

JOINT EXERCISE OF POWERS AGREEMENT

CREATING THE

FORT ORD REGIONAL

HABITAT COOPERATIVE

(pursuant to Joint Exercise of Powers Act,
California Government Code Sections 6500 to 6599.3)

_____, 2019
(for reference purposes)

JOINT EXERCISE OF POWERS AGREEMENT

CREATING THE FORT ORD REGIONAL HABITAT COOPERATIVE

This Joint Exercise of Powers Agreement (this “Agreement”) is dated for reference purposes _____, 2019 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”),
- (e) City of Monterey (“Monterey”),
- (f) California Department of Parks and Recreation (“State Parks”),
- (g) The Regents of the University of California (“UC”),
- (h) The Board of Trustees of the California State University, on behalf of the Monterey Bay Campus (“CSUMB”),
- (i) Monterey Peninsula Community College District (“MPC”),
- (j) Monterey Peninsula Regional Park District (“MPRPD”),
- (k) Marina Coast Water District (“MCWD”), and
- (l) Bureau of Land Management (“BLM”).

RECITALS

A. Each of the parties to this Agreement is a public agency within the meaning of the Joint Exercise of Powers Act (California Government Code Section 6500 *et seq.*, hereinafter referred to as the “JPA Act”). The parties may be referred to collectively as the “Parties” and each individually as a “Party.” BLM is a party but not a Permittee. BLM’s participation in the JPA is voluntary.

B. The JPA Act authorizes the Parties to create a joint exercise of powers entity that has the power to exercise jointly the powers common to the Parties.

C. The Parties have a common interest in creating an entity capable of implementing the HCP. To this end, the Parties anticipate entering into State and Federal Permits with the United States Fish and Wildlife Service (“USFWS”), and the California Department of Fish and Wildlife (“CDFW”) and implementing the HCP as the joint exercise of powers entity established by this Agreement (the “Cooperative”). The HCP identifies certain duties and obligations that must be fulfilled to support the issuance of permits to the Parties under the federal Endangered Species Act (“ESA”) and the California Endangered Species Act (“CESA”) to enable urban development, operations and management in habitat management areas, and other activities and projects on property owned or controlled by the Parties at the former Fort Ord.

D. The Parties will also (i) confirm the cessation, as of June 30, 2020, of collection of the Community Facilities District (“CFD”) Special Taxes established by the Fort Ord Reuse Authority (“FORA”), (ii) identify any replacement or substitute sources of revenue to support the implementation of the HCP, and (iii) provide for joint and several responsibility for ensuring full implementation of the HCP.

AGREEMENT

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

1.1 Terms Defined in the Federal Endangered Species Act. Terms used in this Agreement and specifically defined in the ESA or in regulations adopted by USFWS under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

1.2 Terms Defined in the California Endangered Species Act. Terms used in this Agreement and specifically defined in the CESA or in regulations adopted by CDFW under the CESA have the same meaning as in the CESA and those implementing regulations, unless this Agreement expressly provides otherwise.

1.3 “Agreement” means this Joint Exercise of Powers Agreement, which incorporates the HCP by reference.

1.4 “Appointer” has the meaning given in Section 2.4.1.

1.5 “Authorized Take” means the extent of Incidental Take of HCP Species authorized by USFWS in the Federal Permit issued to the Permittees under Section 10(a)(1)(B) of the ESA, and the Incidental Take of State-Listed Species authorized by CDFW in the State Permit issued to the Permittees under California Fish and Game Code Section 2081(b).

1.6 “BLM” means the Bureau of Land Management, an agency of the U.S. Department of Interior.

1.7 “Borderlands” means designated development parcels or HMAs at the urban/wildland interface where specific design considerations and management activities are required to minimize effects of development on HCP Species and natural communities. Borderlands are confined to those areas so designated on Figure 3-2 of the HCP and are described in Section 3.2.2 of the HCP.

1.8 “Borderlands Fund” means a specific fund within the Cooperative Endowment Fund, as described in Section 9.3.1.1.5 of the HCP.

1.9 “CDFW” means the California Department of Fish and Wildlife, a department of the California Natural Resources Agency.

1.10 “CESA” means the California Endangered Species Act (California Fish and Game Code Section 2050 *et seq.*) and rules, regulations, and guidelines promulgated under that act.

1.11 “CFD Special Taxes” means the FORA Community Facilities District special taxes collected from developers of the former Fort Ord property to pay for mitigation of the adverse environmental impacts of the former Fort Ord development.

1.12 “Cities” collectively means the cities of Seaside, Marina, Del Rey Oaks, and Monterey.

