



# Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Ste. A, Marina, CA 93933  
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**BOARD OF DIRECTORS SPECIAL MEETING**  
**Friday, February 22, 2013 at 5:00 p.m.**  
**910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenter's Union Hall)**

## REVISED AGENDA

**1. CALL TO ORDER AND ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

**4. OLD BUSINESS**

- a. Capital Improvement Program Review – Phase II Study (2<sup>nd</sup> Vote) (pg. 2-22)
  - i. Rescind Resolution 13-2, adopted January 11, 2013
  - ii. Authorize the Execution of Amendment #1 to the Implementation Agreements to Reinstate the Original Formulaic Approach Language Approved on August 29, 2012

**ACTION**

**5. NEW BUSINESS**

- a. Approve Executive Committee Recommended Sponsorship for March 28-29, 2013 Fort Ord Prevailing Wage Conference and Review/Approve Expense (pg. 23)

**ACTION**

**6. PUBLIC COMMENT PERIOD**

*Members of the audience wishing to address the Fort Ord Reuse Authority (“FORA”) Board on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes.*

**7. ITEMS FROM MEMBERS**

**8. ADJOURNMENT**

**NEXT MEETING: MARCH 15, 2013**

*Persons seeking disability related accommodations should contact FORA 24 hours prior to the meeting.*  
This meeting is recorded by Access Monterey Peninsula (AMP) to be televised Sundays at 9:00 a.m./Sundays at 1:00 p.m. on Marina/Peninsula Chanel 25. The video and full Agenda packet are available online at [www.fora.org](http://www.fora.org).

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

<b>Subject:</b>	Capital Improvement Program Review – Phase II Study (2 <sup>nd</sup> Vote)	
<b>Meeting Date:</b>	February 22, 2013	<b>ACTION</b>
<b>Agenda Number:</b>	4b	

### RECOMMENDATION(S):

- i. Rescind Resolution 13-2, adopted January 11, 2013 (**Attachment A**). [The Public Comment Period for this item occurred at the January 11, 2013 FORA Board meeting.]
- ii. Authorize the Executive Officer to execute Amendment #1 to the Implementation Agreement (“IA”), which would codify the formulaic approach to establish the FORA Development Fee Schedule and CFD Special Tax rates (**Attachment B**). This action would reinstate the originally authorized language on August 29, 2012. The originally authorized language has been approved by the Cities of Marina, Del Rey Oaks, and Seaside, and is pending approval by Monterey County and City of Monterey. [The Public Comment Period for this item occurred at the January 11, 2013 FORA Board meeting.]

### BACKGROUND:

At its August 29, 2012 meeting, under item 8a “Capital Improvement Program Review – Phase II Study,” the FORA Board adopted resolution 12-5 and authorized the Executive Officer to execute Amendment #1 to the Implementation Agreement (“IA”). At its October 12, 2012 meeting, City of Seaside Mayor Bachofner withdrew his August 29, 2012 request for reconsideration of item 8a in lieu of future Board consideration of amendments proposed by Supervisor Parker and other Board members. On January 11, 2013, the Board voted to adopt resolution 13-2 and Amendment #1 to the IA, which included additional language in Sections 1.2.1 and 2.1.2 proposed by Supervisor Parker.

At the January 16, 2013 Administrative Committee meeting, the Committee passed a motion recommending the FORA Board consider adopting alternative language to section 2.1.2 at the February Board meeting. The Committee also scheduled a special meeting for January 30, 2013 to determine what the recommended alternative language would be. City of Marina and Supervisor Parker’s staff met in an effort towards resolving the proposed alternative language. Discussions were amicable but full agreement was not achieved. On January 30, 2013, the Committee reviewed the following alternative language, proposed by Marina Interim City Manager Doug Yount:

- “Section 1.2.1 – Delete newly added language (January 11, 2013) and replace with: Furthermore, FORA may substitute alternative projects within the CIP in compliance with CEQA mitigation measures and consistent with the goals of the Base Reuse Plan.
- Section 2.1.2 – Modified language to remain as presented.”

The Committee and staff considered the proposed new language and found it to be reasonable. However, in absence of a positive response from the original maker of the January 11, 2013 Board motion, the Administrative Committee voted to recommend rescission of the language the Board approved on January 11, 2013. The reasons the Committee gave for their recommendation were:

1. The language in original Amendment #1 to the IA (August 29, 2012) was sufficient, limiting Community Facilities District (“CFD”) expenditures to what the law allows, and providing for appropriate flexibility for non-CFD expenditures (property taxes, grants, land sales, etc.);

2. The original Amendment #1 to the IA is the least confusing approach, given the intent of reducing uncertainty;
3. All five FORA land use jurisdictions have already amended their Implementation Agreements to reflect the August 29, 2012 approved version or are in the process of doing so; and
4. Three of five FORA jurisdictions (Cities of Marina, Seaside, and Del Rey Oaks) have voiced concerns with the language approved by the Board on January 11, 2013. The Cities of Marina and Del Rey Oaks do not accept the currently approved language. Rescinding that language would satisfy these concerns/objections.

