

MEMORANDUM OF UNDERSTANDING BY AND AMONG COUNTY OF MONTEREY, CITY OF SEASIDE, CENTRAL COAST VETERANS CEMETERY FOUNDATION, AND FORT ORD REUSE AUTHORITY REGARDING CALIFORNIA CENTRAL COAST VETERANS CEMETERY PLANNING

This MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") regarding the development of the California Central Coast Veterans Cemetery (hereinafter "Cemetery") is entered into by and among COUNTY OF MONTEREY, a political subdivision of the state of California (hereinafter "County"), CITY OF SEASIDE, a municipal corporation, (hereinafter "Seaside"), the CENTRAL COAST VETERANS CEMETERY FOUNDATION, a non-profit corporation (hereinafter "Foundation"), and the FORT ORD REUSE AUTHORITY, a public corporation of the State of California (hereinafter "FORA") (each individually referred to hereinafter as a "Party," and collectively referred to hereinafter as "Parties." This MOU is dated for reference on _____, 2011.

RECITALS

1. On April 28, 2009 the County, Seaside, and FORA entered into a Memorandum of Understanding to cooperate in processing the Cemetery Plan (hereinafter "Plan") and to establish an Endowment Fund (hereinafter "Endowment") for the Cemetery's continued operation as required by the California Department of Veterans Affairs (hereinafter "CDVA").
2. Since the enactment of that planning agreement, the Plan has evolved and the Foundation has desired to become a Party.
3. The Parties have all agreed and/or adopted planning documents that confirm the Cemetery will be located on the former Fort Ord. The Cemetery site is identified in Exhibit 1. The Cemetery Parcel is both within the jurisdiction of Seaside and the County.
4. The Proposed Project. The Plan envisions development of a 178 gross acre site (hereinafter "Project") into six planned land use areas. These areas include: 1) the approximately 78.7-acre Cemetery, 2) three separate parcels for ancillary use, 3) habitat mitigation areas, and 4) two development parcels referred to as the Northern Endowment Opportunity Parcel and the Southern Development Area along with related rights-of-way and 5) other public improvement areas. The Project's areas are defined on the attached Exhibit 2 and are described as follows:
 - a. Cemetery Burial Grounds including Ancillary Uses:
 - i. Approximately 31.1 acres with Seaside
 - ii. Approximately 47.6 acres within County
 - b. Ancillary Uses Adjacent to Burial Grounds:
 - i. Approximately 1.8 acres in the northwestern border of the Cemetery
 - ii. Approximately 1.1 and .9 acres on the south border of the Cemetery
 - c. Northern Endowment Fund Opportunity Parcel:
 - i. Approximately 28.7 acres within Seaside.
 - ii. Approximately 1.7 acres within County
 - d. Southern Development Area with Habitat Restoration Opportunity Area:
 - i. Approximately 30.4 acres within Seaside.
 - ii. Approximately 15.5 acres within County
5. State Cemetery Grant. Construction of the Cemetery is anticipated to be funded through a grant from the State Cemetery Grant Program offered by the U.S. Department of Veterans Affairs under its National

Cemetery Administration. The grant can finance administration and design costs, cemetery features, and related equipment. The State Cemetery Grant Program requires that assurance of on-going operational funding for the cemetery be in place prior to grant submission.

6. The Parties agree to work toward State of California legislation that would create a mechanism for the CDVA to reimburse local private and public contributions to the Endowment when the operations and maintenance purpose of the endowment is fulfilled.
7. In addition to establishing an endowment fund for the operation of the Cemetery, this MOU establishes a mechanism to facilitate the design, construction and operation of the Cemetery.
8. The Parties concur that near-term cemetery endowment funding strategy be established.
9. Upon consensus, additional parties may be added to this Agreement to facilitate the Project as described in this Agreement.

This MOU should be interpreted to carry out these goals.