1.13 “Conservation Strategy” means all HCP-required mitigation measures, as described in Chapter 5 of the HCP; monitoring and adaptive management measures, as described in Chapter 6 of the HCP; program administration and reporting requirements, as described in Chapter 7 of the HCP; and responses to Changed Circumstances, as described in Chapter 8 of the HCP.

1.14 “Contract Date” means the latest of the dates set forth beside the signatures of the Parties below, which shall be deemed to be the effective date of this Agreement.

1.15 “Cooperative” means the Fort Ord Regional Habitat Cooperative created by this Agreement. The Cooperative is responsible for implementing HCP terms and conditions. The Cooperative is composed of appointed and elected officials of the Permittees, as further described in Sections 7.2.1 and 7.3.1 of the HCP.

1.16 “Cooperative Endowment Fund” means the endowment described in Section 9.3 of the HCP consisting of three (3) accounts: (a) the HCP Fund, (b) the Implementation Assurances Fund, and (c) the Borderlands Fund.

1.17 “Cooperative Endowment Holder” means a government entity, community foundation, special district, nonprofit organization, or a congressionally chartered foundation meeting the requirements of California Government Code Sections 65965 to 65968. This is the entity which will be approved by CDFW to hold the collected CFD Special Taxes or other capital resources, in the form of the HCP Fund, the Implementation Assurances Fund, and Borderlands Fund, for disbursement to the Cooperative according to the terms described herein and in Chapter 9 of the HCP, and to collect and temporarily hold the proceeds of the CFD Special Taxes that are to be transferred to UC to fund the FONR Endowment.

1.18 “Cooperative Governing Board” means the body governing the Fort Ord Regional Habitat Cooperative pursuant to this Agreement.

1.19 “County” means the County of Monterey, a California general law county.

1.20 “Covered Activities” means certain activities carried out by the Permittees on Covered Lands that may result in Incidental Take of HCP Species, as specified in Chapter 3 of the HCP. Covered Activities include the following activities, provided that these activities are otherwise lawful: development in designated development parcels, development with restrictions in HMAs, road corridors and infrastructure in HMAs (including future road corridors, existing roads, campgrounds, restrooms, visitor center, beach access trails, Americans with Disabilities Act-compliant trails, interpretive theatres, interpretive signs, and utilities, easements, rights of way, and MCWD facilities in HMAs), management activities within HMAs encompassing Conservation actions for Permit compliance (including habitat restoration and enhancement, prescribed burning, alternative vegetation management, invasive species control, erosion control, and monitoring), resource management actions (including maintenance of roads and trails, maintenance of fuel breaks, access control, and monitoring, research, education, and training),

and activities contained in the Fort Ord General Plan adopted by the State Parks and Recreation Commission.

1.21 “Covered Lands” means the lands upon which the Permits authorize Incidental Take of HCP Species and the lands to which the Conservation Measures set forth in the HCP apply.

1.22 “Covered Species” means the Federally- and State-Listed Species, as listed in Sections 1.29 and 1.57.

1.23 “CRMP” means the Fort Ord Coordinated Resource Management and Planning program, which was established after adoption of the 1997 Installation-Wide Multispecies Habitat Management Plan as a discussion forum for jurisdictions with natural lands management responsibilities at the former Fort Ord military installation.

1.24 “CSUMB” means the Board of Trustees of the California State University, acting on behalf of the Monterey Bay Campus.

1.25 “Del Rey Oaks” means the City of Del Rey Oaks, a California general law city.

1.26 “Effective Date” means the latter of (a) the date that the Federal Permit is issued by USFWS or (b) the date that the State Permit is issued by CDFW.

1.27 “Endowment” means: (a) the FONR Endowment Fund and (b) the Cooperative Endowment Fund, described in Section 9.3 of the HCP. Funds generated by the CFD Special Taxes and other sources available to the Cooperative or its members will be used to establish and maintain these two (2) separate funds to offset both capital and operational HCP costs.

1.28 “ESA” means the federal Endangered Species Act of 1973, as amended (16 United States Code Section 1531 *et seq.*) and rules, regulations, and guidelines promulgated under that act.

1.29 “Federally-Listed Species” means the HCP Species which are listed as threatened or endangered species under the ESA as of the Effective Date, which includes: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Yadon’s piperia (*Piperia yadonii*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Smith’s blue butterfly (*Euphilotes enoptes smithi*), western snowy plover (*Charadrius nivosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and the HCP Species which are listed as threatened or endangered under the ESA during the HCP term as of the date of such listing.

1.30 “Federal Permit” means the federal incidental take permit issued by the USFWS to the Permittees under Section 10(a)(1)(B) of the ESA, as it may be amended from time to time.

