conveyed in an "As Is, Where Is" condition without any*
4 *representation, warranty or guarantee, except as required pursuant to applicable*
5 *law or as otherwise stated herein, by the Grantor ("the Government") as to*
6 *quantity, quality, title, character, condition, size, or kind, or that the same is in*
7 *condition or fit to be used for the purpose for which intended, and no claim for*
8 *allowance or deduction upon such grounds will be considered. There is no*
9 *obligation on the part of the Grantor ("the Government") to make any*
10 *alterations, repairs, or additions, and said Grantor ("the Government") shall not*
11 *be liable for any latent or patent defects in the Property. This section shall not*
12 *affect the Grantor's ("the Government") responsibility under* ***CERCLA***
13 ***COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION*** *herein.*
14
15 *IV. FEDERAL FACILITIES AGREEMENT ("FFA")*
16
17 *The Grantor ("the Government") acknowledges that former Fort Ord has*
18 *been identified as a National Priority List ("NPL") Site under CERCLA. The*
19 *Grantee ("FORA") acknowledges that the Grantor ("the Government") has*
20 *provided it with a copy of the FFA entered into by the EPA Region IX, the State of*
21 *California, and the United States Department of the Army, effective on February*
22 *1990, and will provide the Grantee ("FORA") with a copy of any amendments*
23 *thereto. The Grantee ("FORA") agrees that should any conflict arise between the*
24 *terms of the FFA as they presently exist or may be amended, and the provisions of*
25 *this Property transfer, the terms of the FFA will take precedence. The Grantee*
26 *("FORA") further agrees that notwithstanding any other provisions of the*
27 *Property transfer, the Grantor ("the Government") assumes no liability to the*
28 *Grantee ("FORA"), should implementation of the FFA interfere with their use of*
29 *the Property. The Grantee ("FORA"), or any subsequent transferee, shall have*
30 *no claim on account of any such interference against the Grantor ("the*
31 *Government") or any officer, agent, employee or contractor thereof. Grantor*
32 *("the Government") agrees to use its best efforts to ensure that any amendment to*
33 *the FFA will not be inconsistent or incompatible with the Grantee's ("FORA")*
34 *use of the Property.*
35
36 *V. NOTICE OF HAZARDOUS SUBSTANCE STORAGE*
37
38 *The following is applicable to Parcel E15.1:*
39

1 *The Grantor ("the Government") hereby notifies the Grantee ("FORA")*
2 *of the former storage release, or disposal of hazardous substances on the*
3 *Property. The items typically stored on the Property are listed in Table 4 of the*
4 *Finding of Suitability for Transfer ("FOST") attached hereto and made a part*
5 *hereof as Exhibit "C". The information regarding this storage indicates that it*
6 *was conducted in a manner that would not pose a threat to human health and the*
7 *environment. This notice is given pursuant to CERCLA and no additional action*
8 *is necessary under CERCLA to protect human health and the environment.*
9
10 ***VI. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL***
11 ***REMEDIATION***
12
13 *A. Pursuant to Section 120(h) of CERCLA, 42 U.S.C. § 9601, et seq., the*
14 *FOST, and an environmental baseline survey ("EBS") known as Community*
15 *Environmental Response Facilitation Act report, which is referenced in the FOST,*
16 *sets forth the environmental condition of the Property. The FOST sets forth the*
17 *basis for the Grantor's ("the Government") determination that the Property is*
18 *suitable for transfer. The Grantee ("FORA") is hereby made aware of the*
19 *notifications contained in the EBS and the FOST. The Grantee ("FORA") has*
20 *inspected the Property and accepts the physical condition and current level of*
21 *known environmental hazards on the Property and deems the Property to be safe*
22 *for the Grantee's ("FORA") intended use. The Grantor ("the Government")*
23 *represents that the Property is environmentally suitable for transfer to Grantee*
24 *("FORA") for the purposes identified in the Final Fort Ord Base Reuse Plan*
25 *dated December 12, 1994, as amended on June 13, 1997, as approved by the Fort*
26 *Ord Reuse Authority. If, after conveyance of the Property to Grantee ("FORA"),*
27 *there is an actual or threatened release of a hazardous substance on the Property,*
28 *or in the event that a hazardous substance is discovered on the Property after the*
29 *date of the conveyance, whether or not such substance was set forth in the*
30 *technical environmental reports, including the EBS, Grantee ("FORA") or its*
31 *successor or assigns shall be responsible for such release or newly discovered*
32 *substance unless such release or such newly discovered substance was due to*
33 *Grantor's ("the Government") activities, ownership, use, presence on, or*
34 *occupation of the Property, or the activities of Grantor's ("the Government")*
35 *contractors and/or agents. Grantee ("FORA"), its successors and assigns, as*
36 *consideration for the conveyance, agrees to release Grantor ("the Government")*
37 *from any liability or responsibility for any claims arising out of or in any way*
38 *predicated on release of any hazardous substance on the Property occurring after*
39 *the conveyance, where such hazardous substance was placed on the property by*
40 *the Grantee ("FORA"), or its agents or contractors, after the conveyance to the*
41 *Grantee ("FORA").*

e. The Jurisdiction may direct FORA to transfer property directly to a third party rather than to the Jurisdiction. If the Jurisdiction so elects, the distribution of Sale or Lease Proceeds as defined in Section 1r shall apply to the direct transfer.

Section 5. Subsequent Jurisdiction Disposition.

a. The Jurisdiction may dispose of Jurisdiction-Owned Jurisdiction Property in its discretion, consistent with this Section 5 and Section 6.

b. The Jurisdiction and FORA shall use a Transaction Worksheet, in substantially the form attached to this Agreement as Exhibit B, to document the estimated and final distribution of Sales or Lease Proceeds as more particularly described in the remaining subsections of this Section 5.

c. Forty-five (45) days prior to the Jurisdiction's anticipated final approval of any leasehold or fee transfer of a portion of Jurisdiction-Owned Jurisdiction Property, the Jurisdiction shall deliver to FORA a completed Transaction Worksheet that includes all relevant information about the proposed transfer as requested in the form attached to this Agreement as Exhibit B. FORA shall have the 45 days to review such Transaction Worksheet and informally resolve any issues it may have with the transaction. Within ten (10) business days after FORA requests substantiating documentation, the Jurisdiction shall deliver to FORA documents to support facts represented in the Transaction Worksheet. The Jurisdiction shall not approve any leasehold or fee transfer of a portion of Jurisdiction-Owned Jurisdiction Property until the earlier of (i) forty-five (45) days after delivering to FORA a Transaction Worksheet that includes all relevant information about the proposed transfer as requested in the form attached to this Agreement as Exhibit B, or (ii) thirty (30) days after FORA has confirmed in writing that the Transaction Worksheet is complete.

d. If FORA disagrees with the Transaction Worksheet, FORA shall provide the Jurisdiction with written notice of its objections, including specific objections and reasoning, at least three (3) business days before the meeting scheduled for the Jurisdiction's governing body to consider approval of the transfer. If the Jurisdiction has complied with the requirements of Section 5c and approves the transfer at the noticed meeting in the manner described in the Transaction Worksheet delivered to FORA, then FORA shall be deemed to have waived its right to protest the transfer unless FORA provided the Jurisdiction written notice of its protest, and the grounds on which it is based, at least three (3) business days prior to the noticed meeting. FORA shall be restricted to those objections contained in the written notice of objections.

