



FORT ORD REUSE AUTHORITY

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

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

REGULAR ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. THURSDAY, JANUARY 2, 2014

920 2nd Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

4. APPROVAL OF MEETING MINUTES

a. December 4, 2013 Administrative Committee Meeting Minutes

ACTION

5. PUBLIC COMMENT PERIOD:

Members of the public wishing to address the Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period for up to three minutes. Public comments on specific agenda items are heard under that item.

6. AGENDA REVIEW - JANUARY10, 2014 BOARD MEETING

INFORMATION/ACTION

7. OLD BUSINESS

a. Transportation Agency of Monterey County (TAMC) Multi-Modal
Transit Corridor Update

INFORMATION

b. Review 2010 Monterey County General Plan Consistency Determination

ACTION

c. Discuss Habitat Conservation Plan (HCP) Document Review Schedule

INFORMATION

8. ITEMS FROM MEMBERS

9. ADJOURNMENT

NEXT REGULAR ADMINISTRATIVE COMMITTEE MEETING: JANUARY 15, 2014

For information regarding items on this agenda or to request disability related accommodations please contact the Deputy Clerk 24 hrs. prior to the meeting. Agenda materials are available on the FORA website at www.fora.org.



FORT ORD REUSE AUTHORITY

ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES

8:25 a.m., Wednesday, December 4, 2013 | FORA Conference Room
920 2nd Avenue, Suite A, Marina CA 93933

1. CALL TO ORDER AND ROLL CALL

Chair Dawson called the meeting to order at 8:15 a.m. The following were present:

Carl Holm, County of Monterey*
Elizabeth Caraker, City of Monterey*
John Dunn, City of Seaside*
Layne Long, City of Marina*
Anya Spear, CSUMB
Vicki Nakamura, MPC
Graham Bice, UC MBEST

Patrick Breen, MCWD
Kathleen Lee, Sup. Potter's Office
Lyle Shurtleff, BRAC
Don Hofer, MCP
Bob Schaffer
Doug Yount
Chuck Lande, Marina Heights

FORA Staff:
Michael Houlemard
Steve Endsley
Jim Arnold
Lena Spilman
Crissy Maras
Jonathan Garcia
Josh Metz

* Voting Members

2. PLEDGE OF ALLEGIANCE

Graham Bice led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

None.

4. PUBLIC COMMENT PERIOD

None.

5. AGENDA REVIEW - DECEMBER 13, 2013 BOARD MEETING

Senior Planner Jonathan Garcia led a review of the items included in the draft Board packet, noting that the meeting would begin at 4:30 p.m. at the California State University, Monterey Bay (CSUMB) University Center. The Administrative Committee recommended the Board approve the 2014 Administrative Committee meeting schedule, provided the December 31st meeting was rescheduled for January 2nd.

6. OLD BUSINESS

a. Review CSUMB/FORA Base Reuse Implementation Colloquium Program

Executive Officer Michael Houlemard reviewed the event program and strongly encouraged Committee members to attend and urge their elected representatives to attend the 2-day event.

b. Review Habitat Conservation Plan (HCP) Document Review Schedule

Mr. Garcia discussed the Habitat Conservation Plan status and reviewed the calendars provided in the packet. Mr. Houlemard noted there was a collective effort underway to resolve all outstanding issues by January 2014, which could require a trip to Sacramento. Mr. Garcia announced that the HCP documents would be distributed in the next few days, and that the review period would conclude at the end of January 2014.

7. ITEMS FROM MEMBERS

None

8. ADJOURNMENT

The Committee adjourned at 9:21 a.m.

- START -

**DRAFT
BOARD PACKET**



FORT ORD REUSE AUTHORITY

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

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

REGULAR MEETING FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

Friday, January 10, 2014 at 2:00 p.m.

910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CLOSED SESSION

- a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – **3 Cases**
 - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961
 - ii. Bogan v. Houlemard, Case Number: M122980
 - iii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856
- b. Public Employee Performance Evaluation – Gov Code 54957
Executive Officer - Contract Terms and Conditions

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

5. ROLL CALL

6. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

7. CONSENT AGENDA

- a. Approve December 13, 2013 Board Meeting Minutes ACTION

8. OLD BUSINESS

- a. 2nd Vote: Preston Park Management Agreement Extension with Alliance Communities, Inc. ACTION
- b. Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination ACTION
- c. Pollution Legal Liability (PLL) Insurance Policy
 - i. Presentation - Barry Steinberg (Kutak Rock LLP)/Kathy Gettys (Marsh) INFORMATION
 - ii. Consider Insurance Coverage Options ACTION
- d. Environmental Services Cooperative Agreement (ESCA) Update INFORMATION

9. NEW BUSINESS

- a. Accept FY 2012-2013 FORA Annual Financial Report (Audit Report) ACTION
- b. Elect 2014 FORA Board Officers
 - i. Receive Nominating Committee Report INFORMATION
 - ii. Conduct Election ACTION

10. PUBLIC COMMENT PERIOD

Members of the public wishing to address the FORA Board of Directors on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period for up to three minutes. Public comments on specific agenda items are heard under that item.

11. EXECUTIVE OFFICER'S REPORT

- a. Outstanding Receivables
- b. Habitat Conservation Plan Update
- c. Administrative Committee
- d. Finance Committee
- e. Post Reassessment Advisory Committee
- f. Veterans Issues Advisory Committee
- g. Water and Wastewater Oversight Committee
- h. Travel Report
- i. Public Correspondence to the Board

INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION

12. ITEMS FROM MEMBERS

13. ADJOURNMENT

NEXT REGULAR BOARD MEETING: FEBRUARY 14, 2014

Persons seeking disability related accommodations should contact FORA 24 hrs prior to the meeting. This meeting is recorded by Access Monterey Peninsula and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Chanel 25. The video and meeting materials are available online at www.fora.org.

Placeholder for Item 8a

**2nd Vote: Preston Park Management
Agreement Extension with Alliance
Communities, Inc.**

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination

Meeting Date: January 10, 2014

Agenda Number: 8b

ACTION

RECOMMENDATION(S):

Approve Resolution 14-XX (**Attachment A**), concurring in the County of Monterey's (County) legislative land use determination that the 2010 Monterey County General Plan (General Plan) is consistent with the Fort Ord Base Reuse Plan (BRP).

OTHER OPTIONS:

- I. Per FORA Master Resolution section 8.01.020(e), approve Resolution 14-XX (**Attachment B**), refusing certification of the General Plan until the FORA Board's suggested modifications (included in this resolution) are adopted and transmitted to the FORA Board by the County. If the County adopts such modifications, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed certified.
- II. Refuse certification of the General Plan. Such action results in the Monterey County 2001 General Plan amendment, found consistent by the FORA Board on January 18, 2002, remaining in effect for County Fort Ord lands.

BACKGROUND:

The County submitted the General Plan for consistency determination on September 24, 2013 (**Attachment C**). **Attachment C** includes a link to the County of Monterey's website where documents related to the 2010 Monterey County General Plan consistency determination submittal can be obtained electronically. This link is: http://www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm At the October 11, 2013 Board meeting, several Board members raised concerns that a hard copy of the 2010 Monterey County General Plan consistency determination submittal was not included in the packet. The FORA Executive Committee previously established a policy directing staff to make large documents available on the internet in lieu of including voluminous pages in FORA Board packets. If any Board member finds this difficult, please contact staff to address the concern.

With its submittal for concurrence, the County requested a Legislative Land Use Decision review of the General Plan in accordance with section 8.02.010 of the Fort Ord Reuse Authority (FORA) Master Resolution. Under state law, (as codified in FORA's Master Resolution) legislative land use decisions (plan level documents such as General Plans, Zoning Codes, General Plans, Redevelopment Plans, etc.) must be scheduled for FORA Board review for consideration of concurrence under strict timeframes. This item is included on the Board agenda because the General Plan is a legislative land use decision, requiring Board approval.

The FORA Administrative Committee reviewed this item on October 2nd and October 30th, 2013.

Update: At the October 30th FORA Administrative Committee meeting, County representatives addressed each of the issues that were surfaced by the two letters received earlier this month, and then also reviewed their own response letter that had been sent to the Administrative Committee. Staff described the Board report that was prepared and noted the individual meetings between the County and FORA Staff/Counsel leading up to the County letter addressing the issues in the late arriving correspondence. The Administrative Committee asked that the issues be addressed by counsel and outlined for the FORA Board at its meeting on November 8th.

FORA Special Counsel Alan Waltner's response memorandum is included in **Attachment D** to this report, outlining how his previous memoranda addressed issues raised in recent comment letters and reiterating those points.

DISCUSSION:

County staff will be available to provide additional information to the FORA Board on January 10, 2014. In all consistency determinations, the following additional considerations are made, and summarized in table form (**Attachment E**).

Rationale for consistency determinations FORA staff finds that there are several defensible rationales for making an affirmative consistency determination. Sometimes additional information is provided to buttress those conclusions. In general, it is noted that the BRP is a framework for development, not a precise plan to be mirrored. However, there are thresholds set in the resource constrained BRP that may not be exceeded without other actions, most notably 6,160 new residential housing units and a finite water allocation. More particularly, the rationales for consistency analyzed are:

LEGISLATIVE LAND USE DECISION CONSISTENCY FROM SECTION 8.02.010 OF THE FORA MASTER RESOLUTION

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence support by the record, that:

(1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;

The General Plan would not establish a land use designation that is more intense than the uses permitted in the BRP. Compared to the 1997 BRP, the General Plan increases the amount of habitat within the County's jurisdiction by 246.7 acres as a result of the December 20, 2005 Memorandum of Understanding (MOU) among the County, Monterey Peninsula College (MPC), FORA, the Bureau of Land Management (BLM), and U.S. Army, which swapped land uses between East Garrison and Parker Flats areas of the former Fort Ord. The result of the MOU is that an additional 210

acres are available for development in East Garrison in exchange for the preservation of approximately 447 additional habitat acres in Parker Flats. Also, the MOU added additional habitat acres next to the Military Operations Urban Terrain (MOUT) facility and provides for MPC to relocate a planned public safety officer training facility from the East Garrison area to the Parker Flats area. The County, FORA, and MPC entered into an October 21, 2002 agreement entitled "Agreement Regarding Public Safety Officer Training Facilities," which further describes relocation of MPC's planned facilities from the East Garrison area to the Parker Flats area.