1.31 “FONR” means the 606-acre Fort Ord Natural Reserve in the northern portion of the former Fort Ord military installation operated by UC’s Natural Reserve System.

1.32 “FONR Endowment Fund” means the endowment held and managed by UC, funds for which have been contributed by FORA and will be contributed through the Cooperative for the purpose of adequately funding all HCP-related costs on the FONR.

1.33 “**FORA**” means the Fort Ord Reuse Authority, a public corporation of the State of California.

1.34 “**Habitat Land Owners**” means BLM, State Parks, UC, County, Marina, MPC, and the MPRPD. Habitat land owners possess one or more HMAs (as defined in Section 1.39 below).

1.35 “**Habitat Reserve System**” means the land transferred from the U.S. Army to designated Habitat Land Owners to meet HCP preservation, conservation, enhancement, and restoration objectives of the Conservation Strategy. The Habitat Reserve System consists of land within 14 HMAs (as defined in Section 1.39 below).

1.36 “**HCP**” means the Fort Ord Multi-Species Habitat Conservation Plan prepared by the Permittees for the former Fort Ord military installation.

1.37 “**HCP Fund**” means a specific fund within the Cooperative Endowment Fund, as described in Section 9.3.1.1.3 of the HCP.

1.38 “**HCP Species**” means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing incidental take permits under ESA Section 10(a)(1)(B) or CESA Section 2081: sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Yadon’s piperia (*Piperia yadonii*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), seaside bird’s beak (*Cordylanthus rigidus* ssp. *littoralis*), Smith’s blue butterfly (*Euphilotes enoptes smithi*), western snowy plover (*Charadrius nivosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and seaside bird’s beak (*Cordylanthus rigidus* var. *littoralis*).

1.39 “**HMA**” means Habitat Management Areas, which are the areas located within the habitat reserve areas, the habitat corridors, and the restricted development parcels included in the Habitat Reserve System. Descriptions of the 14 HMAs are provided in Sections 2.3.1 through 2.3.14 of the HCP.

1.40 “**HMA Managers**” means the Cooperative, MPRPD, BLM, State Parks, and UC.

1.41 “**HMP**” means the revised “Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord” issued by the U.S. Army Corps of Engineers in April 1997.

1.42 “**Implementation Assurances Fund**” means a specific fund within the Cooperative Endowment Fund, as described in Section 9.3.1.1.4 of the HCP.

1.43 “**Incidental Take**” means Take that is incidental to, and not the purpose of, an otherwise lawful activity conducted by a governmental agency or Permittee.

1.44 “**JPA Act**” means the Joint Exercise of Powers Act (California Government Code Section 6500 *et seq.*).

1.45 “**Majority of the Cooperative Governing Board**” means not less than eight (8) of the fourteen (14) voting members of the Cooperative Governing Board.

1.46 “**Marina**” means the City of Marina, a California charter city.

1.47 “**MCWD**” means the Marina Coast Water District, a California special district.

1.48 “**Mitigation**” means measures and actions taken to fully offset the impacts of Incidental Take of the HCP Species or State-listed Species.

1.49 “**Mitigation Measures**” means the methods and procedures set forth in the HCP to be used on or applied with respect to the Covered Lands.

1.50 “**Monterey**” means the City of Monterey, a California charter city.

1.51 “**MPC**” means the Monterey Peninsula Community College District, a California community college district.

1.52 “**MPRPD**” means the Monterey Peninsula Regional Park District, a California special district.

1.53 “**Party**” or “**Parties**” means any or all, respectively, of the signatories to this Agreement.

1.54 “**Permits**” means the federal incidental take permit issued by USFWS to the Permittees pursuant to Section 10(a)(1)(B) of the ESA and the State incidental take permit issued by CDFW to the Permittees under California Fish and Game Code Section 2081 for “Take” incidental to “Covered Activities” on the former Fort Ord military installation, as they may be amended from time to time.

1.55 “**Permittees**” means the Cooperative, County, Marina, Monterey, Seaside, Del Rey Oaks, State Parks, UC, CSUMB, MPC, MPRPD, and MCWD.

1.56 “**Seaside**” means the City of Seaside, a California general law city.

1.57 “**State-Listed Species**” means species considered covered for the purposes of the State Permit and include only those HCP Species which are State-Listed. They are sand gilia (*Gilia tenuiflora* ssp. *arenaria*), seaside bird’s beak (*Cordylanthus rigidus* var. *littoralis*), and California tiger salamander (*Ambystoma californiense*).

1.58 “**State Parks**” means the California Department of Parks and Recreation, a department of the California Natural Resources Agency.

1.59 “**State Permit**” means the State incidental take permit issued to the Permittees under California Fish and Game Code Section 2081, as it may be amended from time to time.