Notwithstanding the foregoing provisions, the Parties acknowledge that the transfer process will benefit from early and detailed discussions between FORA and the Jurisdiction.

e. In disposing of Jurisdiction-Owned Jurisdiction Property, the Jurisdiction may require any level or type of consideration permitted by state law. In determining the lawful consideration, the Jurisdiction shall obtain and rely on an appraisal by an appraiser. Alternately, if the Jurisdiction-Owned Jurisdiction Property is within a redevelopment project area, then the Jurisdiction may rely upon an economic consultant's opinion of residual land value consistent in scope and approach with that employed by certified appraisers. In determining the property's fair market value, the appraiser or economic consultant shall be instructed to:

(i) assume that the highest and best use is (A) that use designated in the Base Reuse Plan, if the Jurisdiction authorizes development at such highest and best use, or (B) a less intensive use, consistent with the Base Reuse Plan, designated by the Jurisdiction under Chapter 8 of the Fort Ord Master Resolution, if applicable, and if the Jurisdiction restricts development to such less

intensive use, or (C) any less intensive land use, consistent with the Base Reuse Plan, required by the Jurisdiction in the applicable proposed transfer agreement; and

(ii) consider the effect of any development obligations and use restrictions in the proposed transfer agreement; and

(iii) consider the effect of customary local development fees and exactions, the FORA fees and exactions described in Section 6, and any special taxes or assessments that may be levied in accordance with Section 7.

Each Transaction Worksheet submitted to FORA must include a description of the property's fair market value established under the foregoing assumptions and considerations. If an appraiser determined such value, then the Transaction Worksheet must include the appraisal instructions. When and if the Jurisdiction-Owned Jurisdiction Property is within a redevelopment project area and value was determined by an economic consultant's opinion of residual land value, then the Transaction Worksheet must include a complete description of assumptions and method used to arrive at the value. Finally, the Jurisdiction shall document its analysis of each transaction in a reasonable manner, including staff reports and evidence offered to support governing body findings.

f. In disposing of Jurisdiction-Owned Jurisdiction Property, the Jurisdiction shall include in the disposition documentation a promise by the transferee, and its successors in interest, to comply with Section 7 of this Agreement and the deed restrictions in Exhibit F.

g. When the Jurisdiction receives Sale or Lease Proceeds, the Jurisdiction shall promptly deliver to FORA (i) fifty percent (50%) of the amount of such Sale or Lease Proceeds, and (ii) an update to any applicable Transaction Worksheet. The updated Transaction Worksheet, if any, shall identify the property for which the Sale or Lease Proceeds have been received and specify any Direct Sale Expenses or Direct Leasing Expenses that have been incurred or recalculated for the property since the delivery of the original Transaction Worksheet. The Jurisdiction shall deliver to FORA reasonable documentation to substantiate the information in a Transaction Worksheet update within ten (10) business days after receiving a request from FORA for such documentation.

h. The Sale or Lease Proceeds held by either the Jurisdiction or FORA after payments have been made to FORA under Section 5 (g) may be used by the Parties in any manner consistent with the EDC Agreement and the Base Reuse Plan. [See Authority Act GC 67678) and Base Closure Act.]. The Parties acknowledge that the EDC Agreement requires Sale or Lease Proceeds to be spent only on Economic Development Uses, as defined in the EDC Agreement.

i. Within forty-five (45) days of the end of the last preceding calendar year, the Jurisdiction shall file with FORA a report for the preceding year that summarizes (i) the transactions disclosed in Transaction Worksheets during the year, (ii) Sale or Lease Proceeds received during the year (including the calculation of Direct Sale Expenses and Direct Leasing Expenses), (iii) payments made to FORA during the year, and (iv) expenditures that the Jurisdiction made during the year with its retained Sale or Lease Proceeds. Within ten (10) days after a request by FORA for substantiating documentation, the Jurisdiction shall deliver to FORA reasonable documentation to substantiate the information in the annual report.

Section 6. <u>Basewide Mitigation Measures and Basewide Costs</u>.

a. The Jurisdiction acknowledges that the Authority Act [at Government Code Section 67679(e)] prohibits the Jurisdiction from issuing a building permit for development projects on the Jurisdiction Property unless and until FORA has certified that all development fees that it has levied with

respect to the development project have been paid or otherwise satisfied. To assist FORA in levying development fees, and to the extent legally permissible, the Jurisdiction shall levy, on development projects on the Jurisdiction Property, development fees and assessments in accordance with FORA's adopted fee policy in effect from time to time, to be payable by the project applicant directly to FORA. FORA shall pay all Jurisdiction costs, including reasonable attorneys' fees, incurred defending any legal challenge to the Jurisdiction's authority to levy such development fees and assessments for the benefit of FORA. Nothing in the preceding sentence obligates the Jurisdiction to defend such legal challenge.

b. The Jurisdiction shall not approve a sale, lease, or equivalent use of Jurisdiction-Owned Jurisdiction Property until the Fair and Equitable Share for the particular parcel has been identified in a Transaction Worksheet submitted to FORA under Section 5c.

c. The Jurisdiction shall not complete an approved sale, lease, or equivalent use transaction with respect to a particular parcel of Jurisdiction-Owned Jurisdiction Property until (1) the method of payment of the Fair and Equitable Share for such property has either been established in accordance with the definition of Fair and Equitable Share; (2) some type of financing mechanism is in place to meet the Jurisdiction's Fair and Equitable Share for such property; or (3) otherwise arranged with FORA in writing. This requirement, which supplements other provisions of this Agreement providing for payment to FORA of the Fair and Equitable Share for such parcel, ensures that FORA will receive the tax increment (or equivalent) component of the Fair and Equitable Share for such parcel.

d. The Jurisdiction may fund (or cause the funding of) certain elements of Basewide Mitigation Measures or Basewide Costs from its own resources, grants, or from developers contracting with the Jurisdiction for reuse of the Jurisdiction Property. For each dollar of such Jurisdiction (or Jurisdiction-caused) funding that is not part of the Fair and Equitable Share, there shall be a one (1) dollar reduction in the Fair and Equitable Share that the Jurisdiction would otherwise owe to FORA with respect to any portion of the Jurisdiction Property. The Jurisdiction shall determine when and how the reduction in the Jurisdiction's Fair and Equitable Share will be accounted for. The Jurisdiction shall report on such reductions, including the source of the reduction and how the reduction will be accounted for, in each annual report submitted to FORA pursuant to Section 5(i) above. In addition, any Transaction Worksheet for a transaction in which such a reduction will be accounted for must describe the applicable reduction. Notwithstanding the foregoing, the Jurisdiction shall not fund (or cause the funding of) any elements of Basewide Mitigation Measures or Basewide Costs without first notifying FORA of the Jurisdiction's intention to do so. If FORA reasonably disapproves such funding it shall provide written notice of that disapproval to the Jurisdiction within fifteen (15) days after receipt of the Jurisdiction's notice of intention. Upon receipt of such notice of disapproval from FORA, the Jurisdiction shall not proceed with the proposed funding of Basewide Mitigation Measures or Basewide Costs.