(2) Provides for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;

No increase in density would be permitted by the General Plan.

(3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;

The General Plan is in substantial conformance with applicable programs. FORA staff notes that a member of the public and representatives of the Ventana Chapter of the Sierra Club, Keep Fort Ord Wild, the Open Monterey Project, and LandWatch Monterey County provided correspondence at the August 27 and September 17, 2013 Monterey County Board of Supervisors hearings pertaining to consistency between the 2010 Monterey County General Plan 1997 BRP. In summary, these individual letters requested that the Monterey County Board of Supervisors not adopt the consistency finding, citing instances of incomplete policies and programs and other issues. FORA staff concurs with Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/ Resolution No. 13-307 page 5 of 13 that:

Some but not all of the policies programs have been implemented. Implementation efforts are currently underway. Implementation of the Base Reuse Plan policies is a separate measure from Consistency with the Base Reuse Plan.

Special legal counsel Alan Waltner's September 3, 2013 memorandum further stated that "FORA's procedures for determining consistency correctly interpret and apply the FORA Authority Act, Government Code Sections 67650-67700 and the FORA Master Resolution."

Comment letters from the Ventana Chapter of the Sierra Club and member of the public Jane Haines are included in **Attachment F**.

County staff submitted an October 23, 2013 letter (**Attachment G**) providing additional analysis on concerns raised in recent comment letters and how these concerns are addressed.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;

The General Plan is compatible with open space, recreational, and habitat management areas.

(5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision;

County development within the former Fort Ord that is affected by the General Plan will pay its fair share of the basewide costs through the FORA Community Facilities District special tax and property taxes that will accrue to FORA, as well as land sales revenues. This is evidenced in Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 page 6 of 13 and the May 8, 2001 Implementation Agreement between FORA and County of Monterey.

(6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan;

The Fort Ord Habitat Management Plan (HMP) designates certain parcels for "Development," in order to allow economic recovery through development while promoting preservation, enhancement, and restoration of special status plant and animal species in designated habitats. The General Plan affects lands that are located within areas designated for "Habitat Reserve," "Habitat Corridor," "Development with Reserve Areas and Restrictions," and "Development with no Restrictions" under the HMP. Lands designated as "Development with no Restrictions" have no management restrictions placed upon them as a result of the HMP. The General Plan requires implementation of the Fort Ord HMP.

(7) Is not consistent with the Highway 1 Design Corridor Design Guidelines as such guidelines may be developed and approved by the Authority Board; and

The General Plan would not modify Highway 1 Design Corridor Design Guidelines.

(8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

The General Plan is consistent with the jobs/housing balance approved by the FORA Board.

Additional Considerations

(9) Is not consistent with FORA's prevailing wage policy, section 3.03.090 of the FORA Master Resolution.

The General Plan does not modify prevailing wage requirements for future development entitlements within the County's jurisdiction on former Fort Ord.

FISCAL IMPACT:

Reviewed by FORA Controller _____

This action is regulatory in nature and should have no direct fiscal, administrative, or operational impact. In addition to points already dealt with in this report, it is clarified that the developments expected to be engaged in reuse subject to the General Plan are covered by the Community Facilities District or other agreement that ensure a fair share payment of appropriate future special taxes/fees to mitigate for impacts delineated in the 1997 BRP and accompanying Environmental Impact Report. The County has agreed to provisions for payment of all required fees for future developments in the former Fort Ord under its jurisdiction.

Staff time related to this item is included in FORA's annual budget.

COORDINATION:

The County, Planners Working Group, Administrative Committee, and Executive Committee

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

Resolution 14-XX

Determining Consistency of the 2010)
Monterey County General Plan)

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

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Fort Ord Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the FORA Board of Directors adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan), affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013, the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act, and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings with supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in the County's determination that the General Plan is consistent with the Reuse Plan for those portions of County land that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the supporting material, received additional information, and concurred with

the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee then set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013.

- I. Master Resolution, Chapter 8, Section 8.02.010(a) states: "In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that:
 - (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
 - (2) Provides a development more dense than the density of use permitted in the Reuse Plan for the affected territory;
 - (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;
 - (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
 - (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
 - (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan."
- J. In considering whether or not the General Plan is consistent with the Reuse Plan, the FORA Board has reviewed all evidence pertaining to the six criteria described in Section 8.0.020(a).
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

- (1) The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
- (2) The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.

- (3) The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and the Administrative Committee, and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.
- (4) The FORA Board finds that the General Plan is consistent with the Base Reuse Plan. The FORA Board further finds that its legislative decision is based in part upon the substantial evidence submitted regarding allowable land uses, a weighing of the Reuse Plan's emphasis on a resource constrained sustainable reuse that evidences a balance between jobs created and housing provided, and that the cumulative land uses contained in the County's submittal are not more intense or dense than those contained in the Reuse Plan.
- (5) The General Plan will, considering all its aspects, further the objectives and policies of the Reuse Plan. The County application is hereby determined to satisfy the requirements of Title 7.85 of the Government Code and the Reuse Plan.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

Jerry Edelen, Chair

Michael A. Houlemard, Jr., Secretary

Resolution 14-XX

Denial of certification of the 2010)
Monterey County General Plan)
Until suggested modifications are)
Adopted and submitted)

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

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the Authority Board of FORA adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan), affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013 the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings and supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in County's determination that the General Plan is consistent with the Reuse Plan for those portions of the County that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the

General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the Supporting Material, received additional information, and concurred with the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013.

- I. Master Resolution, Chapter 8, Section 8.01.020(e) reads in part: "(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings shall include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision shall be deemed certified..."
- J. Master Resolution, Chapter 8, Section 8.02.010(a)(4) reads in part: "(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [it] (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property..."
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

1. The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
2. The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.
3. The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and Administrative Committee and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.

4. The FORA Board denies certification of the General Plan until the following policies and programs are adopted in the Fort Ord Master Plan component of the General Plan as currently included in the Reuse Plan EIR: Recreation/Open Space Land Use (ROLU) Policy A-1, ROLU Program A-1.2, Hydrology and Water Quality (HWQ) Policy B-1, HWQ Programs B-1.1 through B-1.7, HWQ C-6.1, Biological Resources (BR) Policy C-2, BR Programs C-2.1, C-2.2, C-2.3, and C-2.5.
5. If such modifications are adopted by the County as suggested, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed consistent with the Reuse Plan.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

Jerry Edelen, Chair

Michael A. Houlemard, Jr., Secretary

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Attachment C to Item 8b
FORA Board Meeting, 01/10/2014

Planning Department

Mike Novo, AICP, Director of Planning

168 West Alisal Street, 2nd Floor
Salinas, CA 93901
(831) 755-5025
Fax: (831) 757-9516
www.co.monterey.ca.us/rma



September 24, 2013

Jonathan Garcia, Senior Planner
Fort Ord Reuse Authority
920 2nd Ave., Suite A
Marina, CA 93933

**SUBJECT: REQUEST FOR FORA CONSISTENCY DETERMINATION ON THE
2010 MONTEREY COUNTY GENERAL PLAN PURSUANT TO FORA MASTER
RESOLUTION, ARTICLE 8.01.020**

Dear Mr. Garcia,

On October 26, 2010 the Board of Supervisors of the County of Monterey adopted a comprehensive General Plan update (2010 General Plan) (Resolution 10-291). The 2010 General Plan now governs the future physical development of the unincorporated areas of the County of Monterey, excluding the Coastal Areas, but including most of the Former Fort Ord. As it relates to property in the territory of the Authority to the Executive Officer, the 2010 General Plan contains the Fort Ord Master Plan (in Chapter 9-E). The Fort Ord Master Plan is essentially the same as the 2001 Fort Ord Master Plan that was adopted by the County and found consistent by the Fort Ord Reuse Authority Board on January 18, 2002 (FORA Resolution #02-3) with some minor updates and amendments including:

- Recognition of the Land Swap Agreement
- Re-insertion of policies missing from the 2001 plan; and
- Updates to policies regarding the landfill parcel, East Garrison, and the York Road Planning area to reflect more recent events.