**DISCUSSION:**

FORA received correspondence from South County Housing, the Building Industry Association Bay Area, and the Cities of Marina and Del Rey Oaks voicing their concerns of the consequences of the uncertainty created by the additional language in resolution 13-2 and Amendment #1 to the IA (**Attachment C**) approved on January 11, 2013.

The correspondence raised concerns that the additional language adopted by the FORA Board on January 11, 2013 would create a number of negative consequences, summarized in the list below.

- 1) Additional language raised concerns that FORA will add projects or obligations to restore FORA Fees and CFD Special Taxes to their maximum permitted rates, creating uncertainty;
- 2) Additional language would have the effect of negating or overriding very important provisions of the original 2001 Implementation Agreements and the 2012 First Amendment;
- 3) Additional language is contrary to the original intent adopted on August 29, 2013;
- 4) Additional language creates confusion in regard to what projects should be included in the CIP, sources of funding for the CIP, and how the fee would be set; and
- 5) Additional language removes the predictability achieved with original August 29, 2013 language.

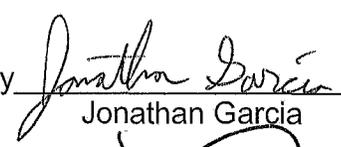
**FISCAL IMPACT:**

Reviewed by FORA Controller 

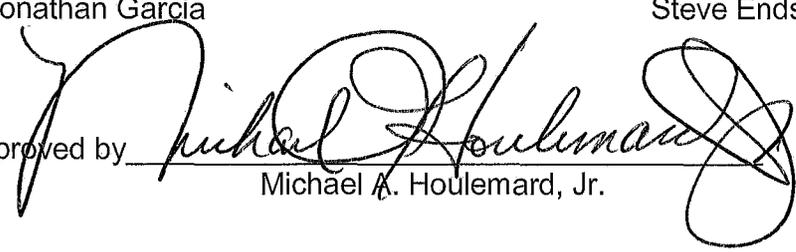
Staff time for this item is included in the approved annual budget.

**COORDINATION:**

Administrative Committee, Executive Committee, and Authority Counsel.

Prepared by   
Jonathan Garcia

Reviewed by   
Steve Endsley

Approved by   
Michael A. Houlemard, Jr.

Resolution 13-02

Resolution of the Fort Ord Reuse )  
Authority (FORA) Board establishing a )  
formula to determine FORA’s annual )  
basewide development fee schedule and )  
Community Facilities District (CFD) )  
Special Tax rates )

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

- A. FORA has adopted a Basewide Community Facilities District (“CFD” or “CFD Special Tax”) to fund, together with other revenues, the FORA CIP. Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures (“FORA CIP”) are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes; and
- B. FORA and its member Jurisdictions have twelve years of experience with the Basewide Development Fee Policy (“Policy”) and CFD Special Tax; and
- C. FORA and the Army have executed an Environmental Services Cooperation Agreement (“ESCA”) providing for FORA to manage base-wide environmental remediation (including ordnance removal) funded by the Army; and
- D. The Policy and CFD Special Tax provide resources to fund CEQA Mitigation Measures (FORA CIP) identified in the 1997 FORA Base Reuse Plan and CEQA Documents; and
- E. FORA and its member Jurisdictions agree that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP as identified in Section 1.1; and
- F. FORA recognizes the importance of calibrating the Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and Board-determined basewide obligations in FORA’s CIP identified in Section 1.1; and
- G. FORA and its member Jurisdictions acknowledge the Policy and CFD Special Tax must be fair and equitable; and
- H. FORA has 1) achieved cost savings; 2) secured grants and other contributions to the base-wide mitigation measures from federal and state sources; and 3) loaned

monies to fund required projects that have reduced or deferred the demand for the original Policy and CFD Special Taxes; and

- I. The Base Reuse Plan emphasized the importance of job-creation and build-out of a balanced mix of community uses including commercial, residential and public facilities to achieve a desired jobs-housing balance; and
- J. FORA and its member Jurisdictions seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax; and
- K. Stakeholders recognize, given inherent uncertainties prevalent in Base Reuse Projects, that appropriate and reasonable cost contingencies are necessary and fiscally responsible; and
- L. FORA and its member Jurisdictions acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax rates. These revenue sources will fund, or partially fund, the CIP Program. That formula must account for all potential revenue sources and costs; and
- M. FORA and its member Jurisdictions agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA's fee program.