e. When FORA has levied (or the Jurisdiction has levied for the benefit of FORA) development fees or assessments on development projects that constitute Interim Uses, the development fees or assessments paid to FORA in connection with such Interim Uses shall be credited toward development fees or assessments levied on subsequent development projects involving permanent uses of the same property. Under no circumstances is FORA obligated to refund development fees or assessments where a permanent use triggers development fees or assessments that are less than those for a prior Interim Use of the same property.

f. If FORA is unable, despite reasonable good faith efforts, to pay Basewide Costs and undertake Basewide Mitigation Measures, then upon a request from FORA, the Jurisdiction shall initiate a process to consider its own financing mechanisms to raise revenues to contribute, toward Basewide Costs and the cost of undertaking Basewide Mitigation Measures. Nothing in this Section 6(f) requires the Jurisdiction to adopt any specific financing mechanism or contribute any funds to alleviate FORA's funding insufficiency.

g. FORA shall pay Basewide Costs and undertake Basewide Mitigation Measures for the benefit of the Jurisdiction Property to the same extent that FORA pays Basewide Costs and undertakes Basewide Mitigation Measures for the benefit of other property. FORA may pay Basewide Costs and undertake Basewide Mitigation Measures in accordance with a FORA-approved schedule of improvements and mitigations, which may be modified from time to time. FORA shall, however, afford the Jurisdiction an opportunity to participate in FORA's approval of a schedule of improvements and mitigations. During any 5-year period, starting with the first FORA approval of a schedule of improvements and mitigations, the benefit to the Jurisdiction Property must be equitable and proportional to the benefit to other property benefited by Basewide Mitigation Measures.

Section 7. Formation of Financing District.

In consideration for the transfer of Property from FORA to the Jurisdiction, the Jurisdiction agrees, for itself, its tenants, and successors, in interest, not to interfere with, protest, or challenge the imposition and formation of any land-based financing district allowed by Government Code 67679(d) (a "Financing District"), which is reasonably necessary to implement the Basewide Costs and Basewide Mitigation Measures. The Jurisdiction further agrees to provide all reasonable assistance to FORA in such formation, including, if required, voting affirmatively for the formation of any such Financing District. A Financing District is □reasonably necessary to implement the Basewide Costs and Basewide Mitigation Measures if:

(i) FORA's revenues from all other sources are reasonably expected to be inadequate to the Basewide Costs and Basewide Mitigation Measures consistent with FORA's policy adopted in January 1999 and previously approved in the Base Reuse Plan in 1997. (That cost is estimated to be as much as Two Hundred Twenty-Five Million Dollars [$225,000,000]); and

(ii) the special taxes or assessments from such Financing District are limited to the gap between the revenues needed by FORA for such purposes and the revenues otherwise reasonably available to FORA for such purposes.

The Jurisdiction and such tenants, successors in interest or assigns may, however, protest the rate or apportionment of special taxes or assessments over property within such a Financing District if such special taxes or assessments are greater than those identified in Exhibit C (as indexed for inflation). The Jurisdiction shall include this obligation in all conveyance instruments of the Jurisdiction-Owned Jurisdiction Property.

Section 8. Unique Situations.

The attached Exhibit D identifies applicable unique situations for which the allocation of Sale or Lease Proceeds or developer assessments vary from the provisions of sections 5 or 6.

Section 9. Development and Service Costs.

As between the Parties, the Jurisdiction shall be responsible for all development costs, except Basewide Mitigation Measures and Basewide Costs. Jurisdiction costs include, without limitation: non-basewide construction, property clearance, site preparation, project-specific demolition costs, and other project-specific development costs. Nothing in this Agreement requires the Jurisdiction to undertake any development of the Jurisdiction Property or to be responsible for payment of any taxes or fees that would normally be paid by developers or property owners.

Section 10. Redevelopment.

a. The Jurisdiction shall initiate a process to consider the adoption of a redevelopment plan for a redevelopment area consisting of some or all of the Jurisdiction Property. Nothing in this Agreement requires the Jurisdiction to adopt a redevelopment plan.

b. The Jurisdiction may assign its rights (and delegate its duties) under this Agreement to the redevelopment agency for the Jurisdictions jurisdictional boundaries.

c. If a redevelopment plan, adopted in accordance with California Health and Safety Code Sections 33492.70 and following, is not in effect with respect to all of the Jurisdiction Property within two (2) years after the date of this Agreement, or if a redevelopment plan, adopted in accordance with California Health and Safety Code Sections 33492 and following, is not in effect with respect to a particular parcel of the Jurisdiction Property by the time the Jurisdiction seeks to complete a sale, lease, or equivalent use transaction for such parcel, then the Parties shall negotiate in good faith to identify a financing mechanism that would result in FORA receiving revenue equal to the tax increment revenue that FORA would have received from the Jurisdiction Property (or applicable parcel). If the Parties fail to agree on the calculation of Fair and Equitable Share for a specific project within Jurisdiction Property, FORA may find a project inconsistent with the Base Reuse Plan, as provided in the Authority Act. Nothing in this Section 10© obligates the Jurisdiction to implement any particular financing mechanism.

Section 11. Ordnance.

The Parties shall cooperate with the Army's investigation, characterization, and remediation of potential ordnance and explosives impediments to allow the reuse of the Jurisdiction Property as contemplated by the Base Reuse Plan.

Section 12. Public Information.

FORA and the Jurisdiction will cooperate in providing appropriate public information in open meetings as necessary or requested by the Jurisdiction.

Section 13. Audit.

Each Party may, at its own expense, audit those records of the other Party that directly relate to performance under this Agreement. Each Party has an obligation to make all such records available, within a reasonable period of time, to the auditing Party.

Section 14. Notice.

Formal notices, demands, and communications between the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt, to the principal office of the Parties as follows:

Jurisdiction:

City of Seaside
ATTN: Dan Keen,
City Manager
440 Harcourt Avenue
Seaside, CA 93955

FORA:

Fort Ord Reuse Authority
ATTN: Michael A. Houlemard, Jr.,
Executive Officer
100 12th Street, Bldg. 2880
Marina, California 93933

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section 14. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 15. Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 16. Severability.

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

Section 17. Dispute Resolution.

a. Dispute resolution procedure. If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 17.

b. Duty to meet and confer. The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party all the information in its possession that is relevant to the dispute, so that both Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, either Party may demand mediation.

c. Mediation. If meeting and conferring do not resolve the dispute, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the parties may mutually agree upon. Either Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the Parties.

d. Arbitration. If the dispute has not been resolved by mediation, and if both Parties wish to pursue arbitration, then the dispute shall be submitted to arbitration. The decision of the arbitrator or arbitrators shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either Party files an action in court.