In February of 2012, the County submitted a package, with a formal request for a consistency determination to the Fort Ord Reuse Authority. That package included 1 hard copy and 5 CD's with the following documents and information:

- **Attachment 1** – The adopted 2010 General Plan
- **Attachment 2** – CEQA documents including:
 - a. Draft EIR
 - b. Final EIR; and
 - c. Supplemental Information to the FEIR
- **Attachment 3** – Reports and Resolutions
 - a. Planning Commission Staff Report and Resolution from August 11, 2010
 - b. Board of Supervisors Staff Report and Resolutions (10-290 and 10-291)

- **Attachment 4** – Fort Ord Master Plan redline version showing changes to text from the previously adopted and certified County version of the Fort Ord Base Reuse Plan.
- **Attachment 5** – Consistency Analysis

The County's consistency determination request was placed on hold while the County processed the consistency findings and certification required by the FORA Master Resolution. Between the time of the original submittal and the submittal of this information, the County has amended the 2010 General Plan three times. Because of these amendments, the County would like to ensure that FORA is working with, and considering consistency of, the most recent version of the General Plan. The updated sections of the General Plan along with the EIR Addendums prepared for those amendments are included in this revised submittal. In total, this revised submittal contains the following documents and information:

- **Amendments to Attachment 1 (The 2010 General Plan)** –
 - Updated Carmel Valley Master Plan Chapter (Chapter 9-B of the General Plan)
 - Updated Public Services Chapter (Chapter 5 of the General Plan)

These replace the chapters in the previously submitted General Plan. Note: The third amendment involved a land use designation change on a parcel in southern Monterey County and did not have any effect on Fort Ord Territory.
- **Additions to Attachment 2 (CEQA Documents)** – Addendums to the General Plan EIR were prepared for the General Plan amendments listed above.
 - Addendum 1 – (For Amendment to Chapter 5 of 2010 General Plan)
 - Addendum 2 – (for Amendment to Carmel Valley Master Plan)
 -
- **Additions to Attachment 3 (Reports and Resolutions)** – Two new Board of Supervisors Board Reports and Resolutions certifying that the 2010 General Plan is consistent with the Base Reuse Plan:
 - September 17, 2013 Board Report and Resolution affirming and updating the August 27, 2013 decision (Resolution # 13-0952)
 - August 27, 2013 Board Report and Resolution (Resolution # 13-0290)
 - Board Report for September 17, 2013 Public Hearing
- **Amended Attachment 5 (Consistency Analysis)** – A new and updated consistency analysis was attached to the August 27 and September 17 Board Resolutions. That analysis is the same in both reports.
- **New Attachment 6 (Public Comment)** – New comments and correspondence received on for the August 27 and September 17 Board of Supervisors hearing on the consistency certification.
 - Letter from Sierra Club – Ventana Chapter – September 16, 2013
 - Letter from Law Offices of Michael Stamp – September 17, 2013
 - Letter from Jane Haines -- September 16, 2013
 - Letter from Jane Hainse – August 26, 2013

- o Letter from MR Wolfe – August 26, 2013 (Attachement D of September 17, 2013 Board Report.

As was the case with the first, submitted with this letter is one hard copy and 5 CD's with the updated information listed above. All of the documents from the original submittal and the updated submittal can be found by following the link below:

www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm

This link will take you to the page for the 2010 General Plan, which provides links to the EIR and all addendums and a link directly to the material submitted as part of this package.

We would be happy to provide FORA staff and the FORA Board with any additional information deemed necessary to complete the Consistency Determination review. We look forward to working with you on this and should you have any questions regarding this submittal please contact Craig Spencer at (831) 755-5233 or John Ford at (831) 755-5158.

Sincerely,


FJR

Craig W. Spencer, Associate Planner
Monterey County – Planning Department
Email: spencerc@co.monterey.ca.us

Attachments

779 DOLORES STREET
SAN FRANCISCO, CALIFORNIA 94110
TEL (415) 641-4641
WALTNERLAW@GMAIL.COM

Memorandum

Date: December 26, 2013

To: Fort Ord Reuse Authority

Board of Directors

Mayor Jerry Edelen, Board Chair

Michael Houlemard, Executive Officer

From: Alan Waltner, Esq.

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

This memorandum responds to your request that we address certain comments made in a series of letters submitted to FORA¹ by Jane Haines regarding the Monterey County General Plan Consistency Review that is currently pending before FORA. In general, this response highlights points made in our two previous memoranda that have been overlooked in these letters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORA Master Resolution Section	Finding of Consistency	Justification for finding
Does not provide for a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not establish land use designations more intense than permitted in the Base Reuse Plan ("BRP"). See Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 (Reso. 13-307) page 5 of 13.
(2) Does not provide for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not allow denser development than permitted in the BRP. See Reso. 13-307 page 5 of 13.
(3) Is in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.	Yes	The General Plan is in compliance with applicable programs. See Reso. 13-307 page 5 of 13.
(4) Does not provide uses which conflict with or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict with or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;	Yes	No conflict or incompatibility exists between the General Plan and BRP. See Reso. 13-307 page 6 of 13.
(5) Requires or otherwise provides for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision;	Yes	The General Plan does not modify County obligations to contribute to basewide costs. See Reso. 13-307 page 6 of 13.
(6) Requires or otherwise provides for implementation of the Fort Ord Habitat Management Plan ("HMP").	Yes	The General Plan provides for HMP implementation. See Reso. 13-307 page 6 of 13.
(7) Is consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.	Yes	The General Plan does not modify Highway 1 Scenic Corridor design standards.
(8) Is consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.	Yes	The General Plan is consistent with job/housing balance requirements. See Reso. 13-307 page 13 of 13.
(9) Prevailing Wage	Yes	The General Plan does not modify prevailing wage requirements.

JANE HAINES

October 10, 2013

Fort Ord Reuse Authority Board of Directors
920 2nd Avenue
Marina, CA 93933

Re: October 11 Agenda - Item 8c - Consistency Determination:
2010 Monterey County General Plan

Dear FORA Board of Directors:

The 2010 Monterey County General Plan is inconsistent with the 1997 Base Reuse Plan (BRP) because it omits applicable BRP programs. Certification of consistency between the two plans should be delayed until the omitted programs are added to the General Plan. Otherwise, the plans are inconsistent and the California Environmental Quality Act (CEQA) will require environmental review of impacts that could result from the inconsistencies.

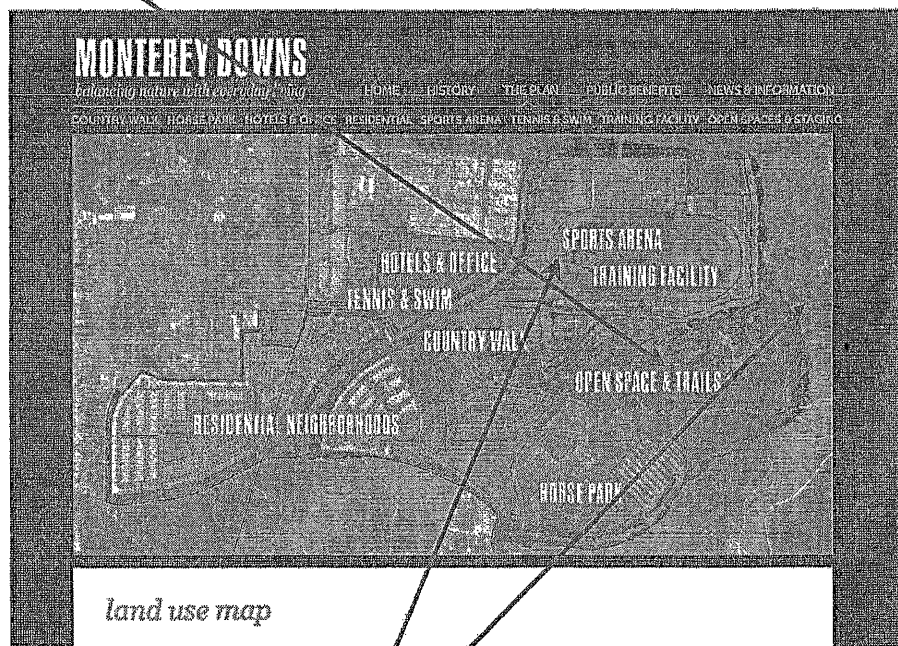
This letter will explain which BRP programs have been omitted from the 2010 General Plan and how omitting those programs will result in potentially significant environmental impacts.

FORA's October 11 and the County's September 17 staff reports discount the publics' comments on the inconsistencies by saying that implementation is a different matter than consistency. However, I and others are commenting about the **omission** of BRP programs from the 2010 Monterey County General Plan. The omission of applicable programs is **not** an implementation issue.¹ It is a consistency issue as well as a CEQA issue.

The following page uses the proposed Monterey Downs project to illustrate the potentially significant environmental impacts from omitting three applicable programs, assuming that Seaside will annex Monterey County land for Monterey Downs, although of course the impacts would also occur to other County projects too. There will be arrows pointing to various locations on the Monterey Downs land use map. The arrows are connected to boxes which explain the BRP program that was omitted from the County's 2010 General Plan, and how omission of that program is likely to cause a significant adverse environmental impact.

¹ Implementation is defined in the Oxford dictionary as "the process of putting a decision or plan into effect." Consistency is defined as "conformity in the application of something, typically that which is necessary for the sake of logic, accuracy, or fairness."

Recreation/Open Space Land Use Program A-1.2. This Open Space & Trails parcel is 72.5 acres entitled Parcel E19a.2 . The HMP designates it for Habitat Reserve. BRP Recreation/Open Space Land Use Program A-1.2 states: "The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands." (A natural ecosystem deed restriction is intended to mitigate the cumulative effects of development on sensitive soils, including Arnold and Oceano soils. Parcel E19a.2 is comprised of Arnold soil.) Without Recreation/Open Space Land Use Program A-1.2, Monterey County will not have to record a Natural Ecosystem Easement deed restriction on Parcel E19a.2. Thus, the natural ecosystem on Parcel E19a.2 will not be protected. Program A-1.2 is on page 270 of Volume II of the BRP, but it is omitted from the Monterey County 2010 General Plan.



land use map

Noise Program B-1.2. The Sports Arena Training Facility adjoins CSUMB. Students who are studying or in lectures could be distracted by shouting, loud speakers and other noisy activities at the Sports Arena. BRP Noise program B-1.2 on page 412 of BRP Volume II states: "Whenever practical and feasible, the County shall segregate sensitive receptors, such as residential land uses, from noise generators through land use." Noise program B-1.2 is omitted from the Monterey County 2010 General Plan. It must be included to protect CSUMB against distracting noises from the Sports Arena.

Recreation/Open Space Land Use Program B-2.1. Nearly the entire eastern edge of Monterey Downs adjoins a habitat management area. (Continued next page.)

(Recreation/Open Space Land Use Program B-2.1 continued). BRP Recreation/Open Space Land Use program B-2.1 is partially included in the 2010 Monterey County General Plan although the final two sentences are omitted. The final two sentences prohibit general purpose roads within a 150 foot buffer area adjoining habitat management areas. BRP Recreation/Open Space Land Use Program B-2.1 states on pg. 270 of BRP Vol. II: "The County of Monterey shall review each future development project for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into the development plan of incompatible land uses as a condition of project approval. ***When buffers are required as a condition of approval adjacent to habitat management areas, the buffer shall be at least 150 feet. Roads shall not be allowed within the buffer area except for restricted access maintenance or emergency access roads.***" (Emphasis added to final two sentences to identify the two sentences omitted from the 2010 Monterey County General Plan Recreation/Open Space Land Use Program B-2.1.) Without the complete text of Program B-2.1 to protect it, the adjoining habitat management area can be adversely impacted.