NOW THEREFORE the Board hereby resolves as follows:

1. Adjustment to the Policy and CFD special taxes.

I.1 The list of authorized CIP improvements (subject to escalation of costs through the San Francisco Construction Cost Index reported in the Engineering News Record, unless otherwise noted) to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP:

I.1.1 Transportation/Transit improvements, including regional improvements, off-site improvements, on-site improvements, and transit capital improvements identified in the Transportation Agency of Monterey County ("TAMC") FORA Fee Reallocation Study, dated April 8, 2005, or as subsequently updated by TAMC consistent with the FORA Fee Reallocation Study, in an amount not to exceed \$112,698,595 (as escalated) unless the obligation is otherwise reduced by TAMC and FORA.

I.1.2 Water Augmentation, which includes FORA's CEQA obligation for the approved water augmentation project and FORA's voluntary contribution to help offset water capacity charge increases. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not.

I.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program.

I.1.4 Fire Fighting equipment ("Rolling Stock") lease-purchase of four fire engines and one water tender.

I.1.5 Other Costs and Contingencies shall be evaluated on a periodic basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

- A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing.
- Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities.
- Other Costs for PLL insurance costs.
- CFD Administration Expenses (including staff and consultant costs).

I.2 FORA will periodically adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

I.2.1 The Policy and CFD Special Tax were originally designed to fund specific CIP improvements serving the overall base and local jurisdictions based upon mitigation measures required by the California Environmental Quality Act (CEQA). These mitigation measures are described in the Base Reuse Plan Environmental Impact Report (EIR) as well as the 1998 Settlement Agreement with the Ventana Chapter of the Sierra Club. This Resolution does not limit FORA's right or duty, or that of its member jurisdictions to raise sufficient funds to construct those CEQA Mitigation Measures. Furthermore, possible future FORA Board actions following on the Base Reuse Plan Reassessment Process may result in changes to FORA's CIP. This Resolution does not limit FORA's right to fund such changes through the Policy and CFD Special Taxes.

I.2.2 The FORA Board will consider adjustments to the Policy and CFD Special Tax after a comprehensive review of all potential costs and revenues. The process to consider such adjustments will be defined, predictable and transparent to all stakeholders. Adjustments to the Policy and CFD Special Tax will be approved only if they are demonstrated to be fiscally prudent and do not expose FORA or its member jurisdictions to unreasonable risk.

I.2.3 In accordance with the process set forth in part II of this resolution, commencing with Section 2.1, the FORA Board will update anticipated construction costs and revenues available to fund the facilities identified in section 1.1 above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of FORA and its member Jurisdictions adopting Implementation Agreement Amendment #1, Spring 2014 as the second evaluation period, and thereafter every two years, or when an economic or other event causes a material change to a CIP cost or revenue assumption, in coordination with FORA CIP updates.

I.2.4 Adjustments to the Policy and CFD Special Tax shall be made upon receipt by the FORA Board of satisfactory, factual documentation describing the basis for the adjustment.

I.2.5 To expedite this review procedure, adjustments to the Policy and CFD Special Tax shall maintain the same relationship among land uses as the maximum annual special taxes originally documented in the CFD.

## II. PROCESS

II.1 FORA shall review and update the CIP periodically to apply the formula described in this Resolution and proposed Implementation Agreement Amendment #1 and any resulting Policy and CFD Special Tax adjustments. That procedure must ensure that FORA's revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP identified in Section 1.1 above. The periodic process will include the following steps:

II.1.1 Determine total remaining CIP costs (including required contingencies) consistent with section 1.1 above.

II.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies advanced to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) FORA property tax revenue as calculated below. FORA retains its discretion to add new projects or obligations to be paid from these sources of funds. The following assumptions and formula shall be used to calculate the FORA property tax revenues, if available:

### Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue

b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the FORA property tax revenue stream for all new assessed value after July 1, 2012.
- b. The term on the FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate equal to the annual average Bond Buyer Revenue Bond Index plus 50 basis points using the prior fiscal year end date (e.g., use 2012 year to date annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.
- d. Allocate the NPV as calculated above to reduce/offset costs of CIP.
- e. Allocate 10% of the actual property tax revenues collected by FORA from all new assessed value after July 1, 2012 and generated from parcels in the Fort Ord area of the member jurisdiction to the City or County for economic development to support the reuse of Fort Ord land within the relevant City or County.

II.1.3 Subtract sources of funds available under Section 2.1.2 from CIP costs to determine net cost to be funded by the Policy and CFD Special Tax.

II.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions used to estimate FORA property tax revenues shown above in Section 2.1.2.

II.1.5 Compare 2.1.4 with 2.1.3 and determine the amount of adjustment, if any, to the Policy and CFD Special Tax rates. In no event shall the adjusted CFD Special Tax rates exceed the Maximum CFD Special Tax rates (as escalated annually per the special tax formula).