(i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias.

Any potential arbitrator must be a qualified professional with expertise in the area that is the subject of the dispute, unless the Parties otherwise agree.

(ii) The Parties shall jointly select a single arbitrator.

(iii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Sections 1280 and following, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, the requirements of Section 17(d)(iv) shall apply.

(iv) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

e. Attorney's Fees and Costs. Should the dispute of the Parties not be resolved by negotiation or mediation, and in the event it should become necessary for either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

f. Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the Parties to pursue arbitration, then either Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

g. Prevailing Party. For purposes of Sections 17(e) and (f), "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

Section 18. Entire Agreement.

This Agreement contains the entire agreement of the Parties with respect to Jurisdiction Property. No other statement or representation by any employee, officer, or agent of either Party, which is not contained in this Agreement, shall be binding or valid.

Section 19. Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 20. Modifications.

This Agreement shall not be modified except by written instrument executed by and between the Parties.

Section 21. Interpretation.

This Agreement has been negotiated by and between the representatives of both Parties, both Parties being knowledgeable in the subject matter of this Agreement, and each Party had the opportunity to have the Agreement reviewed and drafted by their respective legal counsel. Accordingly, any rule of law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.

Section 22. Relationship of the Parties.

Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties unless specifically provided herein.

Section 23. Waiver.

No waiver of any right or obligation of either Party hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by either Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

Section 24. Further Assurances.

The Parties shall make, execute, and deliver such other documents, and shall undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Agreement.

Section 25. Days.

As used in this Agreement, the term "days" means calendar days unless otherwise specified.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Agreement by signing below:

Fort Ord Reuse Authority,
A Public Corporation of the State of California

By: [signature]

Its: Executive Officer

City of Seaside,
A Political Subdivision of the State of California

By: [signature]

Its: Mayor

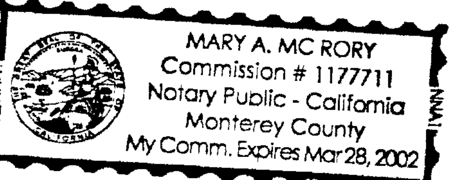
**NOTARY ACKNOWLEDGMENT**

STATE OF CALIFORNIA, COUNTY OF MONTEREY

On May 22, 2001, before me Mary A. McRory Notary Public, personally appeared Jerry C. Smith personally known to me ~~or proved on the basis of satisfactory evidence~~ to be the person whose name is subscribed on the accompanying instrument and acknowledged to me that he/she executed the instrument in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

Mary A. McRory




*03/02/01 final draft*
*City of Seaside.042301*

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Monterey

On May 31, 2001 (Date) before me, Linda L. Stiehl, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Michael A. Houlemard, Jr. (Name(s) of Signer(s)),

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LINDA L. STIEHL
Commission # 1151057
Notary Public - California
Orange County
My Comm. Expires Aug 11, 2001

WITNESS my hand and official seal.

Linda L. Stiehl
Signature of Notary Public

## *OPTIONAL*

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Implementation Agreement

Document Date: May 31, 2001 Number of Pages: ~~30~~ 28

Signer(s) Other Than Named Above: Jerry C. Smith

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael A. Houlemard, Jr.

- ☐ Individual
- ☐ Corporate Officer
  Title(s): ____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☒ Other: Executive Officer of Fort Ord Reuse Auth

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: ____

- ☐ Individual
- ☐ Corporate Officer
  Title(s): ____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: ____

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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## EXHIBIT A
## DESCRIPTION OF THE JURISDICTION PROPERTY

A. FORA proposes to transfer the following real property to the Jurisdiction under this Agreement: all COE parcels that designate the Jurisdiction (City of Seaside) as the final recipient.[1]

B. All personal property located on the above-described real property, including, but not limited to, all buildings, facilities, roadways, and other infrastructure, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon (including all replacements or additions thereto between the date of this Agreement and the date of conveyance of the Property to FORA).

[1] See Exhibit A, Attachment 1, for the FORA Parcels Using COE Parcel Numbers map with attached COE Description of Properties previously described as Exhibit "A" of the Memorandum of Agreement Between the Department of the Army and the Fort Ord Reuse Authority dated June 20, 2000.

EXHIBIT B
Transaction Detail Report – Form
FORT ORD REUSE AUTHORITY

| **TRANSACTION #** | **JURISDICTION:** |
|---|---|
| Seller/Lessor:<br>Address:<br><br>Phone:<br>Fax: | Buyer/Lessee:<br>Address:<br><br>Phone:<br>Fax: |

**Escrow Company:**

**Title Company:**

**Property Location:**

**Parcel #:** **Size:**

**Valuation Company/Firm:** **Date of Valuation:**

**Valuation Instructions/Specifics:**
**Demolition Required: No ☐ Yes ☐ $__________ Cost**
**Instructions:**________________________________________

**Value:**

**Proposed Uses of Property:**

**Interim Use (Lease): Yes ☐ No ☐ Description:**

| **Costs of Sale/Lease:** | **Estimated** | **Final** | **Date** |
|---|---|---|---|
| 1. Fees (Recording) | | | |
| 2. Administrative Costs | | | |
| 3. Title Report | | | |
| 4. Subdivision Map and Surveys | | | |
| 5. Site Improvements | | | |
| 6. Title Insurance | | | |
| 7. Brokers Fees | | | |
| 8. Off-Site Improvements | | | |
| 9. Taxes | | | |
| 10. Special Conditions | | | |
| 11. Leasing Expenses | | | |
| 12. Special Enhancements | | | |
| 13. Other Items (Attach Supplemental as needed) | | | |

| FORT ORD REUSE AUTHORITY | [JURISDICTION] |
|---|---|
| ____________________ | ____________________ |

EXHIBIT C

***Basewide Development Fee/Assessments***

| | |
|---|---|
| New Residential | $29,600 per unit |
| Preston Lease | $0 |
| Preston Sale | $8,900 per unit |
| Other Existing Housing | $8,900 per unit |
| New Retail | $80,000 per acre |
| New Industrial/Business office | $3,880 per acre |
| Hotel/Motel | $6,600 per room |
| Park/Recreation | $-0- |

Interim rental fees from Interim Use as defined in Section 1(o) and described in Section 6(e) of this Agreement.