The above omissions do ***not*** pertain to implementation. Rather, they pertain to ***inconsistency*** between the BRP and the 2010 Monterey County General Plan. They and other omitted or misstated BRP policies² make the 2010 Monterey County General Plan inconsistent with the BRP.

FORA Master Resolution Section 67675.4

In addition to the inconsistency issues described above, I want to mention Master Resolution section 67675.4 which required FORA to set a date for Monterey County to submit to FORA its zoning ordinances and other implementing actions pertaining to Fort Ord land after the 2001-2002 certification of consistency between Monterey County's General Plan with the BRP.

Section 67675.4 states:

(a) Within 30 days after the certification of a general plan or amended general plan, or any portion thereof, the board shall, after consultation with the county or a city, establish a date for that county or city to submit the

² Additional omissions and errors can be identified by comparing BRP Hydrology and Water Quality programs B-2, B-1.3, B-1.4, B-1.5, B-1.6 and B-1.7 on page 353 (and 347) of BRP Volume II with pages FO-38, 39 in the Monterey County General Plan (MCGP). Additional omissions and errors are in BRP Hydrology and Water Quality program C-6.1 on page 4-66 of BRP Vol. II which does not appear on page FO-41 of the MCGP, which is where it would be located if it were included. Also, compare the words "concurrently with development approval" in Pedestrian and Bicycles program B-1.2 on page 310 of BRP Vol. II with the omission of those words in program B-1.2 on page FO-29 in MCGP. Also, compare Biological Resources program A-8.1 on page 381 of BRP Vol. II with program A-8.1 on pg. FO-46 of the MCGP. In each instance, a program required by the BRP for Monterey County is either partially or wholly omitted in the 2010 MCGP, or written in a manner inconsistent with the gist of the corresponding BRP program.

zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord.

(b) If the county or city fails to meet the schedule established pursuant to subdivision (a), the board may waive the deadlines for board action on submitted zoning ordinances, zoning district maps, and, where necessary, other implementing actions, as set forth in Section 67675.5.

Apparently, FORA never required Monterey County to submit its zoning ordinances and other implementing actions, because the 2012 Scoping Report lists the following incomplete implementation of Monterey County zoning ordinances and other implementing actions:

- appropriate infill residential zoning for CSUMB to expand its housing stock (Scoping Report pg. 4-5)
- amend zoning in the Greater Monterey Peninsula Area Plan (Scoping Report pg. 4-8)
- amend zoning ordinance in regard to all Fort Ord areas other than East Garrison (Scoping Report pgs. 4-7, 4-13, 4-20, 4-29)
- amend County Code Chapter 11.24 to regulate card rooms and to prohibit gambling within Fort Ord (Scoping Report pg. 4-27)
- amend County Subdivision Ordinance which identifies a standard of 3 acres per 1,000 people (Scoping Report pg. 4-40)
- amend County's review procedures to ensure compatibility with the historic context and associated land uses as a condition of project approval (Scoping Report pg. 4-158)

Thus, I am requesting that FORA do what it apparently failed to do in 2001-2002, which is to require Monterey County to submit its zoning ordinances and other implementing actions to FORA within 30 days after the certification of the General Plan. The submittal should include the above-mentioned zoning ordinances.

Conclusion

I request FORA to require Monterey County to add the omitted applicable BRP programs to the 2010 Monterey County General Plan and to correct related errors before FORA makes a finding of consistency. I also request FORA to comply with Master Resolution section 67675.4.

Sincerely,

Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

10 October 2013

Dear Fort Ord Reuse Authority Board Members;

The Sierra Club recommends that the FORA Board find the 2010 Monterey County General Plan, and the included Fort Ord Master Plan (FOMP), inconsistent with the Fort Ord Reuse Plan (FORP) based on evidence that the General Plan does not reflect the appropriate language and programs of the FORP Final Environmental Impact Report (EIR). In point of fact, parts of the FOMP precisely *reverse* specific changes made in and for the FORP Final EIR. Following CEQA law, the Sierra Club expects that the 2010 Monterey County General Plan reflects rather than alters the provisions of the FORP Final EIR before it would be found to be consistent with the FORP.

The Sierra Club further recommends that the FORA Board defer a finding of consistency until the County of Monterey Land Use Plan map (Figure 6a) accurately reflects the FORP County of Monterey Land Use Concept Map 4.1-7 and the FORP Land Use Concept Map 3.3-1. Ensuring that planning maps are carefully aligned in detail and designation will not only support a finding of consistency, but may serve to avoid later conflicts that arise from the differences between the documents.

By way of illustration, this letter will address three specific differences between the 2010 General Plan and the FORP, including:

- 1) The omission in the FOMP of the FORP Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction (FORP Volume 2, p. 270).
- 2) The reversed articulation of the Recreation/Open Space Land Use Program A-1.
- 3) The mismatched land use designation between the County of Monterey Land Use Plan (Figure 6a) and the FORP County of Monterey Land Use Concept Map 4.1-7/ FORP Land Use Concept Map 3.3-1.

These examples are meant to provide clear differences, but are not meant to represent a complete list of differences between the General Plan and the FORP EIR.

Program Omission

As is clearly shown in the FORP Final Draft EIR (p. 4-14, see attached except of same), the following program in underlined, which means that it was an edit meant to be included in the Final Draft EIR.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

Appropriately, Program A-1.2 also appears in Volume Two: Reuse Plan Elements of the FORP (see page 270).

At the 17 September 2013 Board of Supervisor's meeting, Monterey County staff acknowledged that Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction was left out of the FOMP brought forward to the Board. The staff representative went on to note that despite this omission, the county was in the process of having these easements reviewed and approved by FORA, so the county was carrying out this program (captured on the video from the 17 September 2013 Board of Supervisor's meeting, 1:40:10 in the web video record). However, he offered no supporting evidence to

...To explore, enjoy, preserve and protect the nation's forests, waters, wildlife and wilderness...



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

support this claim. Regardless, the omission still represents a specific and significant alteration of the Final EIR.

The stated omission of a specific Land Use program – a program that is separate from and in addition to the Habitat Management restrictions – renders the FOMP inadequate to carry out the self-same provision of the FORP.

Further, Program A-1.2 is quite specific in the action it proscribes for establishing “criteria and standards for the uses of land, water, air, space, and other natural resources within the area of the base.” (Govt. Code § 67675(c) (1)). This distinguishes it from the latitude that accompanies shifts in land use density with regard to the “integrated arrangement and general location and extent of land, water, air, space, and other natural resources within the area of the base.” Excluding such a specific provision renders the FOMP out of substantial conformance with the FORP.

Reversed Articulation of Program

Recreation/ Open Space Land Use Policy A-1, as stated in the FOMP (p. FO-21), misquotes the policy in the FORP and thereby changes its specificity. In order to be in conformance with the FORP, the policy should read: “The County of Monterey shall *protect* irreplaceable natural resources and open space at former Fort Ord.” (my italics to emphasize the language that was neglected in the FOMP).

Because the wording in the FOMP – “...encourage the conservation and preservation of...” – is more general and does not convey the same level of responsibility as the FORP language does, it represents a notable difference in the policy language. This is underscored by the fact that this is the precise change that was made in the Final Environmental Impact Report: “encourage the conservation and preservation of” is marked by strikethrough text, and “protect” is added, as shown by underlining (p. 4-14, FORP: Final Environmental Impact Report). As with the addition of Program A-1.2 mentioned above, this change in language is also reflected on p. 270 in Volume Two of the FORP.

Monterey County staff’s response to the Board of Supervisors regarding this point (captured on the video from the 17 September 2013 Board of Supervisor’s meeting, 1:40:00 in the web video record) was that the “protect” language *was changed* to the “encourage” language. It is not clear how the precise language that was altered for the Final EIR could or would have been returned to the very same language that was altered. It is also not clear which succession of document represent this reversion. Again, Monterey County staff offered not evidence to support their claim.

Mismatched maps

The Reassessment process has brought to light the importance of FORP maps that align with the specific provisions of the FORP and subsequent determinations of consistency. The Category II considerations in the Reassessment Report are testimony to this point. Withholding a finding of consistency *until* the FOMP Figure 6a accurately reflects both FORP County of Monterey Land Use Concept Map 4.1-7 and FORP Land Use Concept Map 3.3-1 would ensure the land use designations accurately describe the provisions of the FORP. For an extended, but not exhaustive list of the errors in the FOMP Figure 6a, see attached 16 September 2013 letter to the Monterey County Board of Supervisors.

The response of the Monterey County staff to each of the errors identified on FOMP Figure 6a is available by viewing the web video from the 17 September 2013 Board of Supervisor’s meeting. The primary defense offered by the County staff was that FOMP Figure 6a, as is, was found consistent in 2001. The Sierra Club would point out that increased attention to accuracy, despite past oversights, serves to guide all parties more effectively in the realization of the FORP.

...To explore, enjoy, preserve and protect the nation’s forests, waters, wildlife and wilderness...



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

The points above are illustrations of apparent errors in the current version of the FOMP, but they likely do not exhaust the changes that would be required before a vote of consistency by the FORA Board would be merited. For instance, the header near the bottom of p. FO-4 reads "Design Principals" when it should read "Design Principles".

The Sierra Club looks forward to further work on the Fort Ord Master Plan so that, as described in the Master Resolution, its substantial conformance with the Fort Ord Reuse Plan is assured.

Sincerely,

Scott Waltz, Ph.D.
Sierra Club, Ventana Chapter
(SW/RD)

...To explore, enjoy, preserve and protect the nation's forests, waters, wildlife and wilderness...