1.60 “**Take**” means (a) with regard to a Federal Permit: to Harass, Harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to Harass, Harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect (50 Code of Federal Regulations Part 222.102 – Definitions); (b) with regard to a State Permit, to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill (California Fish and Game Code Section 86). California Fish and Game Code Section 2080 prohibits commerce and taking of species listed as endangered or threatened under the CESA.

1.61 “**Technical Advisory Committee**” means the advisory committee to the Cooperative Governing Board on resource planning, problem-solving, and management processes in former Fort Ord.

1.62 “UC” means The Regents of the University of California.

1.63 “USFWS” means the United States Fish and Wildlife Service, an agency of the U.S. Department of Interior.

1.64 “Wildlife Agencies” means USFWS and CDFW.

2.0 AUTHORITY CREATION AND OPERATION OF COOPERATIVE

2.1 Establish Cooperative. This Agreement creates the Cooperative as an entity, the principal purpose of which is protection and stewardship of natural resources and endangered species habitat on the former Fort Ord. The Cooperative will achieve that objective through the implementation of the HCP. The HCP will enable the Cooperative to achieve certain land use planning and development goals and provide comprehensive species and ecosystem conservation for all covered species now listed in the HCP (the “HCP Species”) or which may later be added to the HCP by amendment. As provided in the JPA Act, the Cooperative is a public entity separate from its members. Debts, liabilities, and obligations of the Cooperative are its own and not those of its members.

2.2 Cooperative’s Responsibilities. This Agreement requires the Cooperative to (a) oversee, monitor, and report on HCP implementation, including concurrence determinations; (b) manage the Habitat Reserve System; (c) secure or receive funding for conservation management; (d) provide HCP public information and outreach; and (e) exercise the powers described in Section 6.0 of this Agreement.

2.3 State Filing. Within thirty (30) days after the Contract Date or any amendment to this Agreement, the Cooperative will cause appropriate notice thereof to be filed with the office of the Secretary of State of the State of California, as provided in Government Code Section 6503.5.

2.4 Appointments to Cooperative Governing Board; Term. The Cooperative will be governed by a Cooperative Governing Board consisting of voting and non-voting members as described in Section 2.5 of this Agreement.

2.4.1 Appointments. Each Party’s legislative body, or if the Party has no legislative body, the Party’s designated administrator (in either instance, the “Appointer”), shall appoint that Party’s member(s) of the Cooperative Governing Board(s) and may also appoint alternate representative(s). The Manager of the Fort Ord National Monument, or another representative appointed by such Manager, will serve as the BLM member.

2.4.2 Term. The term of office of each member and alternate shall be four (4) years; provided, however, that his/her term shall expire on the first to occur of any of the following: (a) replacement by his/her Appointer, (b) if he/she is an elected official of the Party which caused his/her appointment at the time of such appointment, when he/she ceases to be such an elected official, (c) the effective date of his/her resignation as a member or alternate, or (d) his/her death, disqualification, or permanent incapacity to serve as a member or alternate. Within sixty (60) days after a member’s seat on the Cooperative Governing Board becomes vacant, the Appointer shall appoint a replacement to complete any unserved portion of his/her predecessor’s four (4) year term. Replacement of any alternate may be made at the discretion of the Appointer. Any member term of his or alternate may be reappointed by his/her

Appointer for a subsequent term or terms. Each Party shall maintain its own records of its appointments and related terms of office. BLM's board member term does not expire.

2.5 Membership and Voting. The initial Cooperative Governing Board shall include fourteen (14) voting members, as follows: Del Rey Oaks (1), Monterey (1), Marina (2), Seaside (2), County (2), State Parks (1), MPRPD (1), MPC (1), UC (1), CSUMB (1), and MCWD (1). Because Seaside, Marina, and County each have been apportioned a greater amount of Fort Ord development lands than the other Permittees (and because CFD Special Taxes collected from these Permittees' lands provided most of the funding for the Cooperative Endowment Fund and the FONR Endowment Fund), each has two (2) voting Cooperative Governing Board members. Each voting Cooperative Governing Board member shall have one (1) vote for each decision relating to the governance, budget, or administration of the Cooperative. BLM shall be the sole non-voting member.

2.5.1 Non-Voting Member Assurances. The non-voting member agrees to fulfill its responsibilities in compliance with the HCP and the Permits.

2.5.2 Voting Member Assurances. Because each voting member has responsibility for ensuring HCP compliance through habitat management activities, coordination with HMA Managers, annual monitoring and reporting, and the HCP concurrence process, each voting member agrees to: (a) perform habitat management activities in compliance with the HCP and (b) refrain from engaging the Cooperative in any expenses or financial obligations that could accrue to the Parties until at least ninety (90) days after Effective Date.