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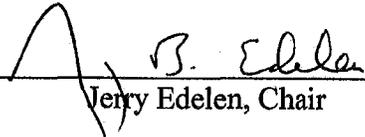
Upon motion by Supervisor Parker, seconded by Mayor Edelen, the foregoing Resolution was passed on this 11th day of January, 2013, by the following vote:

AYES: EDELEN, O'CONNELL, RUBIO, PENDERGRASS, POTTER, PARKER, CALCAGNO, MORTON, OGLESBY, BURNETT, COHEN, GUNTER, SELFRIDGE.

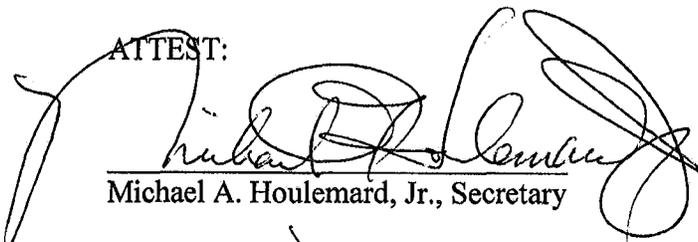
NOES:

ABSTENTIONS:

ABSENT:

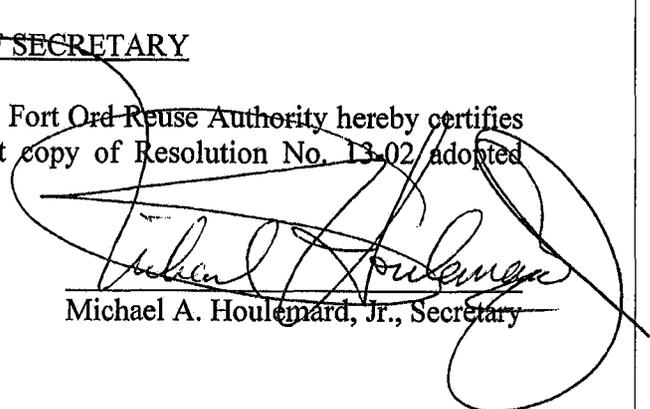
  
\_\_\_\_\_  
Jerry Edelen, Chair

ATTEST:

  
\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 13-02 adopted January 11, 2013.

  
\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary

# Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and its Member Jurisdictions

## RECITALS

- A. The Fort Ord Reuse Authority (“FORA”) and the *member jurisdiction* have entered into an Implementation Agreement dated as of May 1, 2001 (“Implementation Agreement”) to, among other purposes, identify and provide for distribution of land sale and lease revenues, FORA property tax revenues (formerly tax increment revenues), and basewide assessments or development fees as the primary sources of funding to implement the Basewide Mitigation Measure (as defined) and to pay Basewide Costs (as defined), collectively referred to as the FORA Capital Improvement Program (“CIP”); and
- B. FORA has adopted a Base-wide Community Facilities District (“CFD” or “CFD Special Tax”) to fund, together with other revenues, the FORA CIP. Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures (“FORA CIP”) are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes; and
- C. FORA and the *member jurisdiction* have twelve years of experience with the Basewide Development Fee Policy (“Policy”) and CFD Special Tax; and
- D. FORA and the Army have executed an Environmental Services Cooperation Agreement (“ESCA”) providing for FORA to manage base-wide environmental remediation (including ordnance removal) funded by the Army; and
- E. The Policy and CFD Special Tax provide resources to fund CEQA Mitigation Measures (FORA CIP) identified in the 1997 FORA Base Reuse Plan and CEQA Documents; and
- F. FORA and the *member jurisdiction* recognize that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP as identified in Section 1.1; and
- G. FORA and the *member jurisdiction* recognize the importance of calibrating the Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and Board-determined basewide obligations in FORA’s CIP identified in Section 1.1.; and

- H. FORA and the *member jurisdiction* acknowledge the Policy and CFD Special Tax must be fair and equitable; and
- I. FORA has 1) achieved cost savings; 2) secured grants and other contributions to the base-wide mitigation measures from federal and state sources; and 3) loaned monies to fund required projects that have reduced or deferred the demand for the original Policy and CFD Special Taxes; and
- J. The Base Reuse Plan emphasized the importance of job-creation and build-out of a balanced mix of community uses including commercial, residential and public facilities to achieve a desired jobs-housing balance; and
- K. FORA and the *member jurisdiction* seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax; and
- L. Stakeholders recognize, given inherent uncertainties prevalent in Base Reuse Projects, that appropriate and reasonable cost contingencies are necessary and fiscally responsible; and
- M. FORA and the *member jurisdiction* acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax rates. These revenue sources will fund, or partially fund, the CIP Program. That formula must account for all potential revenue sources and costs; and
- N. FORA and the *member jurisdiction* agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA's fee program.