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

November 7, 2013

Dear Fort Ord Reuse Authority Board of Directors:

The Sierra Club objects to a finding of consistency between the Fort Ord Master Plan in the 2010 Monterey County General Plan and the Fort Ord Reuse Plan for the reasons stated in our 10 October 2013 letter which appears on pages 21 to 23 of the November 8 Board Packet.

Sincerely,

Rita Dalessio
Conservation Chair
Sierra Club/Ventana Chapter
(RD/SW)

Cc:
Congressman Sam Farr
State Senator Bill Monning
Assembly member Mark Stone
Larry Silver, California Environmental Law Project

JANE HAINES

November 7, 2013

Fort Ord Reuse Board of Directors
920 2nd Avenue
Marina, CA 93933

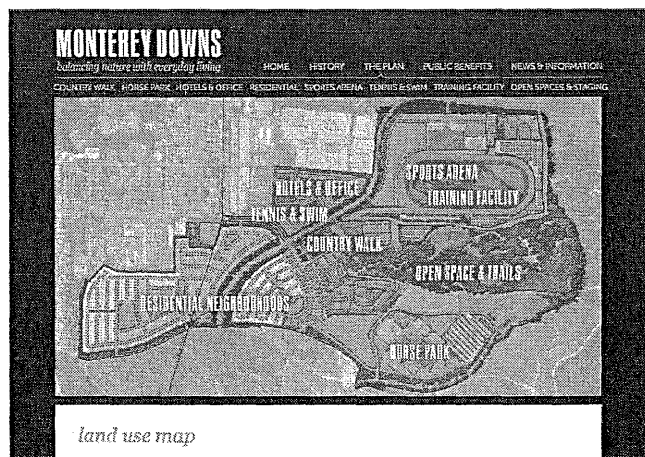
board@fora.org

Re: November 8 Agenda - Item 6a - 2010 Monterey County General Plan
Consistency Determination

Dear FORA Board of Directors:

The November 5 defeat of Measures K and M shows that the voters want the 1997 Base Reuse Plan implemented. However, the 2010 Monterey County General Plan fails to implement important programs from the 1997 Base Reuse Plan, including programs applicable to land currently under Monterey County jurisdiction which Seaside wants to annex for the Monterey Downs project. This exclusion of important applicable programs necessitates that the 2010 General Plan not be found consistent with the 1997 Base Reuse Plan.

My October 10 letter, included in your packet on pages 24-27 and incorporated herein, shows that the 2010 Monterey County General Plan omits Base Reuse Plan Recreation/Open Space Land Use Program A-1.2, a program that would apply to the central eastern parcel within the Monterey Downs project and would require an easement deed restriction to run with the land to protect the parcel's sensitive soils. Also omitted is Noise Program B-1.2 that would apply to the Monterey Downs Sports Arena in the northern central portion of the land to protect the adjacent land owner (CSUMB)



land use map

against loud noises. Also omitted are two important sentences in Recreation/ Open Space Land Use Program B-2.1 which would bar roads through a 150 feet wide buffer area on the central east 72.5 acre parcel adjoining adjacent habitat management areas.

The 1997 Base Reuse Plan expressly makes those omitted programs applicable to Monterey County lands. (1997 Base Reuse Plan pages 270 and 460.)

FORA's Master Resolution, section 8.02.010 (a)(3), states that "in the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board **shall disapprove** (emphasis added) any legislative land use decision for which there is substantial evidence supported by the record, that...[the legislative land use decision] is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution."

Since the 2010 Monterey County General Plan completely omits two applicable programs and an essential component of a third program, and the Master Resolution states that the Authority Board **shall disapprove** (emphasis added) a consistency finding when substantial evidence shows the general plan is not in substantial conformance with applicable programs, your Board will violate Master Resolution section 8.02.010(a)(c) if you find the 2010 Monterey County General Plan consistent with the 1997 Base Reuse Plan.

The November 8 staff report asserts that "there are several defensible rationales for making an affirmative consistency determination" and the resolution in your Board packet asserts that "FORA's consistency determination must be based upon the overall congruence between the submittal and the Reuse Plan, not on a precise match between the two." No legal authority supports those assertions. "Defensible rationale" and "overall congruence" are legally improper standards for finding consistency when the controlling regulation says "shall disapprove."

The November 5 Election Results

The November 5 election results retain the 1997 Base Reuse Plan. It is a plan that was based on a million dollar study and forged from a lengthy process of political and legal compromise. The Plan has not been implemented according to the plain meaning of its text, nor has Chapter 8 of the Master Resolution been enforced according to the plain meaning of its text.

The November 5 election results will hopefully cause the FORA Board to return to the plain meaning of the Reuse Plan and the plain meaning of Chapter 8:

- The text of the 1997 Reuse Plan says that “The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.” (Volume II of Base Reuse Plan, pg. 270.)
- The text of Chapter 8 says that “In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [the land use decision] is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of the Master Resolution.”

Substantial evidence consists of page 270 of the 1997 Reuse Plan compared to page FO-21 of the 2010 Monterey County General Plan. Page 270 includes the open space program; page FO-21 does not.

Chapter 8 says that when the legislative decision is not in substantial conformance with an applicable program of the Reuse Plan, the FORA Board “shall” disapprove a consistency finding. What could be more clear than that?

The staff report on page 6 of your packet states that “strict timelines” in State law require FORA to act on the County’s request for a consistency finding. State law allows 90 days from the date of submittal. The date of submittal was September 24, 2013. That means that as of your meeting tomorrow (November 8), forty-five days will remain before your Board must act.

Forty-five days is sufficient time for FORA staff to compile an explanation based on **the actual text** of the 1997 Reuse Plan, the **actual text of** 2010 General Plan, and the **actual text** of Chapter 8 to explain to your Board why FORA staff recommends that your Board find consistency when the **actual text** of those three documents mandates your Board to disapprove finding consistency. Your staff report contains terms like “several defensible rationales” and “overall congruence.” However, I’ve been unable to find those terms in any statute, regulation or case law applicable to a consistency finding by FORA.

Tomorrow, three days after the voters spoke, presents an opportunity to the FORA Board to finally require accountability from FORA staff to implement the plain meaning of FORA governing documents. I request that at tomorrow’s hearing, your Board do so.

Sincerely,

JANE HAINES

November 8, 2013

Fort Ord Reuse Board of Directors
920 2nd Avenue
Marina, CA 93933

board@fora.org

Re: FORA's proposed resolutions for item 6a on the November 8 agenda

Dear FORA Board of Directors:

I met with FORA's attorney and other FORA staff on November 4 to discuss legal issues pertaining to FORA's consistency findings. It was my understanding that FORA would rewrite its resolutions prior to the November 8 Board meeting so I did not address the issue of FORA's resolutions in my November 7 letter to the FORA Board. Apparently FORA did rewrite the resolutions because last night I found revised resolutions posted on the FORA website. However, the revised resolutions contain the same legal errors that I'd expected would be corrected.

This letter will attempt to explain why FORA's resolutions for finding consistency between a general plan and the Reuse Plan omit legally required findings, and why FORA's past omissions of the legally-required findings have inappropriately resulted in general plans shaping the Reuse Plan rather than the Reuse Plan shaping general plans.

It's complicated, but I will try to explain:

- Chapter 8, section 8.02.010(a), states the standard for determining consistency between a general plan and the Reuse Plan as follows: "In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that [any of six criteria are met]."
- The above standard is written in the negative and it greatly limits the FORA Board's discretion. Any substantial evidence showing that the legislative decision meets any of the criteria for disapproval requires that the FORA Board shall disapprove a finding of consistency.

- In contrast, FORA's current and past resolutions have been written in the affirmative to give the FORA Board broad discretion. Any substantial evidence showing that the legislative decision is consistent with the Reuse Plan allows the resolutions' findings to support a finding of consistency.
- The difference between the negative and the affirmative finding is similar to the difference between criminal and civil law. In criminal law, the evidence must prove beyond a reasonable doubt that a person is guilty. In civil law, a person is liable if a preponderance of the evidence shows the person is liable. It is much harder to prove a fact beyond a reasonable doubt than it is to show that the preponderance of the evidence proves the fact. (That is why O.J. Simpson was not criminally liable but was liable for civil damages.)
- In the case of general plan consistency with the Reuse Plan, it is much harder to show that no substantial evidence requires disapproval of a consistency finding than it is to show that substantial evidence supports a consistency finding.

The resolutions' affirmative findings do not meet the criteria for adequate findings set forth by the *California Supreme Court in Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. *Topanga* holds that findings must bridge the analytic gap between the raw evidence and ultimate decision. It states: "If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and **between findings and ultimate action** (emphasis added), the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action." *Topanga* 11 Cal.3d 506 at 515.

The governing legal authority for the FORA Board to evaluate consistency between a general plan and the Reuse Plan is Chapter 8, Section 8.02.010(a). It states that the FORA Board shall disapprove consistency if any substantial evidence shows that any of six criteria are met. Thus, FORA's resolution must show the analytic route by stating that FORA examined the evidence and found that no substantial evidence supports any of the six criteria for disapproval in Section 8.02.010(a). (Alternatively, the resolution could state that FORA examined the evidence and found that substantial evidence supports one or more of the criteria.)

Instead, FORA's resolutions state that FORA finds substantial evidence to support finding that the General Plan and Reuse Plan are consistent. That affirmative finding does not bridge the analytic gap between evidence and the ultimate decision in the manner required by Section 8.02.010(a).

Probably the above distinction seems trivial to you, but consider this. If the standard is whether any evidence supports finding that the 2010 Monterey County General Plan is consistent with the Base Reuse Plan, the answer is obviously “yes, it does.” There is plenty of evidence that the 2010 Monterey County General Plan is consistent with the Reuse Plan.