2.6 Pay. Cooperative Governing Board members serve without compensation but may be entitled to reimbursement for expenses incurred on behalf of the Cooperative at the direction of the Cooperative Governing Board.

2.7 Staffing Needs. The Cooperative Governing Board shall determine how to best meet any staffing needs of the Cooperative (including whether by hiring full or part time employees, retaining consultants or independent contractors, engaging the services of another public or private entity, or any combination of the above), as those needs may evolve over time. The Cooperative Governing Board will meet and confer in good faith within thirty (30) days following the Contract Date to cooperatively develop and establish an initial staffing plan for the Cooperative.

2.8 Meetings of Cooperative Governing Board.

2.8.1 Regular Meetings. The Cooperative Governing Board shall hold regular meetings at least twice per year at dates and times established by the Cooperative Governing Board. The Cooperative Governing Board may establish a meeting schedule that sets regular meetings at more frequent intervals. The Chair of the Cooperative Governing Board may call, cancel, or reschedule meetings.

2.8.2 Legal Notice. Meetings of the Cooperative Governing Board shall be called, noticed, held, and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code Section 54950 *et seq.*) and the Bagley Keene Open Meeting Act (California Government Code Section 11120 *et seq.*).

2.8.3 Minutes. The administrator selected pursuant to Section 2.9.2 or his/her designee shall cause minutes of meetings of the Cooperative Governing Board to be kept and shall present minutes for review and approval by the Cooperative Governing Board at its regular meetings.

2.8.4 Quorum. A Majority of the Cooperative Governing Board constitutes a quorum for the transaction of business, except that less than a quorum may adjourn meetings.

2.9 Officers: Duties; Bonding.

2.9.1 Chair. The Cooperative Governing Board shall annually elect from its members a Chair and a Vice Chair. The Chair and the Vice Chair shall have the duties assigned by the Cooperative Governing Board or set forth in by-laws adopted by the Cooperative Governing Board.

2.9.2 Administrator. The Cooperative Governing Board shall appoint an administrator, who shall (a) serve as the custodian of the Cooperative's records; (b) prepare minutes to be submitted for review and approval by the Cooperative Governing Board; (c) act as Secretary at meetings; (d) keep a journal record of the Cooperative's proceedings; and (e) perform duties incident to the office as assigned by the Cooperative Governing Board.

2.9.3 Bonded Officers. The Cooperative Governing Board shall identify and designate each public officer or other person who has charge of, handles, or has access to the Cooperative's property and funds and, to the extent required by Government Code Section 6505.1, shall require such officers and persons to file official bonds, provided that such bonds shall not be required if the Cooperative's property and funds have an aggregate value less than One Thousand Five Hundred Dollars (\$1,500), as adjusted for inflation according to a generally accepted index adopted by the Cooperative Governing Board.

2.9.4 Audits. The Cooperative shall cause to be prepared: (a) a special audit as required by California Government Code Section 6505 every year during the term of this Agreement and (b) a report in writing on the first day of February, May, August, and November of each year to the Cooperative Governing Board and the Parties. The report shall: (a) describe the amount of money held by the Cooperative; (b) the manner in which the money is held and invested; (c) include the income received since the last such report; and (d) the amount paid out since the last such report.

2.9.5 Other Officers. The Cooperative Governing Board may: (a) appoint such other officers and employees as it may deem necessary and (b) retain independent counsel, consultants and accountants.

2.9.6 Hired Management. The Cooperative shall have the authority to hire a management firm or other entity to implement the Cooperative's responsibilities; provided, however, that the Cooperative's responsibilities or obligations under this Agreement may not be assigned to any third party without the prior approval of USFWS and CDFW, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.0 TERMINATION AND WITHDRAWAL

3.1 Effective Date and Termination. This Agreement will become effective on the Contract Date and will continue in effect until terminated (a) by the mutual written consent of all of the Parties or (b) by a vote or written consent of a Majority of the Cooperative Governing Board after the provision of not less than ninety (90) days' advance written notice to the other Parties. The HCP requirements referred to in this Agreement become effective on the Effective Date.

3.2 Withdrawal. Any Party may withdraw from this Agreement upon ninety (90) days' written notice to the other Parties, USFWS, and CDFW. The withdrawing Party remains obligated to the same extent, if any, that the remaining Parties are obligated to contribute money to pay any debts, liabilities, and obligations incurred by, arising from, or related to actions taken by the Cooperative while the withdrawing Party was a party to this Agreement.