## AGREEMENTS

Now therefore, FORA and the *member jurisdiction* hereby agree as follows:

### I. ADJUSTMENT TO THE POLICY AND CFD SPECIAL TAXES.

1.1 The list of authorized CIP improvements (subject to escalation of costs through the San Francisco Construction Cost Index reported in the Engineering News Record, unless otherwise noted) to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP:

1.1.1 Transportation/Transit improvements, including regional improvements, off-site improvements, on-site improvements, and transit capital improvements identified in the Transportation Agency of Monterey County ("TAMC") FORA Fee Reallocation Study, dated April 8, 2005, or as subsequently updated by TAMC consistent with the FORA Fee Reallocation Study, in an amount not to

exceed \$112,698,595 (as escalated) unless the obligation is otherwise reduced by TAMC and FORA.

1.1.2 Water Augmentation, which includes FORA's CEQA obligation for the approved water augmentation project and FORA's voluntary contribution to help offset water capacity charge increases. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not.

1.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program.

1.1.4 Fire Fighting equipment ("Rolling Stock") lease-purchase of four fire engines and one water tender.

1.1.5 Other Costs and Contingencies shall be evaluated on a periodic basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing.

Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities.

Other Costs for PLL insurance costs.

CFD Administration Expenses (including staff and consultant costs).

1.2 FORA will periodically adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

1.2.1 The Policy and CFD Special Tax were originally designed to fund specific CIP improvements serving the overall base and local jurisdictions based upon mitigation measures required by the California Environmental Quality Act (CEQA). These mitigation measures are described in the Base Reuse Plan Environmental Impact Report (EIR) as well as the 1998 Settlement Agreement with the Ventana Chapter of the Sierra Club. This agreement does not limit FORA's right or duty, or that of its member jurisdictions to raise sufficient funds to construct those CEQA Mitigation Measures. Furthermore, possible future FORA Board actions following on the Base Reuse Plan Reassessment Process may result in changes to FORA's CIP. This Agreement does not limit FORA's right to fund such changes through the Policy and CFD Special Taxes.

1.2.2 The FORA Board will consider adjustments to the Policy and CFD Special Tax after a comprehensive review of all potential costs and revenues. The process to consider such adjustments will be defined, predictable and transparent to all stakeholders. Adjustments to the Policy and CFD Special Tax will be approved only if they are demonstrated to be fiscally prudent and do not expose FORA or its member jurisdictions to unreasonable risk.

1.2.3 In accordance with the process set forth in part II of this Agreement, commencing with Section 2.1, the FORA Board will update anticipated construction costs and revenues available to fund the facilities identified in Section 1.1, above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of this Agreement, Spring 2014 as the second evaluation period, and thereafter every two years, or when an economic or other event causes material change to a CIP cost or revenue assumption, in coordination with FORA CIP updates.

1.2.4 Adjustments to the Policy and CFD Special Tax shall be made upon receipt by the FORA Board of satisfactory, factual documentation describing the basis for the adjustment.

1.2.5 To expedite this review procedure, adjustments to the Policy and CFD Special Tax shall maintain the same relationship among land uses as the maximum annual special taxes originally documented in the CFD.

## II. PROCESS

2.1 FORA shall review and update the CIP periodically to apply the formula described in this Implementation Agreement amendment and any resulting Policy and CFD Special Tax adjustments. That procedure must ensure that FORA's revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP identified in Section 1.1 above. The periodic process will include the following steps:

2.1.1 Determine total remaining CIP costs (including required contingencies) consistent with Section 1.1 above.

2.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies advanced to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) FORA property tax revenue as calculated below. ~~FORA retains its discretion to add new projects or obligations to be paid~~

~~from these sources of funds.~~ The following assumptions and formula shall be used to calculate the FORA property tax revenues, if available:

Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue.
- b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the FORA property tax revenue stream for all new assessed value after July 1, 2012.
- b. The term on the FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate equal to the annual average Bond Buyer Revenue Bond Index plus 50 basis points using the prior fiscal year end date (e.g., use 2012 year to date annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.
- d. Allocate the NPV as calculated above to reduce/offset costs of CIP.
- e. Allocate 10% of the actual property tax revenues collected by FORA from all new assessed value after July 1, 2012 and generated from parcels in the Fort Ord area of the *member jurisdiction* to the City or County for economic development to support the reuse of Fort Ord land within the relevant City or County.

2.1.3 Subtract sources of funds available under Section 2.1.2 from CIP costs to determine net cost to be funded by the Policy and CFD Special Tax.

2.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions used to estimate FORA property tax revenues shown above in Section 2.1.2.