# EXHIBIT D

## UNIQUE SITUATIONS WITH UNIQUE ALLOCATIONS OF SALE OR LEASE PROCEEDS

PRESTON PARK HOUSING: The three hundred fifty-four (354) units of housing within Preston Park shall be administered as provided in this Agreement, subject to the following additional provisions:

1. The Fort Ord Reuse Authority (FORA) and the City of Marina (Marina) agree to abide by the action taken by FORA Board in December 1999 to apply the net revenues from the leasing of the Preston Park Housing Complex to capital projects and related costs at the former Fort Ord. In addition, FORA and Marina agree that the extension of the Preston Park Lease Agreement as approved by the FORA Board and as attached hereto will govern the expanded area of leasing as may be amended from time to time and as permitted through the term of the lease amendment. FORA and Marina also agree that all revenues from the leasing of the Preston Park Housing Complex shall be in accordance with section 5(g) of this Implementation Agreement. If Marina, at its discretion, at some point in the future, elects to sell a portion or all of the Preston Park Housing Parcels, the proceeds will be distributed and the assessment of the property shall be in accordance with any other transaction covered by this agreement.

   The sublease with Mid-Peninsula Housing Corporation shall remain in effect for its term, as extended, and the provisions of the lease to FORA shall apply to the administration of the housing. In March 2000, FORA extended the lease with the U.S. Army for five additional years, with a one-year option to extend. The one-year option is available only if FORA is unable to recover its construction/rehabilitation costs during the five-year extension period.

2. Charges, including those paid to support Marina Public Safety services, may be taken and applied by the City in a manner consistent with the practices and policies, which have applied heretofore in the administration of the sublease and its implementing measures, for the term of the sublease and any extension thereto.

3. The action allocating Preston Park revenues to projects, as taken by the FORA Board of Directors in December 1999, shall continue to apply and the amount of net revenues allocated from the lease of the Preston Park Housing recommended by the Marina City Council and approved by the FORA Board shall continue to be allocated to capital projects and related costs at the former Fort Ord. Clarifications of the approved allocation list shall be made by joint action with a recommendation from the Marina City Council and approval by the FORA Board of Directors.

4. Upon recommendation from the Marina City Council and approval by the FORA Board of Directors, the lease and sublease of Preston Park Housing may be extended for the support of the Department of Defense mission in the Monterey Bay area, to include units within Abrams Park Housing.

5. Any sale of Preston Park housing, or leasing beyond the terms described in this Exhibit, and the distribution of the proceeds there from, shall be in accordance with the provisions of this Agreement.

HAYES HOUSING:
In consideration for the City of Seaside's agreement to undertake the basewide costs associated with building removal at the Hayes Park Project, the development fees for the Hayes Park developer will be reduced by $10,000 per dwelling unit removed. It is anticipated that this provision will be formally enacted by separate agreement between FORA and Seaside at a future date. To the extent such agreement modifies this general provision, it supersedes this section.

EXHIBIT E

**WATER RESERVATIONS AND ALLOCATIONS (Current Year)**

| **ENTITY** | | **FORT ORD REUSE PLAN ALLOCATION In Acre Feet per Year (AFY)** |
|---|---|---|
| ORD MILITARY COMMUNITY (Reservation) | | 1729 |
| CSUMB | | 1035 |
| UC MBEST | | 230 |
| COUNTY | | 560 |
| COUNTY/STATE PARKS | | 45 |
| DEL REY OAKS | | 75 |
| MONTEREY | | 65 |
| MARINA (SPHERE) | | 10 |
| SEASIDE | | 710 |
| MARINA | | 1175 |
| TOTAL ALLOCATIONS | | 5634 |
| | Assumed Line Loss | 532 |
| | Reserve | 434 |
| Total | | 6600 |

## EXHIBIT F
## DEED RESTRICTION AND COVENANTS

The Deed Restriction and Covenants is made this _____ day of __________, 200__, by the Fort Ord Reuse Authority ("Owner"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances.

A. Owner is the owner of the real property described in Exhibit A to this Deed Restriction and Covenants ("the property"), by virtue of a conveyance of the property from the United States Government and/or the United States Department of the Army to Owner in accordance with state and federal law, the Fort Ord base Reuse Plan ("the Reuse Plan"), and the policies and programs of the Fort Ord Reuse Authority.
B. Future development of the property is governed under the provisions of the Reuse Plan and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located consistent with the Reuse Plan.
C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.
D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services and by other residual effects of a former military reservation, including unexploded ordinance.
E. It is the desire and intention of Owner, concurrently with its acceptance of the conveyance of the property, to recognize and acknowledge the existence of these development constraints on the property and to give due notice of the same to the public and any future purchaser of the property.
F. It is the intention of the Owner that this Deed Restriction and Covenants is irrevocable and shall constitute enforceable restrictions on the property.

NOW, THEREFORE, Owner hereby irrevocably covenants that the property subject to this Deed Restriction and Covenants is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following restrictions and covenants on the use and enjoyment of the property, to be attached to and become a part of the deed to the property. The Owner, for itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

3. ______________ (Left blank on purpose) ______________

4. This Deed Restriction and Covenants shall remain in full force and effect immediately and shall be deemed to have such full force and effect upon the first conveyance of the property from FORA, and is hereby deemed and agreed to be a covenant running with the land binding all of the Owner's assigns or successors in interest.
5. If any provision of this Deed Restriction and Covenants is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.
6. Owner agrees to record this Deed Restriction and Covenants as soon as possible after the date of execution.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above-written.

***Owner***

**NOTARY ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _______________, 2001, before me ___________________________, Notary Public personally appeared_____________________________ personally known to me or proved on the basis of satisfactory evidence to be the person whose name is subscribed on the accompanying instrument and acknowledged to me that he/she executed the instrument in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