3.3 Effect of Withdrawal. Upon withdrawal, the withdrawing Party shall no longer be a party to this Agreement, and the term "Parties" as used in this Agreement shall thereafter mean the remaining Parties. Within thirty (30) days after receiving notice of withdrawal, the Parties who will remain will meet to discuss whether any amendments to this Agreement are necessary or appropriate in light of the withdrawal and to prepare any appropriate amendments for consideration by the remaining Parties. The requirements of this provision are intended to be in addition to any notice or other requirements set forth in the Permits pertaining to withdrawal from or termination of the HCP or Permits.

4.0 INCORPORATION OF THE FINAL HCP

The final HCP is incorporated herein by this reference. If this Agreement conflicts with the HCP, the HCP will control. In all other cases, this Agreement and the HCP will be interpreted to be supplementary to each other.

5.0 TECHNICAL ADVISORY COMMITTEE AND COORDINATED RESOURCE MANAGEMENT AND PLANNING PROGRAM

Voluntary technical guidance for implementing the HCP will be provided through the Technical Advisory Committee to the Cooperative Governing Board, defined in Section 1.61 above. The CRMP, defined in Section 1.23 above, was established in 1994 to coordinate implementation of the Installation-Wide Multispecies Habitat Management Plan as a discussion forum for jurisdictions with natural lands management responsibilities at the former Fort Ord. The Technical Advisory Committee will be an advisory body for the HCP, whereas the CRMP will continue to coordinate HMP implementation. The Technical Advisory Committee serves an advisory function to help maintain permit compliance in terms of habitat management. The Cooperative will not be required to implement the advice of the Technical Advisory Committee on land management, monitoring, and adaptive management, unless explicitly stated for a task in the HCP.

6.0 POWERS AND RESPONSIBILITIES

6.1 General. The Cooperative has the powers granted to joint powers authorities by the JPA Act. The Cooperative may do acts necessary to exercise those powers including any of the following: (a) make contracts; (b) employ agents and employees; (c) receive, collect, manage, and disburse funds; (d) receive grants, contributions, and donations of property, funds, and services; and (e) sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to HCP implementation. The Cooperative's principal responsibility shall be to carry out the provisions of the HCP and the Permits.

6.2 Responsibility to Wildlife Agencies. While either Permit remains in effect, the Cooperative will provide each respective Wildlife Agency with a copy of the Cooperative's annual report or with such other reasonably available financial information as will provide adequate evidence of the Permittees' ability to fulfill their obligations. The Cooperative will include in its annual report to Wildlife Agencies an accounting of the items described in the HCP Section 7.9.3.4. Wildlife Agencies will use the

annual report to assess the adequacy of program funding. If Wildlife Agencies determine that the Implementation Assurances Fund, the HCP Fund, the FONR Endowment Fund, and/or the Borderlands Fund funding is inadequate, the Parties will meet and confer in good faith to cooperatively develop a strategy to address the funding shortfall, and to maintain the level of Conservation and Take authorization afforded by the Permits until adequate funding is restored. (See Section 9.3.5 of the HCP.)

7.0 TERMINATION OF POWERS

The Cooperative shall continue to exercise its powers until the termination of this Agreement. The Cooperative's statutory authority is subject to legislative amendments to the JPA Act.

8.0 FUNDING OF ENDOWMENTS

The Parties shall fund the endowments required for the implementation of the HCP in the manner determined by the Cooperative Governing Board after taking into consideration each of the Parties' unique circumstances as well as factors of general application, including the expected pace of development and expected cost of HCP implementation, as each may change over time. Possible funding mechanisms include, but are not limited to, the adoption of Community Facilities District special taxes by some of the Parties, imposition of fees on third party developers, the making of lump sum contributions or fixed annual contributions by some of the Parties, seeking appropriation of funds from the state or federal government, supplemented by grants and other non-appropriated monies as may be available, or any combination of the above. Possible methods of apportioning funding responsibility among the Parties include, but are not limited to, allocating based on the amount of developable land held by each Party, the amount of land that each Party intends to develop, the market value of the development contemplated by each Party, the value of any habitat held by each Party, previous commitments regarding habitat funding, or any combination of the above. The Cooperative Governing Board will meet and confer in good faith within thirty (30) days following the Contract Date to cooperatively develop and establish an initial funding and allocation plan for the endowments required for the implementation of the HCP. Funds collected pursuant to the adopted plan shall be held by the Cooperative Endowment Fund Holder (in combination with the unexpended portion of any CFD Special Taxes contributed by FORA) in an investment account in accordance with the requirements of the Mitigation Fee Act (California Government Code Section 66000 *et seq.*) until disbursement or expenditure according to this Agreement. The Cooperative shall use CFD Special Taxes for the purposes for which they were imposed, and for no other purpose. Upon issuance of the Permits, the Cooperative will provide funding for UC to establish the FONR Endowment Fund for HCP implementation on the FONR. Until the FONR Endowment is fully funded or the completion of the HCP, UC will manage the FONR Endowment, but will not make withdrawals except according to the provisions in Section 7.6 of the HCP. (See also Section 9.3 of the HCP.)