2.1.5 Compare 2.1.4 with 2.1.3 and determine the amount of adjustment, if any, to the Policy and CFD Special Tax rates. In no event shall the adjusted CFD Special Tax rates exceed the Maximum CFD Special Tax rates (as escalated annually per the special tax formula).

### III. ENFORCEMENT

3.1 This agreement is entered into for the benefit of FORA and the *member jurisdiction* subject to the Policy and CFD Special Tax, and may be subject

to dispute resolution and enforced by FORA or the *member jurisdiction* subject to the Policy and CFD Special Taxes in the same manner and process set forth for dispute resolution and under Section 17 of the Implementation Agreement.

3.2 The original Implementation Agreement will prevail when this Amendment #1 conflicts with the Implementation Agreement.

[Add signature pages]

[Add acknowledgments for recordation]

DRAFT



CHARTERED MEMBER



January 24, 2013

Jerry Edelen, Chairperson and  
Board of Directors and  
Michael Houlemard, Executive Director  
Fort Ord Reuse Authority  
920 Second Avenue, Suite A  
Marina, CA 939333

Dear Ladies and Gentlemen,

South County Housing (SCH) has been designated by Marina Community Partners (MCP) - master developer of the Dunes on Monterey Bay - as the developer of the Dunes income restricted below-market rate housing components. SCH, with the cooperation of MCP and the City of Marina, has put together a financing plan for the construction of the 108 below-market income restricted apartment units which is scheduled to close in the next few weeks. This \$29.2 million dollar finance package includes State of California Multifamily Housing Program (MHP) funding, Federal Home Loan Bank Affordable Housing Program (AHP) funding, State of Calif. HOME funding and federal Low Income Housing Tax Credit financing in addition to the MCP & SCH contributions.

This will be the first housing project of any kind in the Dunes project and our feasibility analysis included not only the projected level of building costs, City and FORA fees for our project but also included an analysis of the prospects that market rate housing, parks and commercial development could be developed over time in the vicinity of our development to create a mixed use neighborhood of which our project would be a part. Important to that analysis and our decision to move forward with bidding and starting construction was our examination of the First Amendment to Implementation Agreement between FORA and the City of Marina dated as of September 13, 2012 and recorded September 14, 2012, setting forth the process for calculating future FORA fees.

MCP has provided us with a revised First Amendment to Implementation Agreement recently approved by FORA, indicating that the revisions create uncertainty over MCP's ability make the fee assumptions needed to invest in infrastructure and planning for future mixed use and market rate housing. While we hope to proceed with scheduled closing of our first 108 apartments because our financing is in place, this uncertainty if it continues will certainly be a factor in our decisions to proceed with the below-market rate components of the project in the future.

We urge FORA to consider the consequences of allowing uncertainty to exist over the level of future FORA Fees in achieving goals for both below-market and market rate housing at Fort Ord and to do what is necessary and reasonable to mitigate that uncertainty. In addition we request that FORA adopt the updated fee as quickly as possible as outlined in the First Implementation Agreement.

Sincerely,



Dennis Lalor  
President and CEO

C: Bruce Delgado, Mayor, City of Marina  
Doug Yount, City Manager, City of Marina



January 23, 2013

Chairman Edelen and Members of the Board  
Michael Houlemard, Executive Officer  
Fort Ord Reuse Authority  
920 2d Ave. Suites A  
Marina, CA 93933

Dear Chairman and Board Members,

We respectfully request that you reconsider and rescind your Board actions on January 11, 2013 making unilateral revisions to the First Amendment to Implementation Agreements and the related FORA Resolution, as originally adopted by the FORA Board in August 2012 and submitted and approved by the Cities of Seaside, and Del Rey Oaks and approved, signed and recorded by the City of Marina.

The BIA Bay Area submits this request on behalf of the development community and those interested in the successful reuse and redevelopment of the former Fort Ord to achieve an economically feasible, balanced and environmentally sustainable community. The purpose of the original First Amendment was to achieve a workable on-going process for setting FORA Fees and CFD Special Taxes to fund CEQA basewide mitigation measures. By taking into account all sources of available revenue, the Board established a process that was "defined, predictable and transparent to all stakeholders" (sec. 1.2.2). The original First Amendment was essential to encourage the development community to support FORA's recent extension by the state legislature.

The recent revisions made by the FORA Board in the First Amendment could effectively negate the purpose and intent of the First Amendment with the effect of creating the very uncertainty over future FORA Fees and CFD Special Taxes that the First Amendment was designed to mitigate. These revisions have raised concerns that FORA will add projects or obligations to restore FORA Fees and CFD Special Taxes to their maximum permitted rates. Unless this uncertainty is removed, it will be very difficult, if not impossible, to evaluate future projects for economic feasibility because pro forma projections will have to assume the maximum level of FORA Fees and CFD Special Taxes. FORA Fee/Tax Levels which were unsustainable during the recession will remain so for the foreseeable future, even as the economy slowly recovers.