EXHIBIT A
Attachment 1
Page 1 of 8

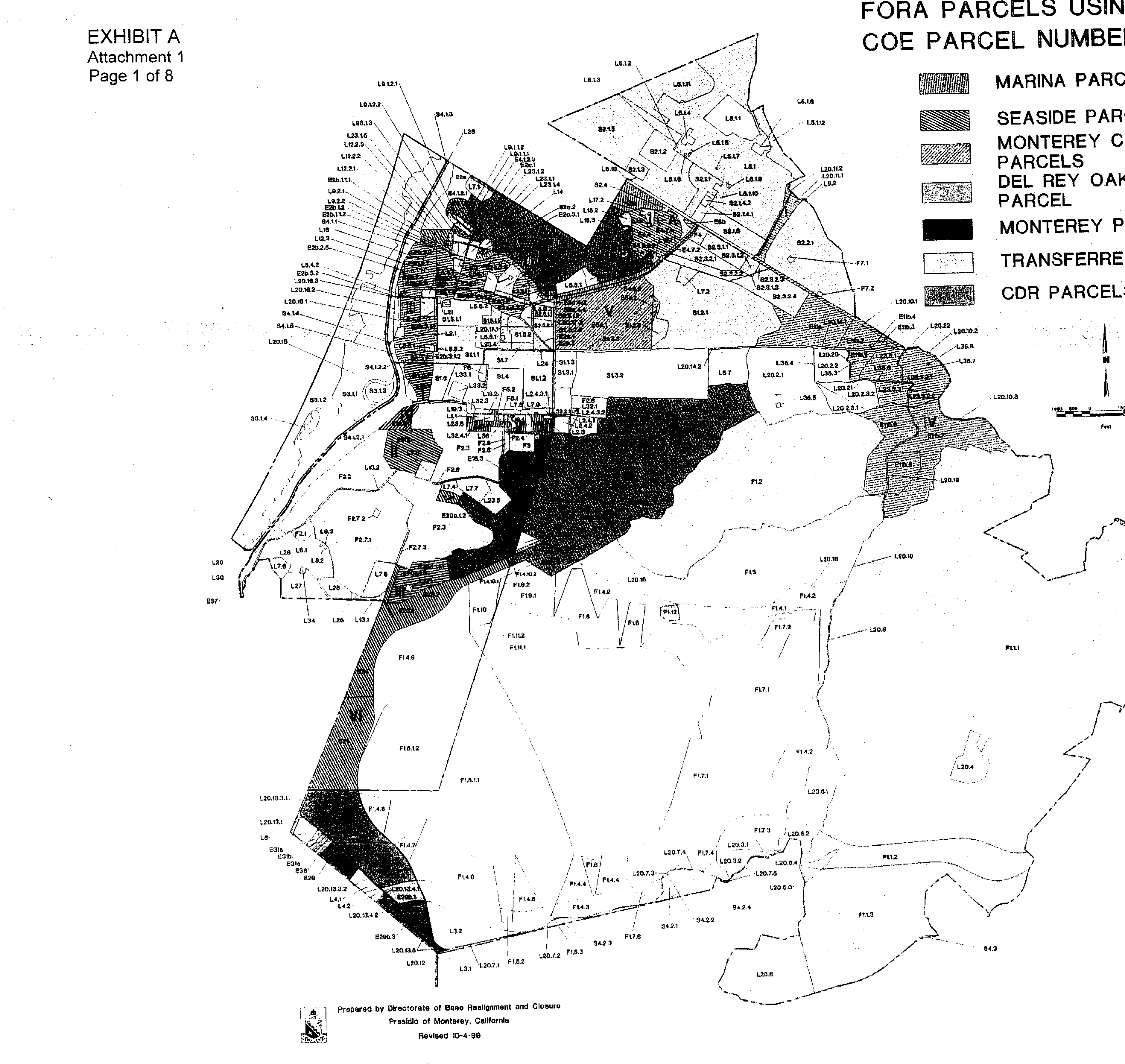

EXHIBIT "A"
DESCRIPTION OF PROPERTIES

Search Results: Click Back Button on Browser to Search Again.
Parcels Database last updated on: 10/4/99 1:54:42 PM
Total Acreage from Query is: 5188.101 Acres

| COE Number | Parcel Name | Acreage | Jurisdiction | Recipient | Transfer Status |
|---|---|---|---|---|---|
| E11a | Habitat management | 154.5 | County | EDC | in progress |
| E11b.1 | development / mixed use /ac limit | 24.7 | County | EDC | in progress |
| E11b.2 | development / mixed use-ac limit | 41.7 | County | EDC | in progress |
| E11b.3 | sewer treatment facility / development mix | 6.2 | County | EDC | in progress |
| E11b.4 | water tank 147 | 0.1 | County | EDC | in progress |
| E11b.6 | development / mixed use-aac limit | 129.4 | County | EDC | in progress |
| E11b.7 | development / mixed use-ac limit | 255.3 | County | EDC | in progress |
| E11b.8 | ASP / development mixed use | 58.8 | County | EDC | in progress |
| E15.1 | ROW / retail | 49.1 | Seaside | EDC | in progress |
| E15.2 | open space | 28.7 | Seaside | EDC | in progress |
| E18.1 | housing future | 73 | Seaside | EDC | in progress |
| E18.2.1 | ROW Gigling road | 4.9 | Seaside | EDC | in progress |
| E18.2.2 | ROW Gigling road | 0.1 | County | EDC | in progress |
| E18.3 | ROW Normandy/Parker Flats | 6.2 | Seaside | EDC | in progress |
| E18.4 | water tank | 2.2 | Seaside | EDC | in progress |
| E19a.1 | housing SFD low density | 265.7 | County | EDC | in progress |

| E19a.2 | housing SFD low density | 218.4 | County | EDC | in progress |
|---|---|---|---|---|---|
| E19a.3 | housing SFD low density | 209.3 | County | EDC | in progress |
| E20b | housing Stilwell | 101.8 | Seaside | EDC | in progress |
| E20c.1.1.1 | housing future | 75 | Seaside | EDC | in progress |
| E20c.1.1.2 | housing future | 113.9 | Seaside | EDC | in progress |
| E20c.1.2 | Cable TV area | 0.3 | Seaside | EDC | in progress |
| E20c.1.3 | ROW N/S road | 10.4 | Seaside | EDC | in progress |
| E20c.2.1 | housing future | 92.5 | Seaside | EDC | in progress |
| E20c.2.2 | water tanks/pumps | 2.3 | Seaside | EDC | in progress |
| E21a | housing SF low density | 138.7 | County | EDC | in progress |
| E21b.1 | housing SFD low density | 156.7 | County | EDC | in progress |
| E21b.2 | housing SFD low density | 134.2 | County | EDC | in progress |
| E21b.3 | housing SFD low density | 58.5 | County | EDC | in progress |
| E23.1 | ROW / retail | 47.5 | Seaside | EDC | in progress |
| E23.2 | ROW / housing future SFD med density | 72.6 | Seaside | EDC | in progress |
| E24 | ROW / housing future SFD med density | 197.1 | Seaside | EDC | in progress |
| E29 | BP/LI/O//R&D | 34.5 | County/Monterey | EDC | in progress |
| E29a | visitor center / bus park | 273.3 | Del Rey Oaks | EDC | in progress |
| E29b.1 | ROW future Hwy 68 / habitat | 34.5 | Del Rey Oaks | EDC | in progress |
| E29b.2 | ROW/BP/LI/O/R&D | 30.1 | County/Monterey | EDC | in progress |

EXHIBIT A
Attachment 1
Page 3 of 8

| E29b.3 | BP/LI/O/R&D | 28.4 | County/Monterey | EDC | in progress |
|---|---|---|---|---|---|
| E29e | ROW/future Hwy 68/OP/R&D | 9.5 | County/Monterey | EDC | in progress |
| E2a | development / mixed use | 63.7 | Marina | EDC | in progress |
| E2b.1.1.1 | development / mixed use | 24 | Marina | EDC | in progress |
| E2b.1.1.2 | developmemt / mixed use | 1.2 | Marina | EDC | in progress |
| E2b.1.2 | ROW road | 10.6 | Marina | EDC | in progress |
| E2b.1.3 | development / mixed use | 33.6 | Marina | EDC | in progress |
| E2b.1.4 | ROW road | 2.2 | Marina | EDC | in progress |
| E2b.1.5 | development / mixed use | 12.2 | Marina | EDC | in progress |
| E2b.2.1 | development / mixed use | 71.1 | Marina | EDC | in progress |
| E2b.2.2 | ROW road | 0.8 | Marina | EDC | in progress |
| E2b.2.3 | ROW road | 4.4 | Marina | EDC | in progress |
| E2b.2.4 | development / mixed use | 7.5 | Marina | EDC | in progress |
| E2b.2.5 | 2/12 Pump and Treat Facility | 1.5 | Marina | EDC | in progress |
| E2b.3.1.1 | development / mixed use | 108.6 | Marina | EDC | in progress |
| E2b.3.1.2 | CID Building | 1.6 | Marina | EDC | in progress |
| E2b.3.2 | ROW 8th St | 0.1 | Marina | EDC | in progress |
| E2c.1 | development / mixed use | 13.2 | Marina | EDC | in progress |
| E2c.2 | OU2 Pump and Treat Facility | 1.1 | Marina | EDC | in progress |
| E2c.3.1 | development / mixed use | 10 | Marina | EDC | in progress |