On the other hand, if the standard is whether any evidence shows that the 2010 General Plan does not meet the third criteria (substantial conformance with applicable programs specified in the Reuse Plan), the answer is obviously that the evidence clearly shows that the General Plan omits two applicable Reuse Plan programs and an important component of a third applicable program.

Thus, the difference between utilizing an affirmative or a negative standard will determine whether or not FORA must disallow a finding of consistency (which it must in the case of the negative finding), or whether FORA can find that the 2010 General Plan is consistent with the Reuse Plan (which it must in the case of the affirmative finding).

Pursuant to *Topanga*, FORA will abuse its discretion if it utilizes an affirmative finding in its resolution, because the affirmative finding does not address the analytic route that Section 8.02.010(a) requires FORA to follow from consideration of the evidence to the ultimate decision.

In sum, FORA’s resolutions must be rewritten to show the analytic route prescribed by Master Resolution Section 8.02.010(a). Rather than affirmatively finding that the General Plan is, or is not, consistent with the Reuse Plan, the resolution must find either that no substantial evidence shows that the General Plan is not in substantial conformance with applicable Reuse Plan programs (in which case FORA must find the plans to be consistent), or that substantial evidence shows that the General Plan is not in substantial conformance with applicable Reuse Plan programs (in which case FORA must disallow a finding of consistency).

In their current form, the resolutions require your Board to find the 2010 General Plan is consistent the Reuse Plan. However, the current form of the resolutions lacks findings that bridge the analytic gap between the raw evidence and your ultimate decision. Thus, the resolutions must be redrafted to bridge that gap, or otherwise making your decision based on the resolutions in their current form will be an abuse of discretion.

If Fort Ord is to be redeveloped in accordance with the Reuse Plan, step #1 is to correct FORA’s past procedure for finding general plan consistency.

Sincerely,

Jane Haines

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

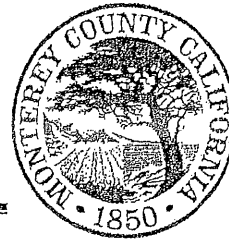
Benny J. Young, Director

Carl P. Holm, AICP, Deputy Director

Michael A. Rodriguez, C.B.O., Chief Building Official

Michael Novo, AICP, Director of Planning

Robert K. Murdoch, P.E., Director of Public Works



168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
<http://www.co.monterey.ca.us/rma>

October 23, 2013

Fort Ord Reuse Authority
Jonathan Garcia, Senior Planner
920 2nd Avenue, Suite A
Marina, CA 93933

SUBJECT: 2010 Monterey County General Plan Consistency Determination.

Dear Mr. Garcia,

This letter is provided as the County's responses to comments received during the General Plan consistency determination process.

Overview

In 2001, Monterey County added the Fort Ord Master Plan to our General Plan, which the FORA Board found consistent with the Fort Ord Reuse Plan in 2002 (FORA Resolution #02-3). In 2010, the Fort Ord Master Plan (FOMP) was updated to recognize actions that the FORA Board had already taken. The changes included references to the Land Swap Agreement, the East Garrison approvals (both of which were found consistent with the Reuse Plan by the FORA Board) and other minor text changes made in consultation with FORA staff. There was no intent to change any policy or program.

It has come to our attention through the consistency determination process that the 2001 Master Plan and hence the 2010 Monterey County General Plan does not accurately copy word for word several Base Reuse Plan policies and programs. Policies and programs certified by FORA for the 2001 plan were not changed as part of the 2010 update. The County has stated its intent in the language of the FOMP and the subsequent resolution to carry out the General Plan in a manner fully in conformity with the Reuse Plan, which includes the FEIR, Implementation agreement and the Authority Act. The County submits for your consideration that fulfilling the intent of the policies and programs is more important than whether the language is identical between the FOMP and the Base Reuse Plan. In this case there is significant history in the Fort Ord Reuse Plan, and in the FEIR that shape and guide how the policies of the FOMP are interpreted and applied. The County submits that while the language is different, the implementation must be consistent with the intent of the Reuse Plan, as such the Fort Ord Master Plan should be found consistent with Reuse Plan. To demonstrate this, below are the County's responses to comments received during the consistency determination process describing how the plans are consistent.

Comments and Responses

Issue 1: Parts of the FOMP [Fort Ord Master Plan] reverse specific changes made in response to comments in the Fort Ord Reuse Plan Final EIR.

County's Response: As noted above it was not the County's intent to change anything as part of the 2010 General Plan that had not been acted on by FORA. The policies and programs do seem to be based upon the draft plan evaluated in the DEIR for the Reuse Plan. The question is whether these policies would be implemented in a manner consistent with the plan. Those policies identified are:

- *Recreation/Open Space Land Use Policy A-1.* The word change from "shall encourage the conservation and preservation" to "shall protect"

This word change in the FEIR was made as a result of potential Land Use Compatibility Impacts, specifically concerning the "Frog Pond" which is in Del Rey Oaks, the Police Officer Safety Training (POST) facility that was relocated by the Land Swap Agreement, and the Youth Camp/East Garrison development that has already been addressed through approvals of the East Garrison development and Youth Camp restrictions in the HMP. The concerns behind this language change have already been resolved through implementation.

- *Recreation/Open Space Land Use Program A-1.2* – program calling for Natural Ecosystem Easement Deeds on "identified open space lands" omitted.

This program also was the result of the potential Land Use Compatibility Impacts described above yet the County is committed to complying with this requirement through plan implementation. The item is included in the County's Long-range work program.

- *Hydrology and Water Quality Policy B-1 and Programs B-1.1 through B-1.7.*

The language of the FOMP is not identical to the Reuse Plan, but the language has been included in other policies and programs in an equivalent or more comprehensive manner.

- *Hydrology and Water Quality Program C-6.1* – Program requiring the County to work closely with other FORA jurisdictions and CDRP to develop and implement a plan for storm water disposal that will allow for the removal of ocean outfall structures.

The County is under order from the State Water Board to develop storm water requirements that meet current state standards. The County is nearing completion of those standards including eliminating ocean outfalls and will work closely with other FORA jurisdiction to accomplish the same in Fort Ord. The County is leading a storm water task force to address this issue.

- *Biological Resources Policy C-2 and Programs C-2.1, C-2.2, C-2.3 and C-2.5.* – Preservation of oak woodlands in the natural and built environments.

Oak woodlands are protected under the General Plan, state law, and within Current County code. The County reviews and requires each development to minimize impacts on native trees through siting, design, and other mitigations pursuant to policies within the Fort Ord Master Plan, the HMP, the Open Space Element of the General Plan (Policies OS-5.3, OS-5.4, OS-5.10, OS-5.11, OS-5.4, and OS-5.23), and the Land Use Element of the General Plan (Policies LU-1.6 and LU-

1.7). Appropriate protections are provided for Oak woodlands within the natural and built environments.

Issue 2: Fort Ord does not have a long-term sustainable Water Supply contrary to County General Plan Policy PS-3.1 [which establishes a rebuttable presumption that there is a long-term water supply in Zone 2C which includes Fort Ord Territory].

County's Response: Policy PS-3.1 requires a determination that there is a long-term sustainable water supply. An exception is given to development within Zone 2C; however, "This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C {...} Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan" (emphasis added.) In the case of the Fort Ord Master Plan (an Area Plan), there are more specific area plan policies that give guidance on making a finding that a Long Term Sustainable Water Supply exists consistent with PS-3.1. The Determination of a Long Term Sustainable Water supply would rely on the Hydrology and Water Quality policies of the Reuse Plan including the requirement to comply with the Development Resource Management Plan (DRMP). The DRMP establishes a water allocation for the County. The Public Services Element and the Fort Ord Master Plan policies work in conjunction with each other in a manner that is consistent with the Reuse Plan.

Issue 3: The Fort Ord Master Plan does not comply with the Land Swap Agreement because the Land Swap Agreement traded residential density at Parker Flats for increased residential density at East Garrison. This trade made the Eastside Parkway no longer desirable as a primary travel route.

County's Response: The Fort Ord Master Plan reflects the action taken on the Land Swap Agreement in 2002 and 2003 by acknowledging the revised Habitat Lands under the HMP. The Land Swap Agreement did not include amendments to the Reuse Plan. The Land Swap Assessment that accompanied the Land Swap Agreement provided the biological evidence necessary to gain concurrence from HMP stakeholders that the "swap" was sufficient under the terms of the HMP. The Biological Assessment mentions changes being considered at the time of the Land Swap Agreement preparation¹, but those references within the biological assessment for an HMP amendment did not amend the Reuse Plan nor do they make the adopted General Plan inconsistent with adopted Reuse Plan since both documents have the same land use designations for the areas in question.

¹ The FORA Master Resolution states "FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased."

Issue 4: The County Still has not complied with the Fort Ord Reuse Plan Policies after Fifteen (15 Years).

County's Response: The County has implemented some of the Reuse Plan policies and is actively working on others. Delays in implementation do not make the General Plan inconsistent with the Reuse Plan.

Issue 5: Is the County the lead agency under CEQA?

County's Response: Yes. The FORA Master Resolution describes FORA's role as a "Responsible Agency" under CEQA for review of legislative decisions and development projects (Section 8.01.070). The County has certified an EIR prior for the 2010 General Plan. The DEIR, FEIR, Supplemental Information, and subsequent addendums to the EIR have all been provided to FORA with the consistency determination submittal/request.

Conclusion

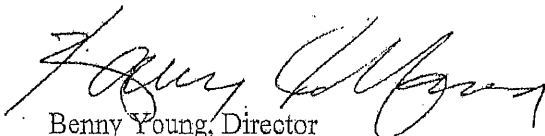
The Description of the Fort Ord Master Plan on pg FO-1 states "The purpose of this plan is to designate land uses and incorporate objectives, programs and policies to be consistent with the Fort Ord Reuse Plan (Reuse Plan) adopted by the Fort Ord Reuse Authority (FORA) in 1997." The County is implementing the Reuse Plan by adopting Reuse Plan Land Use Designations, enforcing the Habitat Management Plan, participating in the Base-wide Habitat Conservation Plan process, and coordinating with the public and private jurisdiction regarding development and open space in Fort Ord.