**Crisand Giles**  
Executive Director

Mailing Address:  
150 S Almaden Blvd., #1100  
San Jose, CA 95113

Tel (408) 961-8133  
cgiles@biabayarea.org  
<http://www.biabayarea.org>

Specifically we would have you reconsider; (1) the revision made to sec. I.2.1 gives the Board the right, notwithstanding the process agreed to, to fund through the Policy and Special Taxes changes to the FORA CIP made by the Board following the Base Reuse Plan Assessment Project, and (2) the revisions to sec. II.1.2 retain in FORA the discretion to add or expand new projects or obligations to be paid from

the sources otherwise specified in that section as first level of potential available sources of funding CIP programs in calculating the annual level of FORA Fees and CFD Special Taxes.

Whether intended or not, we view the recent revisions as material and substantive, not as merely clarifying, we believe they have the effect of negating or overriding very important provisions of the original 2001 Implementation Agreements and the 2012 First Amendment, among them:

- (a) From Sec.7, May/August 2001 Implementation Agreement [underlined for emphasis]:

“A Financing District is reasonably necessary to implement the Basewide Costs and Basewide Mitigation Measures if: (i) FORA’s revenues from all other sources are reasonably expected to be inadequate ....; and (ii) the special taxes or assessments from such Financing District are limited to the gap between the revenues needed by FORA for such purposes and the revenues otherwise reasonably available to FORA for such purposes.” and

- (b) From the First Amendment [underlined for emphasis]:

“.....Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures (“FORA CIP”) are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes” (Recital B)

“FORA and [the Jurisdiction] recognize that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP as identified in Section 1.1” (Recital F)

“FORA and [the Jurisdiction] recognizes the importance of calibrating th4e Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and board-determined basewide obligations in FORA’s CIP as identified in Section 1.1” (Recital G)

“FORA and [the Jurisdiction] seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax;” (Recital K)

“FORA [and the Jurisdiction] acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax...The formula must account for all potential revenue sources and costs;” (Recital M)

“FORA and [the Jurisdiction] agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA’s fee program.” (Recital N)

"The list of authorized CIP improvements....to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP" (Sec. I.1.1)

The Board action was unexpected, coming so soon after the original terms of the First Amendment to Implementation Agreement that was so thoroughly negotiated. Developer objections to the revisions were voiced strongly at the December and January FORA Administrative meetings and the FORA Administrative committee unanimously agreed that the modified language was not beneficial; unfortunately we falsely understood that our concerns were relayed to the FORA Board. In fact FORA staff continued to tell members of the development community not to worry and at the FORA Board meeting on January 11<sup>th</sup> a developer representative was told by staff he need not speak to the Board about revision concerns because the revision proposal would not pass. The FORA Board then proceeded to adopt the revisions unanimously; hardly the defined, predictable and transparent process envisioned in the original version of the First Amendment – which has already been approved by the Cities of Seaside, and Del Rey Oaks and approved, signed and recorded by the City of Marina.

We believe the Board likely acted on the revisions without awareness of the consequences outlined above, and we urge the Board to reconsider and rescind its action. By complying with the First Amendments original intent, the Board would send an important signal to the local jurisdictions and development community that FORA intends to honor the terms and spirit of the Amended Implementation Agreement.

Thank you for your time and consideration.

Sincerely,



Crisand Giles  
Executive Director, South Bay  
925.360.5101 Mobile



CITY OF MARINA

211 Hillcrest Avenue  
Marina, CA 93933  
831-884-1278; FAX 831-384-9148  
www.ci.marina.ca.us

January 30, 2013

Michael Houlemard  
Fort Ord Reuse Authority  
920 Second Street, Suite A  
Marina, CA 93933

Re: Fort Ord Reuse Authority Request for Revisions to Implementation Agreement  
Amendment #1

Dear Mr. Houlemard: *Michael,*

This letter responds to your letter of January 17, 2013 requesting that the Marina City Council consider the proposed amendment to Implementation Agreement Amendment previously approved by the City Council. The Marina City Council entered into Amendment No. 1 after lengthy consideration by FORA of its policies and procedures related to the CFD Fee. The primary benefit of Amendment No. 1 to the City of Marina and to other jurisdictions was to contractually commit FOR A to a methodology for determining the CFD Fee that included parameters on the projects to be funded with the CFD Fee. This contractual commitment by FOR A provides a degree of certainty for future developments. Given the continuing difficult economic times that have slowed development at Fort Ord and the loss of tax increment to assist development, certainty with regard to fees is essential to attracting and retaining development opportunities at Fort Ord.