| E2c.3.2 | ROW road | 13.8 | Marina | EDC | in progress |
|---|---|---|---|---|---|
| E2c.3.3 | development / mixed use | 31.7 | Marina | EDC | in progress |
| E2c.4.1.1 | ROW road | 8.9 | Marina | EDC | in progress |
| E2c.4.1.2 | ROW road | 2.8 | Marina | EDC | in progress |
| E2c.4.2.1 | development / mixed use | 13.1 | Marina | EDC | in progress |
| E2c.4.2.2 | development / mixed use | 2.4 | Marina | EDC | in progress |
| E2c.4.3 | ROW road | 1.9 | Marina | EDC | in progress |
| E2c.4.4 | ROW road | 1.1 | Marina | EDC | in progress |
| E2d.1 | development / mixed use | 15.2 | Marina | EDC | in progress |
| E2d.2 | ROW | 5.4 | Marina | EDC | in progress |
| E2d.3 | development / mixed use | 46.6 | Marina | EDC | in progress |
| E2e.1 | ROW 6th Ave / 8th St Road | 6.1 | Marina | EDC | in progress |
| E2e.2 | ROW Intergarrison road | 0.2 | County | EDC | in progress |
| E31a | bus park /LI/O/R&D | 5.2 | Del Rey Oaks | EDC | in progress |
| E31b | bus park /LI/O/R&D | 3.1 | Del Rey Oaks | EDC | in progress |
| E31c | bus park /LI/O/R&D | 4.2 | Del Rey Oaks | EDC | in progress |
| E34 | ROW / housing future SFD med density | 94.7 | Seaside | EDC | in progress |
| E36 | bus park /LI/O/R&D | 6.3 | Del Rey Oaks | EDC | in progress |
| E4.1.1 | housing lower Patton | 154 | Marina | EDC | in progress |
| E4.1.2.1 | housing lower Patton | 13 | Marina | EDC | in progress |

EXHIBIT A
Attachment 1
Page 5 of 8

| E4.1.2.2 | housing lower Patton | 23 | Marina | EDC | not started |
|---|---|---|---|---|---|
| E4.1.2.3 | ROW Booker Str /lower Patton | 1 | Marina | EDC | not started |
| E4.2 | housing upper Patton | 64.2 | Marina | EDC | in progress |
| E4.3.1 | housing Abrams | 179.6 | Marina | EDC | in progress |
| E4.3.2.1 | housing Abrams | 43.6 | Marina | EDC | in progress |
| E4.3.2.2 | Housing Lexington Court | 7.9 | Marina | EDC | in progress |
| E4.4 | housing Preston | 98.9 | Marina | EDC | in progress |
| E4.5 | water treatment facility | 2.9 | Marina | EDC | in progress |
| E4.6.1 | ROW middle Imjin road | 25 | Marina | EDC | in progress |
| E4.6.2 | ROW Imjin road | 17.3 | County | EDC | in progress |
| E4.7.1 | ROW NE Imjin road | 5 | Marina | EDC | in progress |
| E4.7.2 | ROW Imjin road | 3.1 | County | EDC | in progress |
| E5a | development / mixed use | 45.7 | Marina | EDC | in progress |
| E5b | development / mixed use | 3.2 | Marina | EDC | in progress |
| E8a.1 | Landfill, 75 acre development, HMP | 304.1 | County | EDC | in progress |
| E8a.2 | Landfill carrot, Univ med density residential | 4 | County | EDC | in progress |
| L20.10.1 | ROW / north Reservation road | 26.2 | County | EDC | in progress |
| L20.10.2 | ROW / north Reservation road | 5.2 | County | EDC | in progress |
| L20.10.3 | ROW / north Reservation road | 2.2 | County | EDC | in progress |
| L20.11.1 | ROW / Blanco road | 31.2 | County | EDC | in progress |

| L20.11.2 | ROW Blanco road | 7.7 | Marina | EDC | in progress |
|---|---|---|---|---|---|
| L20.13.1 | ROW N/S road | 2 | Del Rey Oaks | EDC | in progress |
| L20.13.3.1 | ROW S Boundary / NS road | 7.9 | Del Rey Oaks | EDC | in progress |
| L20.13.3.2 | ROW / part S Boundary Road | 2.1 | County/Monterey | EDC | in progress |
| L20.13.4.1 | ROW S Boundary / future Hwy 68 | 0.8 | Del Rey Oaks | EDC | in progress |
| L20.13.4.2 | ROW / part S Boundary Road | 0.8 | County/Monterey | EDC | in progress |
| L20.13.5 | ROW / S Boundary / York road | 5.9 | County/Monterey | EDC | in progress |
| L20.14.1 | ROW / East Intergarrison road | 16.2 | County | EDC | in progress |
| L20.14.2 | ROW / Mid Intergarrison road | 3.2 | County | EDC | in progress |
| L20.18 | ROW / Eucalyptus road | 7.2 | County | EDC | in progress |
| L20.19 | ROW / North Barloy Canyon road | 10.3 | County | EDC | in progress |
| L20.20 | ROW / west Camp road | 2.3 | County | EDC | in progress |
| L20.21 | ROW / part Watkins Gate road | 4.4 | County | EDC | in progress |
| L20.22 | ROW / Chapel Hill road | 2.4 | County | EDC | in progress |
| L20.9 | ROW / south Reservation road | 18.9 | County | EDC | in progress |
| L23.3.1 | development mixed use-ac limit | 54.5 | County | EDC/MPC | not started |
| L23.3.2.1 | development mixed use-ac limit/historic district | 83.2 | County | EDC/MPC | not started |
| L23.3.2.2 | development mixed use-ac limit | 20.1 | County | EDC/MPC | not started |
| L23.3.3 | development mixed use-ac limit | 36.4 | County | EDC/MPC | not started |
| L31 | Esselen Parcel Surplus II | 11.7 | Seaside | EDC | in progress |

| L32.1 | public facilities/inst Surplus II | 2.9 | County | EDC | in progress |
|---|---|---|---|---|---|
| L32.4.1 | development mixed use / retail Surplus II | 52.4 | Seaside | EDC | in progress |
| L32.4.2 | ROW / development mixed use / Surplus II | 4.3 | County | EDC | in progress |

California Native Plant Society

Monterey Bay Chapter: PO Box 221303, Carmel, CA 93923

Jane Parker, Chair

May 13, 2020

Board of Directors, Fort Ord Reuse Authority

**SUBJECT**: Notice of Breach of Contract of the FORA-Del Rey Oaks-CNPS Contract and Request for Mediation; Failure by FORA to implement Mitigation 3 of the North-South Road/Highway 218 project.