AGREEMENT

1. Use of Proceeds from sale of Development Parcels. The Parties collectively commit up to \$1.9 million required to a) submit an application for the design and construction grant and b) to fund an endowment for the long term operation and maintenance of the Cemetery, through the sale of either the Northern Endowment Fund Opportunity Parcel by the Parties or portions of the Southern Development Area with Habitat Restoration Opportunity Area within Seaside.
 - a. The County and Seaside agree to work collaboratively to designate the Northern Endowment Fund Opportunity Parcel for future development.
 - b. Seaside endeavors to comply with the development milestones outlined in Section 11 of this MOU. Those milestones pertain to the Northern Endowment Fund Opportunity Parcel.
 - c. Seaside may transfer, sell, or otherwise encumber portions of the Southern Development Area with Habitat Restoration Opportunity Area within Seaside's jurisdiction upon the Endowment funding requirements and the off-set of habitat impacts of the Project and other adjacent Fort Ord projects, being met, as mutually agreed upon. Seaside may control the use of this portion of the Southern Development Area.
 - d. Additional parties may be added to this Agreement to facilitate the Project by mutual agreement of the parties.
2. Principles for near-term funding strategy. The Parties agree to the following principles in pursuing a near-term funding strategy for the Cemetery Endowment:
 - a. That all Parties be included, and that the Northern Endowment Fund Opportunity Parcel will continue to be a primary mechanism to provide Cemetery Endowment funding.
 - b. That the Cemetery Parcel be surveyed for transfer.
 - c. That the funding strategy be accomplished by October 1, 2011.
 - d. That the funding strategy may include other entities upon consensus agreement.
 - e. That the asset value of the Northern Endowment Fund Opportunity Parcel be the source of repayment if other collateral is used to secure Cemetery Endowment funding.
 - f. To the extent possible, the Parties will work toward State of California legislation that would create a reimbursement mechanism, so that local contributions to the Cemetery Endowment, in excess of required operations and maintenance funding would be reimbursed to the contributors.

- g. The Parties agree to cooperate in the processing, planning, and other promotional activities to accommodate and advance Cemetery development as designated in the Fort Ord Base Reuse Plan ("BRP") and other planning documents.
3. Annexation. It is the intent of the Parties to cooperate fully to accomplish annexation of those portions of the Project site currently located within County territory and outside Seaside as defined on the attached Exhibit 2 in order to facilitate the development of the Cemetery. It is also the intent of the Parties to cooperate fully to accomplish the conveyance of the portions of the Project site currently owned by the County to Seaside as defined on the attached Exhibit 2 in order to facilitate the development of the Cemetery. Seaside and County agree that the Southern Development Area with Habitat Restoration Opportunity Area shall be used for habitat mitigation to offset impacts of the Project and other adjacent Fort Ord projects, as mutually agreed upon.
4. Land Conveyance. At the direction of Seaside and with the cooperation of the Parties, FORA agrees to convey title to the land described in Exhibit 1 in multiple conveyance events as regulatory agencies have confirmed site closure for the removal of remnant hazards. The land will likely be conveyed with applicable conveyance documentation, land use controls and deed restrictions. These include, but are not restricted to Finding of Suitability for Early Transfer 5 ("FOSET 5"), Monterey County Ordinance Ordinance (Chapter 16.10 of the County Code), Seaside Ordinance Ordinance (Chapter 15.34 of the Seaside Municipal Code), and the Remedial Design/Remedial Action, Land Use Controls Implementation, and Operation and Maintenance Plan - Parker Flats Munitions Response Area Phase I. To reduce costs associated with land conveyance of the Cemetery to CDVA, County and Seaside may elect to direct FORA to transfer the approximately 78.7-acre Veterans cemetery parcel (31.1 acres within Seaside and 47.6 acres within the County) directly to CDVA or to the Foundation for Cemetery construction. The Foundation agrees to secure or pay for a property survey needed to complete the transfer. Such conveyance is not intended to include the Cemetery's ancillary use parcels.
5. Design and Construction of Cemetery. The CDVA will be the lead agency for the proposed Cemetery and may designate FORA to act on its behalf. The Parties support the transfer of responsibility for the design and construction of the Cemetery to FORA.
6. Water Allocation. The Parties agree that FORA will take the lead to request that the U.S. Army and Department of the Defense convey, transfer, or otherwise re-allocate water rights and allocation in an amount determined sufficient [currently estimated to be up to 105 acre-feet per year ("AFY") of potable water] by the Marina Coast Water District to develop the Cemetery, ancillary uses adjacent to the Cemetery, and the Northern and Southern Development Areas. The use of the Northern Endowment Parcel as the funding mechanism for the Endowment is conditioned upon Seaside receiving a minimum of 100 AFY of potable water to support future development. Water demand has been estimated to be 2.2 AFY for the Cemetery burial grounds. If necessary, the County agrees to allocate up to this amount of water (2.2 AFY) for the Cemetery burial grounds. Further, the Parties will work with the Marina Coast Water District and the Army to secure sufficient interim water necessary to establish Cemetery landscaping.
7. Environmental Disclosures. The Agency for Toxic Substances and Disease Registry ("ATSDR") was established under the mandate of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980. CERCLA, also known as the "Superfund" law, authorized the U.S. Environmental Protection Agency ("EPA") to conduct clean-up activities at hazardous waste sites. EPA was directed to compile a list of sites considered hazardous to public health. This