9.0 COOPERATIVE ACCOUNTABILITY

In managing the Endowment, the Cooperative is subject to the requirements of California Government Code Sections 65965 to 65968. The Cooperative Governing Board shall assure that revenue from the Endowment is accounted for in the manner required by law.

10.0 FISCAL YEAR

Unless and until changed by a Majority of the Cooperative Governing Board, the fiscal year of the Cooperative shall be the period from July 1 of each year to and including the following June 30 (to match

the State's fiscal year), except for the first fiscal year which shall be the period from the Contract Date to the following June 30.

11.0 DISPOSITION OF ASSETS AND REAL PROPERTY

Upon termination of this Agreement, and after the repayment of advances and contributions in accordance with Section 12 of this Agreement, assets acquired as the result of the joint exercise of powers under this Agreement, other than real property and funding for the restoration or management of real property, shall be distributed to the Parties in proportion to an individual Member's overall unreimbursed contribution of assets to the Cooperative. The Cooperative shall transfer any real property, and any money set aside for the restoration or management of real property, acquired by the Cooperative as the result of the joint exercise of powers under this Agreement to one or more public agencies or appropriate conservation non-profit entities. The funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside.

12.0 CONTRIBUTIONS AND ADVANCES

With the Cooperative Governing Board's approval, any Party may contribute money, personnel services, equipment, materials, or property to the Cooperative for any of the purposes of this Agreement. Such advances must be recorded and repaid in the manner agreed upon, by the Cooperative and the Party making the advance, in writing prior to the date of the advance. Except as otherwise expressly provided in this Agreement, no Party is obligated to pay the Cooperative's administrative expenses.

13.0 ACCOUNTS AND REPORTS

13.1 Accounts. The Cooperative shall establish and maintain such funds and accounts as may be required by good accounting practice and as may be required by the terms of any state or federal grant that the Cooperative may receive. The books and records of the Cooperative shall be open to inspection at reasonable times by the Parties and their representatives. The Cooperative shall give an audited written report of financial activities for the fiscal year to the Parties within six (6) months after the close of each fiscal year during the term of this Agreement.

13.2 Audits. To the extent required by California Government Code Section 6505.6, the Cooperative shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Cooperative. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under California Government Code Section 26909 and shall conform to generally-accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with the Parties and, if required by California Government Code Section 6505.6, also with the Auditor Controller of County. Such report shall be filed within twelve (12) months of the end of the fiscal year or years under examination. The Cooperative may replace the annual special audit with an audit covering a two (2) year period.

13.3 Audit Costs. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit under this Section 13 shall be borne by the Cooperative and shall be a charge against any unencumbered funds of the Cooperative available for that purpose.

14.0 CONFLICT OF INTEREST CODE

The Cooperative shall adopt a conflict of interest code as required by law and shall comply with the terms of Fair Political Practices Commission Ethics Training requirements.

15.0 FORM OF APPROVALS

Approvals by the Cooperative required in this Agreement, unless the context specifies otherwise, must be given by resolution of the Cooperative Governing Board. When consent or approval is required in this Agreement, it may not be unreasonably withheld, conditioned, or delayed.

16.0 MISCELLANEOUS PROVISIONS

16.1 No Partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

16.2 Notices. Notices to the Parties shall be sufficient if delivered to the chief executive of the Party at the Party's principal location within five (5) working days prior to any action to be taken or any meeting to be called. The following notice list contains the notification addresses of the Parties:

ATTN: RMA Director
County of Monterey
1441 Schilling Place 2nd Floor
Salinas, CA 93901

ATTN: City Manager
City of Del Rey Oaks
650 Canyon Del Rey
Del Rey Oaks, CA 93940

ATTN: City Manager
City of Marina
211 Hillcrest Ave.
Marina, CA 93933

ATTN: City Manager
City of Monterey
City Hall
Monterey, CA 93940

ATTN: State Parks, Monterey District
Superintendent
2211 Garden Road
Monterey, CA 93940

ATTN: County Administrative Officer
County of Monterey
1441 Schilling Place, 2nd Floor
Salinas, CA 93901

ATTN: Superintendent/President
Monterey Peninsula College
980 Fremont Street
Monterey, CA 93940-4799

ATTN: Assistant Director
UCSC Real Estate Office
c/o REO/MBEST
1156 High Street
Santa Cruz, CA 95064