The County has supported the purpose statement of the Fort Ord Master Plan by adopting a resolution containing findings and certification that the 2010 General Plan is consistent with and intended to be carried out in a manner fully in conformity with the Reuse Plan (as required by the FORA Master Resolution). Attached to the findings is a table that outlines how the County's General Plan addresses all of the "Specific Programs and Mitigation Measures For Inclusion in Legislative Land Use Decisions" (Section 8.02.020 of the FORA Master Resolution).

None of the Findings requiring denial of the consistency determination, contained in 8.02.010 of the FORA Master Resolution can be made. The General Plan does not allow more intensity (1) or density (2) of Land Use than the Reuse Plan (see Land Use Designations), (3) Required programs and Mitigation Measures have been included and/or are being implemented as evidenced in the attachment to the County's consistency resolution and as further explained above, (4) The General Plan contains the same types of Land Uses that the Reuse Plan and the General Plan will not conflict or be incompatible with open space, recreational, or habitat management areas, (5) Financing and the provisions for adequate public services and facilities are required, and (6) implementation of the HMP is required.

The 2010 General Plan is consistent with the Fort Ord Reuse Plan.

Sincerely,



Benny Young, Director
Resource Management Agency
County of Monterey

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Pollution Legal Liability (PLL) Insurance Policy

Meeting Date: January 10, 2014

Agenda Number: 8c

INFORMATION/ACTION

RECOMMENDATION(S):

- i. Receive a presentation regarding the Pollution Legal Liability (PLL) Insurance Policy from Executive Officer Houlemard, Special Counsel Barry Steinberg (Kutak Rock, LLP) and Kathy Gettys (Marsh) INFORMATION
- ii. Consider insurance coverage options, provide direction to staff INFORMATION/ACTION

BACKGROUND/DISCUSSION:

In June 2000, the Fort Ord Reuse Authority (FORA) entered into an Economic Development Conveyance Agreement with the United States Army for the transfer of former Fort Ord land. In 2001, FORA entered into property transfer (Implementation) agreements with underlying jurisdictions. Under the terms of these Implementation Agreements, with a few exceptions, FORA is obligated to transfer and individual jurisdictions are required to accept title to land from FORA (or direct FORA to transfer to their designee) once regulatory approval of environmental conditions is achieved. The affected jurisdiction would then own former Fort Ord land within their jurisdictional boundary to transfer for private development or to maintain for public purposes. Since both FORA and the underlying jurisdictions would be in the chain of title for these former military lands, environmental liability concerns exist. Board members expressed concern that the associated environmental risk would expose their general funds to claims and suggested that FORA staff provide options for environmental insurance coverage, which would be more efficient if acquired collectively and basewide. In 2002, after research and industry inquiries, FORA staff determined that only limited coverage was available for former military owned land. Subsequently, after consultation with FORA special counsel Barry Steinberg, it was concluded that coverage could be obtained, but at a significant cost.

In 2004, after noting changes in the financial markets and upon receipt of information from colleagues in the Association of Defense Communities, staff reported on options for coverage for Pollution Legal Liability (PLL) insurance. That year, the Board authorized the purchase of a ten-year policy to provide PLL insurance coverage to FORA, its member land use jurisdictions, and their developers. That policy of insurance coverage will expire at the end of calendar year 2014, and staff recommends that the Board provide guidance addressing environmental risk. The options are; 1) obtaining an extension of the existing policy, 2) securing a new policy, 3) self-insuring, or 4) allowing the existing policy to lapse with no provision for coverage. The existing PLL Insurance has only been called upon in limited ways; no formal claims against the policy have been made over the years. While the existing cost cap policy addresses FORA's obligations under the cooperative agreement with the Army, that coverage will terminate upon completion of the remedial work. The current cost-cap policies do not adequately address many of the risks associated with the day-to-day operations and activities that will occur over the next 5 to 10 years.

In Spring 2005, the U.S. Army (Army) and FORA entered negotiations toward an Army-funded Environmental Services Cooperative Agreement (ESCA) for the removal of remnant Munitions

and Explosives of Concern (MEC) on the former Fort Ord. Under the terms of this ESCA contract, FORA accepted transfer of 3,340 former Fort Ord acres prior to regulatory environmental sign-off. In early 2007, the Army awarded FORA approximately \$98 million to perform the ESCA parcels MEC cleanup. FORA also entered into an Administrative Order on Consent (AOC) with the U.S. Environmental Protection Agency (EPA) and the California Department of Toxic Substance Control (DTSC) defining conditions under which FORA performs its contractual responsibilities for these Army remediation obligations.

In order to complete the AOC defined work, after a competitive selection process, FORA entered into a Remediation Services Agreement (RSA) with LFR Inc. (now ARCADIS) to provide MEC remediation services and executed a Cost-Cap insurance policy for this remediation work through American International Insurance Group (AIG). The Army ESCA Grant also provided FORA with \$916,056 toward the purchase of PLL Insurance Coverage similar to what the FORA Board purchased in 2004.

Through FORA's ESCA contract and the Army's other work under Comprehensive Environmental Response, Compensation, and Liability Act, most of the remaining lands transferring through FORA have completed significant risk "characterization." In other words, much more is known today about the pollution conditions on the 6000 acres than was known ten years ago. This should assist in attracting proposals from the insurance industry. The combination of; 1) the availability of ESCA PLL Insurance Funds and 2) the status of the investigations and characterization that has been performed since 2004 provides the FORA Board with a unique opportunity to supplement these funds and negotiate an extension to or replacement of the existing FORA PLL policy. There may exist an opportunity in this year to extend coverage at a reasonable price and terms partially using funds already intended for that purpose.

FORA Special Counsel Barry Steinberg and Insurance Broker Kathy Gettys will be present at the January 10, 2014 meeting to provide a brief presentation outlining the policy, options, and a recommended acquisition process for Board consideration.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

FORA land use jurisdictions and other agencies receiving property and/or accessing insurance coverage: City of Marina, City of Seaside, City of Monterey, City of Del Rey Oaks, County of Monterey, Monterey Peninsula College, Marina Coast Water District, Transportation Agency of Monterey County, and Monterey-Salinas Transit.

Prepared by _____ Reviewed by _____
Jonathan Garcia Stan Cook

Approved by _____

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: Accept Fiscal Year 12-13 Annual Financial Report	
Meeting Date: January 10, 2014	ACTION
Agenda Number: 9a	

RECOMMENDATION:

Accept the Moss, Levy & Hartzheim, Certified Public Accountants (Auditor) Fort Ord Reuse Authority (FORA) Fiscal Year 12-13 Annual Financial Report (Audit Report) (**Attachment A**).

BACKGROUND:

Each fall, FORA staff and/or Auditor present the Audit Report to the Finance Committee (FC) for its review and consideration before the Audit Report is forwarded to the FORA Board. The FORA Board has directed that every three to five years the FC evaluate the financial consultant providing the requisite opinion. Last year the firm Moss, Levy & Hartzheim (the Auditor) was hired to conduct the FY 11-12, FY 12-13, and FY 13-14 audits. For FY 12-13, the Auditor also conducted an audit of the Preston Park Housing financial operations – a change from past years where such audits were performed under the prior management contract.

DISCUSSION:

In the FY 12-13 review, the audit work of both the FORA and Preston Park financial operations began in October. The Auditor met with FORA Management and a Finance Committee representative as well as with the Preston Park management team (Alliance) to discuss pertinent items and audit procedures. The draft Audit Report was completed in early December and the Auditor presented the draft report at the December 17, 2013 FC meeting.

FORA has held title to the Preston Park Housing complex since 2000. However, the asset was not noted in past reports as it was expected to be acquired by the City of Marina. The Auditor has determined this capital asset should be included in the FORA Audit Reports. The FY 11-12 report included "unaudited" Preston Park information and as stated above, the Auditor audited Preston Park for the FY 12-13 report.

As a result, the Auditor issued a "qualified" opinion with respect to the Government-Wide Financial Statements because FORA (thru Alliance) has not yet recorded the value of Preston Park land and buildings. Accounting principles generally accepted in the U.S. require that those capital assets be capitalized and depreciated. The Auditor also reported several third-party (Alliance) findings with respect to the Preston Park internal control structure. Alliance management provided response and corrective actions, which the Auditor accepted.

With respect to FORA operations (Fund Financial Statements), the Auditor issued an "unmodified" opinion (formerly "unqualified") and complimented FORA staff for implementing previous year's recommendations. There were no findings/questionable costs in the FY 12-13 financial audit concerning FORA internal control structure. The Auditor's letter expresses the opinion that the financial statements present fairly, in all material respects, FORA's financial position as of June 30, 2013, and the respective changes in financial position, for the fiscal year then ended, in accordance with accounting principles general accepted in the United States of America.

The FC unanimously voted to recommend to the FORA Board that: a) it accept the FY 12-13 Audit Report (after making specific typographical and other grammatical corrections and inserting additional footnotes requested by the FC), and 2) FORA staff implement the Auditor's recommendation to determine the Preston Park asset valuation and include this information in future annual audit reports. *Please refer to item 11d for more details regarding the FC meeting.*

Copies of the Audit Report are included in the FORA member board packets. Interested members of public can obtain copies at the FORA office or on-line at www.fora.org.

FISCAL IMPACT:

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

COORDINATION:

Finance Committee, Executive Committee, the Auditor

DRAFT

Prepared by: _____
Ivana Bednarik

Approved by: _____
Michael A. Houlemard, Jr.

Placeholder for Attachment A Item 9a

January 10, 2014

Fiscal Year 12-13 Annual Financial Report

This item will be included in the final Board packet.

Placeholder for Item 9b

Elect 2014 FORA Board Officers

This item will be included in the final Board packet.