list is termed the National Priorities List (“NPL”). The 1986 Superfund Amendments and Reauthorization Act (“SARA”) directed ATSDR to perform a public health assessment for each NPL site. In 1990, federal facilities were included as sites to be proposed for or listed on the NPL. EPA placed Fort Ord on the NPL on February 21, 1990. The US Army, in consultation with EPA, is implementing groundwater and munitions and explosives of concern (“MEC”) remediation on former Fort Ord. FORA has entered into an Environmental Services Cooperative Agreement (“ESCA”) to complete a portion of the US Army’s MEC remediation work on certain portions of former Fort Ord, which includes the Cemetery parcel, to be transferred from the US Army to FORA under the FOSET 5. As FORA completes former Fort Ord ESCA MEC remediation work and transfers property, groundwater and soil Land Use Covenants (“LUC”) restricting certain property uses will be recorded.

8. Munitions Response Sites. Based on the 1997 BRP designations, FORA is required under an Administrative Order on Consent with State and Federal regulators to achieve regulatory site closure before transferring any of the properties described herein to Seaside, the County, or others as may be directed. FORA anticipates the portion of the Veterans Cemetery site that was remediated by the US Army and has an approved Record of Decision will be transferred during calendar year 2012 - once appropriate surveys are completed and after the regulatory agencies have confirmed that site closure is complete. In addition, the Army must grant the CERCLA covenant..
9. Ongoing Remediation. The FORA ESCA will continue remediation adjacent to the Cemetery, which may require munitions removals or on-site detonation. This may impact Cemetery construction and/or operations. If intrusive activity is to occur in an area where MEC is expected, and for all MEC demolition operations, an exclusion zone will be established to ensure public safety. During any intrusive activity (e.g., excavations) in areas where MEC is likely to be present, only authorized personnel essential to the operation are permitted to be inside the exclusion zone. When an exclusion zone includes public roads, businesses, residences, or ongoing construction projects, the affected entities or individuals will be notified and asked to temporarily relocate outside the exclusion zone.
10. Environmental Review. Parties shall cooperate with Seaside as lead agency relating to the disposition of property to generate funds for the Endowment, including environmental review pursuant to a separate agreement.
11. Milestones. The Parties endeavor to comply with the following schedule and acknowledge the CDVA’s overall project schedule as currently described in **Exhibit 3**.