Dear Chair Parker and Members of the Board of Directors:

The Monterey Bay Chapter of the California Native Plant Society (MB-CNPS) has repeatedly stated to FORA and the City of Del Rey Oaks that the MB-CNPS protests the current proposal to realign and widen South Boundary Road and create a new intersection at General Jim Moore Boulevard. The Environmental Assessment/Initial Study for this proposal was certified by FORA in 2010 – the EA/IS included language that noted CNPS had to agree to any road alignment that impacted Plant Reserve 1 North. MB-CNPS has repeatedly stated that Plant Reserve 1 North must be protected in its entirety and that we do not agree to the realignment of South Boundary Road as currently proposed and approved by FORA. We have not received a response to our May 1, 2020 letter to FORA and its attachments.

Regarding Item 7.a.3, on the May 14, 2020 Agenda for the FORA Board Meeting, Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements – the MB-CNPS **PROTESTS** the transfer of road improvement funding to the City of Del Rey Oaks without the unequivocal assurance that proposed road improvements **WILL NOT IMPACT IN ANY WAY the 4.58-ACRE PLANT RESERVE 1 NORTH.**

As stated in our May 1, 2020 letter to FORA from MB-CNPS attorney Molly Erickson:

"CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation."

"The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is 'adjacent to the Del Rey Oaks Resort' which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area.".

"... before FORA can proceed with its South Boundary Road project, FORA must successfully negotiate with CNPS to agree 'to relocate a currently identified habitat preserve area further south.' (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA's EA/IS."

**The Monterey Bay Chapter of CNPS firmly reiterates that it has not agreed to relocate the 4.58-acre habitat preserve area referred to as Plant Reserve 1 North.** FORA and Del Rey Oaks have agreed to the protection of the 4.58-acre parcel. Del Rey Oaks and FORA have destroyed or lost their records that document this contractual agreement and mitigation requirement, as evidenced by their responses to our recent California Public Records Act requests. MB-CNPS has retained these important records. As a separate and independent claim, MB-CNPS is concerned that FORA has failed to assign a successor lead agency for all projects for which FORA previously served as lead agency. This means there is no entity that has been assigned to implement project mitigations previously adopted by FORA. CEQA mandates that mitigations must be carried out. The failure to carry out mitigations is a violation of CEQA. In 1999, FORA approved the Environmental Assessment/Initial Study, adopted mitigations, and approved the North-South Road/Highway 218 Improvements project. FORA constructed the improvements project and FORA has not yet implemented all adopted mitigations, including Mitigation 3, which was in direct response to the comment letter MB-CNPS provided on the project EA/IS and for which there is a continuing need. The MB-CNPS EA/IS comment letter on the North/South Road/Highway 218 project led not only to the creation of Plant Reserve 1 North and the CNPS-FORA-DRO Agreement regarding its permanent protection, but also Mitigation 3.

MB-CNPS is concerned that FORA has made an anticipatory breach of the 1998 agreement between CNPS, FORA and DRO, as modified in 1999. MB-CNPS is concerned that FORA has, or intends to abandon, its responsibilities under the Agreement, specifically including but not limited to the term that "the [protected habitat] area will be protected from fragmentation and degradation in perpetuity," that no "road widening ... would affect the reserve," that "any future widening [that] would affect the habitat would require negotiation of this agreement," and that "no development would be permitted in the plant reserve."

MB-CNPS is concerned that FORA also has, or intends to, abandon its responsibilities under the EA/IS adopted in 2010 for the South Boundary Road project, specifically including but not limited to FORA's apparent new position that the MB-CNPS agreement with FORA and DRO is not a necessary condition precedent for the construction of the South Boundary Road realignment project. MB-CNPS is concerned that FORA's actions show that it has, or intends to, abandon its duties as to these matters as well as the unimplemented project mitigations described above, including Mitigation 3, when FORA is dissolved on June 30. MB-CNPS is concerned that FORA has not and will not assure an adequate assignment to an entity that will step into FORA's shoes and honor FORA'S agreement for the permanent protection of Plant Reserve 1 North, as well as the documented CEQA mitigations.

Accordingly, MB-CNPS puts FORA on notice of these important responsibilities and allegations and demands that FORA and Del Rey Oaks promptly enter into dispute resolution with MB-CNPS, with mediation to take place and be resolved no later than May 31, 2020, so in the event of an impasse MB-CNPS would have time to act before FORA is dissolved on June 30, 2020.

Please contact MB-CNPS Attorney Molly Erickson at (831) 373-1214 no later than May 15, 2020, in order to arrange mediation with a mutually acceptable mediator. FORA's failure to respond will be interpreted by MB-CNPS to be a refusal to mediate.

Sincerely,

Brian LeNeve

President

California Native Plant Society, Monterey Bay Chapter to Fort Ord Reuse Authority
May 13, 2020
Page 3

cc: Mayor Kerr, City Manager Pick, and members of the City Council, Del Rey Oaks

Kate McKenna, Executive Officer, LAFCO of Monterey County

Debbie Hale, Executive Director, Transportation Agency of Monterey County

Members of the Board of Directors, Monterey Bay Chapter - CNPS

---------- Forwarded message ---------
From: **Jack Stewart** <jdsjack2@aol.com>
Date: Wed, May 13, 2020 at 12:23 PM
Subject: My Comments on VIAC 5/14/2020 meeting
To: harry@fora.org <harry@fora.org>
Cc: CameronJ@co.monterey.ca.us <CameronJ@co.monterey.ca.us>

Harry,

I hope this comment(s) are viable, short and to the point. Please feel free to edit for errors or wordsmith. I have no ego!

Comment(s):

1. The VIAC strongly supports their continuance thus ensuring Veterans related issues and/or projects continue with meaningful advisory, and information capacity. Communication(s) within the Veterans community, Municipalities, State, Federal governments and the agency replacing FORA are paramount.

2. VIAC recommends the County provide administrative, logistical services to include housing for a VIAC employee under purview of the Military & Veterans Affairs Office. The County Military & Veterans Affairs Office has a recommended title and salary structure that VIAC supports.

3. Voting Membership for VIAC must consist of Veterans via appointment by the Replacement Agency members. It is expected that most current programs will be in place for at least 150 years. Ex-Official membership to be determined by the Replacement Agency.

4. VIAC will minimally, provide quarterly reports to the replacement agency.

5. Upon approval of the continuance, administrative factors will be authored under bylaws thereof.

A lasting legacy for our Veterans is in your grasp.

Jack Stewart