- END -

**DRAFT
BOARD PACKET**



TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Memorandum

To: Fort Ord Reuse Authority Administrative Committee

From: Ariana Green, Transportation Planner

Meeting Date: January 2, 2014

Subject: Marina-Salinas Multimodal Corridor Plan

RECOMMENDED ACTION:

RECEIVE a report on the Marina-Salinas Multimodal Corridor Plan; and
PROVIDE input to Transportation Agency staff.

SUMMARY:

This project will plan for a multimodal corridor that will connect the Monterey Peninsula to Salinas. Transportation Agency staff will work with partner agencies and members of the public to develop the plan.

FINANCIAL IMPACT:

The budgeted funding for the entire scope of work is \$232,798. A Caltrans Community-Based Transportation Planning Grant is contributing \$200,000 and the remaining \$32,798 through a local match. FORA contributed \$15,000 to the planning effort.

DISCUSSION:

This project will plan for a transit, bicycle, pedestrian and auto corridor which will connect Marina to Salinas. The plan will also look at improving connections to transportation projects and activity centers within the study area such as the Monterey Branch Line light rail, CSUMB, Hartnell College, County Government Center, Salinas Transit Center and Salinas train station. In August 2013 the Transportation Agency Board approved a contract with Kimley-Horn and Associates, Inc. to develop the Marina-Salinas Multimodal Corridor Plan.

The 1997 Fort Ord Base Reuse Plan identified a multimodal corridor that connected Marina and Salinas. The original alignment was routed along Imjin Rd/Imjin Pkwy and cut through habitat

lands to access Blanco Rd. The first alignment was ultimately abandoned because of the potential negative impacts to sensitive habitat and agricultural land along Blanco Rd. In 2010 all land-governing jurisdictions along the corridor signed a Memorandum of Agreement that shifted the alignment to Inter-Garrison Rd/Reservation Rd/Davis Rd. Since the Memorandum of Agreement was signed, several stakeholders including CSUMB have requested that the alignment once again be evaluated. This project will focus on expanding existing roadways and will attempt to address unresolved concerns and uncover new opportunities for high quality transit and transit-oriented development.

The first part of the planning process will focus on determining a preferred corridor route which will then be adopted by partner agencies. The second part of the planning process will identify preferred conceptual roadway design features along the agreed upon corridor route. Some features that may be considered are bicycle facilities, sidewalks or paths, transit stops/shelters, transit prioritization at signalized intersections, dedicated bus rapid transit facilities and pedestrian and equestrian crossing enhancements.

Because the route will traverse several jurisdictions and provide access to a mix of land uses the planning process will strive for stakeholder consensus and community collaboration. TAMC will coordinate the creation of a comprehensive transportation/land use plan for the corridor. The process will engage a diverse group of stakeholders that represent different socio-economic, jurisdictional and community interests. Staff will use visualizations to better communicate detailed corridor options to a wide range of community members and potential users, including Spanish speakers and students. The visualizations produced will help frame the potential trade-offs between different roadway alignments and designs and help solicit the community's preferences.

A conceptual plan for the multimodal transportation corridor will be a guiding document for development and roadway designs, and serve as a tool to raise money for project implementation. Land uses along the corridor will be evaluated to identify opportunities to create transit-oriented developments and enhance the community environment. TAMC will work with Fort Ord Reuse Authority and other Partner Agency staff to ensure that the Marina-Salinas Multimodal Corridor Plan is consistent with existing local plans and policies as well as current planning efforts.

Transportation Agency Staff will present the project to Transportation Agency committees and all partner agency councils and boards throughout the planning process beginning in November 2013. A series of public workshops will be held in Salinas and the Marina area. The first round of workshops will be held in January 2014.

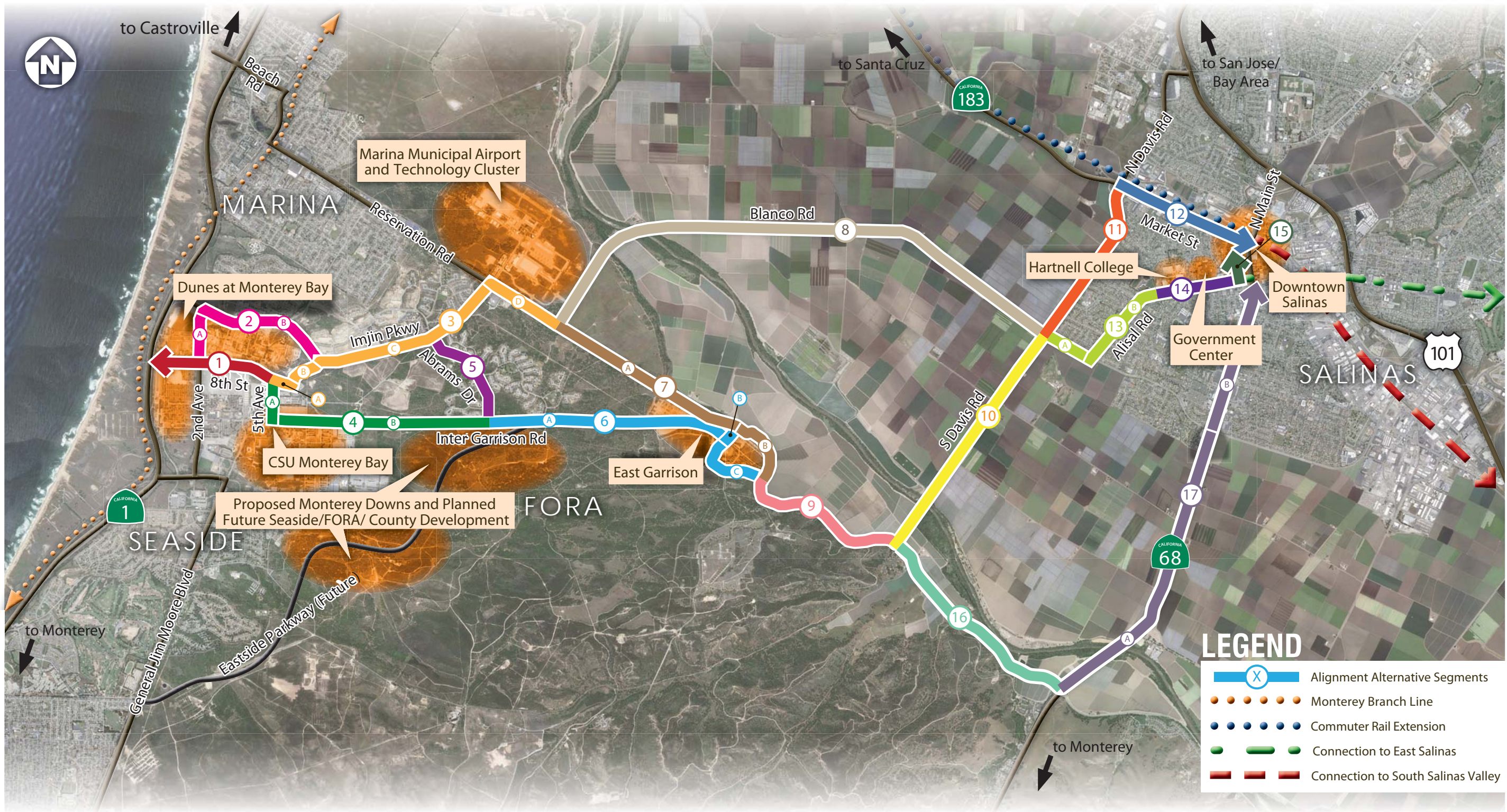
Approved by: _____
Debra L. Hale, Executive Director

Date signed: _____

Marina-Salinas Multimodal Corridor Conceptual Plan



Alignment Alternatives - Roadway Segments



Marina-Salinas Multimodal Corridor Conceptual Plan



Project Schedule

Project Phase 1
Goal: Identify Preferred Alignment

Project Phase 2
Goal: Define Concepts and Identify ROW

Assess Potential Alignments

- Data Collection
- Identify Multi-Modal Needs
- Analysis of Opportunities and Constraints

Detailed Development of Corridor

- Regional Network Integration
- Cross-Sections and Plan Lines
- Cost Estimates
- Land Use Opportunities
- Prioritization

Project Report
- Draft and Final Report

Project Introduction
to Boards/Councils

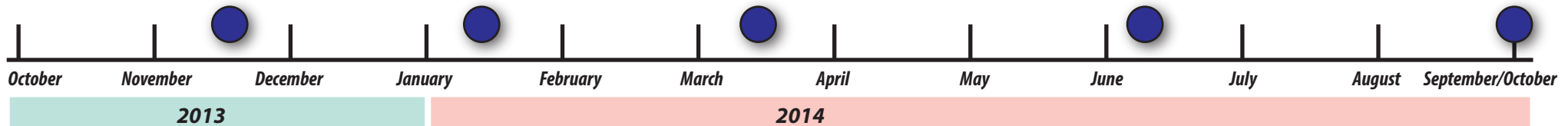
Board/Council Adoption
of Preferred Alternative

Board/Council Adoption
of Plan Lines

**Project Workshops
Salinas & Marina**

**Developer
Forum**

**Project Workshops
Salinas & Marina**



Partner Agency
Meetings



**FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE REPORT
OLD BUSINESS**

Subject: Discuss Habitat Conservation Plan (HCP) Document Review Schedule	
Meeting Date: January 2, 2014 Agenda Number: 7c	INFORMATION

RECOMMENDATION(S):

Receive a report on the HCP Document Review Schedule.

BACKGROUND/DISCUSSION:

On December 6, 2014, FORA emailed copies of the draft HCP governing documents: The Implementing Agreement, the Joint Powers Authority Agreement, the HCP Implementing Ordinance (jurisdictions' template), and the HCP Fee Collection Policy (educational institutions' template).

Staff requested that the review period end by January 24, 2014, and comments and questions be submitted to jonathan@fora.org. These HCP governing documents are also available on the FORA website at: <http://www.fora.org/HMP.html> under 'HMP&HCP Links.'

COORDINATION:

Authority Counsel