Task	Lead Agency	Completion Date
Approve Exclusive Negotiating Agreement (“ENA”) for Northern Endowment Fund Opportunity Parcel	Seaside	September 18, 2010
Conduct Environmental Review of Endowment Parcel use(s)	Seaside	November 1, 2011 to March 1, 2013
Complete Habitat Conservation Plan (HCP)	FORA	August 1, 2012
Complete Disposition and Development Agreement or other agreements for Northern Endowment Fund Opportunity Parcel	Seaside	April 1, 2013
Complete Annexation to Seaside	Seaside	April 1, 2013
Receive Regulator & U.S. Army approval	FORA	December 2014

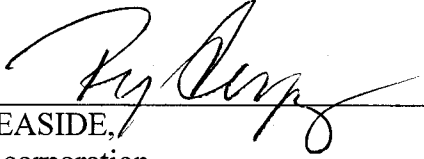
to transfer property from FORA to Seaside		
Convey land FORA to Seaside or designee	FORA	March 1, 2015
Convey land/assets	Seaside	Late 2015

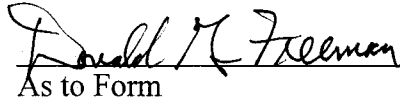
12. County Approvals. The County Director of Redevelopment and Housing, or his or her designee, is authorized to act on behalf of the County as to matters of administration and interpretation of this MOU, except for matters expressly required in this MOU to be acted upon by the County's Board of Supervisors. The Director of Redevelopment and Housing of the County of Monterey, or designee, at his or her sole discretion, may refer any matter under this MOU to the County Board of Supervisors for action in a timely manner under this MOU.
13. Seaside Approvals. Seaside City Manager, or his or her designee, is authorized to act on behalf of Seaside as to matters of administration and interpretation of Seaside's roles and responsibilities under this MOU, except for matters expressly required in this MOU to be acted upon by Seaside.
14. Additional Governmental Parties. The Parties acknowledge that additional governmental parties may be required to be added to this Agreement upon mutual agreement of the Parties in order for the Parties to fulfill their roles and responsibilities as outlined in this Agreement.
15. Termination. The purpose of this MOU is to facilitate the June 2012, funding of an endowment for the operation of the California Central Coast Veterans Cemetery. The endowment needs to be funded by this date in order to formally request funds for the construction of the cemetery under the State Cemetery Grant Program. If this purpose is frustrated by the failure to fund the endowment by the time stated, then this MOU may be terminated on thirty (30) days' notice by action of one or more of the legislative bodies of the County, Seaside or FORA.
16. Amendment by Written Recorded Instrument. This MOU may be amended or modified in whole or in part, only by a written instrument executed by all of the parties.
17. Governing Law. This MOU shall be governed by and interpreted by and in accordance with the laws of the State of California.
18. Entire MOU. This MOU, along with any exhibits and attachments hereto, constitutes the entire MOU between the parties hereto concerning the subject matter hereof.
19. Interpretation. It is agreed and understood by the parties hereto that this MOU has been arrived at through negotiation and that no party is to be deemed the party which prepared this MOU within the meaning of Civil Code Section 1654.

IN WITNESS WHEREOF, the Parties have executed this MOU on the day and year set out opposite their respective signatures.

By:

Date: 1-28-12






As to Form

CITY OF SEASIDE,
a municipal corporation

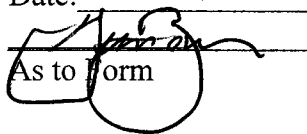
By:

Date: _____


1-10-12
COUNTY OF MONTEREY,
a political subdivision of the State of California


As to Form Deputy County Clerk


By: _____
FORT ORD REUSE AUTHORITY
a public corporation of the State of California

Date: 2-14-12

As to Form

By: Janet M. Park

Date: _____

CENTRAL COAST VETERANS CEMETERY
FOUNDATION
a non-profit corporation

As to Form