ATTN: General Manager
MPRPD
60 Garden Court, Suite 325
Monterey, CA 93940

ATTN: FONM Manager
Bureau of Land Management
Central Coast Field Office
940 2nd Avenue
Marina, CA 93933

ATTN: City Manager
City of Seaside
440 Harcourt Ave.
Seaside, CA 93955

ATTN: Director, UCSC Natural Reserves
Physical & Biological Sciences
c/o ENVS
1156 High Street
Santa Cruz, CA 95064

ATTN: President California State
University Monterey Bay
100 Campus Center, Building 1
Seaside, CA 93955-8001

ATTN: General Manager
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

16.3 Entire Agreement. This Agreement, together with the HCP and the Permits, constitutes the entire agreement among the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

16.4 Amendment of Agreement. No addition, alteration, amendment, change, or modification to this Agreement shall be binding upon the Parties, or any of them, unless reduced to writing and signed by each and all of the Parties.

16.5 Elected Officials Not to Benefit. No member of the Cooperative Governing Board shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

16.6 Availability of Funds. Implementation of this Agreement by BLM is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that BLM will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

16.7 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signatures shall be deemed originals for all purposes.

16.8 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

16.9 Applicable Laws. All activities undertaken pursuant to this Agreement, the HCP, or the Permits must be in compliance with all applicable state and federal laws and regulations.

16.10 Successors; Assignment. This Agreement binds and benefits successors to the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties. Recognizing that many of the Parties intend to transfer ownership or control of Covered Land to third parties, as described in Section 7.9.1.1 of the HCP, and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the Permits shall be governed by Wildlife Agencies' regulations in force at the time.

16.11 Calendar Days. Throughout this Agreement and the HCP, the use of the term "day" or "days" means calendar days, unless otherwise specified.

16.12 No Waiver. The failure of any Party at any time to require the performance by any other Party of any provision of this Agreement shall in no way affect the right to require such performance at any later time. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act. No waiver of any breach of any provision of this Agreement shall be deemed to be any waiver of the provision itself. No waiver shall be binding unless executed in writing by the Party making the waiver. Any and all rights and remedies which any Party may have under this Agreement or at law or in equity shall be cumulative, and shall not be deemed inconsistent with each other; no one of them, whether exercised or not, shall be deemed to be an exclusion of any other, and any or all of such rights and remedies may be exercised at the same time.

16.13 Mediation. The Parties must submit any disputes arising under this Agreement to non-binding mediation before filing suit to enforce or interpret this Agreement. Upon request by any Party to the dispute, the Parties will within ten (10) days select a single mediator, or if the Parties cannot agree, they shall ask the then presiding judge of the Monterey County Superior Court to select a mediator to mediate the dispute within fifteen (15) days of such selection.

16.14 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Parties to the litigation shall bear their own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable federal law.

16.15 Severability. In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

16.16 Due Authorization. The Parties represent and warrant that (a) the execution and delivery of this Agreement has been duly authorized and approved by requisite action, (b) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable the Parties to enter into and comply with the terms of this Agreement, and (c) the persons executing this Agreement on behalf of the Parties have the authority to bind the Parties.

16.17 Headings. Headings are using in this Agreement for convenience only and do not affect or define this Agreement's terms and conditions.

[signatures appear on following pages]

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Joint Exercise of Powers Agreement to be in effect as of the Contract Date.

Dated: _____, 2019

COUNTY OF MONTEREY

By: _____
County Administrative Officer

Approved as to form:

By: _____
County/Deputy County Counsel

Dated: _____, 2019

CITY OF MARINA

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF SEASIDE

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF DEL REY OAKS

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF MONTEREY

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

MARINA COAST WATER DISTRICT

By: _____
General Manager

Approved as to form:

By: _____
District Counsel

Dated: _____, 2019

UNIVERSITY OF CALIFORNIA

By: _____
Secretary to the Regents

Approved as to form:

By: _____
General Counsel

Dated: _____, 2019

CALIFORNIA STATE UNIVERSITY

By: _____
President

Approved as to form:

By: _____
General Counsel

Dated: _____, 2019

MONTEREY PENINSULA COMMUNITY COLLEGE
DISTRICT

By: _____
President

Approved as to form:

By: _____
General Counsel

Dated: _____, 2019

CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION

By: _____
Regional Manager

Approved as to form:

By: _____
General Counsel

Dated: _____, 2019

MONTEREY PENINSULA REGIONAL PARK
DISTRICT

By: _____
General Manager

Approved as to form:

By: _____
General Counsel

Dated: _____, 2019

BUREAU OF LAND MANAGEMENT

By: _____
District Manager
Central California District Office
El Dorado Hills, California