The proposed amendment to Amendment #1 approved by the FORA Board provides FORA with significant discretion with regard to setting the CFD Fees and eliminates any degree of certainty as to the amount of the CFD Fees that might be charged to developers in the future. This amendment is directly counter to the original intent of Amendment #1. Marina entered into Amendment #1 in order to contractually bind FORA to the process established by resolution. Marina views Amendment #1 in its current form, as executed by both Marina and FORA as accomplishing the parties original intent and at this time sees no advantage to proceeding with further amendment to the Implementation Agreement.

Sincerely,

  
Douglas A. Yount  
Interim City Manager

Cc: Mayor, City Council, City of Marina  
Board Members, Fort Ord Reuse Authority



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. • DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 • FAX (831) 394-6421

February 7, 2013

Michael Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority  
920 Second Avenue, Suite A  
Marina, CA 93933

Re: Revisions to Implementation Agreement Amendment #1

Dear Mr. Houlemard:

As you know, on January 11, 2013, the FORA Board unanimously approved two items: (1) Clarifying Language to Resolution 12-5; and (2) Revisions to Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and its Member Jurisdictions. After further review of the Staff Report and talking with my staff, it has become clear that the staff report for this item was lacking in information vital to the Board making an informed decision. Significantly, potential impacts caused by the modifying language were not addressed in the Staff Report at all.

The original Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and its Member Jurisdictions was approved by FORA in August 2012 after significant discussion of FORA's CFD and CIP policies and procedures. The purpose of the Amendment was to provide for a predicable methodology to determine CFD and development fees. The original Amendment #1 also provided for the scope of projects to be funded by the CFD fee and provided certainty for future CIP and development projects. This certainty regarding fees is critical to attracting and retaining development opportunities at former Fort Ord and in the City of Del Rey Oaks.

After further review, it is apparent that the revisions to Amendment #1 which were approved on January 11, 2013 are contrary to the intent of the original Amendment #1. The new language creates confusion in regard to what projects should be included in the CIP, sources of funding for the CIP, and how the CFD fee would be set. This new language removes the predicability that was achieved with the original Amendment #1. The City of Del Rey Oaks will not enter into the revised Implementation Agreement.

The City of Del Rey Oaks previously approved and executed the original Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and the City of Del Rey Oaks that was approved by the FORA board in August 2012. The City has also submitted the executed agreement to FORA staff for FORA execution and recordation. With this letter, the City is requesting that FORA (1) execute the approved document, (2) cause the document to be recorded, and (3) send us a conformed copy of the recorded document for our files.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Edelen". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Jerry B. Edelen, M.A., M.B.A.  
Mayor

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

<b>Subject:</b>	Approve Executive Committee Recommended Sponsorship for March 28-29 FORA Prevailing Wage Conference Expense	
<b>Meeting Date:</b>	February 22, 2013	<b>ACTION</b>
<b>Agenda Number:</b>	5a	

### RECOMMENDATION:

Approve the Executive Committee recommendation that FORA authorize up to \$5,000.00 for a March 28-29 Prevailing Wage Workshop/Training Conference sponsorship with the Carpenters Local Union.

### BACKGROUND/DISCUSSION:

In August 2009, the Fort Ord Reuse Authority (FORA) was awarded an American Recovery & Reinvestment Act (ARRA) grant comprised of \$6.4 million in federal funds and \$6.4 million in local matching funds to assist in construction of Capital Improvement Projects that jump starts efforts to build new local communities. FORA, the Carpenters Local Union, and developer/contractors are working together to provide understanding of how State & Federal prevailing wages and apprentice training can help create new jobs and new business in the new economy. The conference will assist attendees to understand the documentation and regulations that are needed by public agencies with the requirement to pay prevailing wages.

Congressman Sam Farr and State Senator Bill Monning, members of the FORA Development and Contracting community and State of California panelists (that are experts in their field) asked to be featured as speakers during a 2 day training conference which will be held at FORA Conference Room(s) in Marina, CA, **Thursday, March 28, 2013** and **Friday, March 29, 2013**, 9:00 a.m. to 4:00 p.m. Registration deadline: March 15, 2013.

### FISCAL IMPACT:

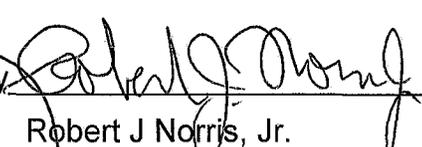
Reviewed by FORA Controller 

The \$5,000 sponsorship is not included in the revised FY 12-13 budget. If approved, the cost may be offset by savings in other categories, if not; it will be covered by FORA reserves.

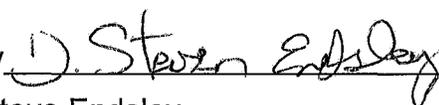
### COORDINATION

Executive Committee

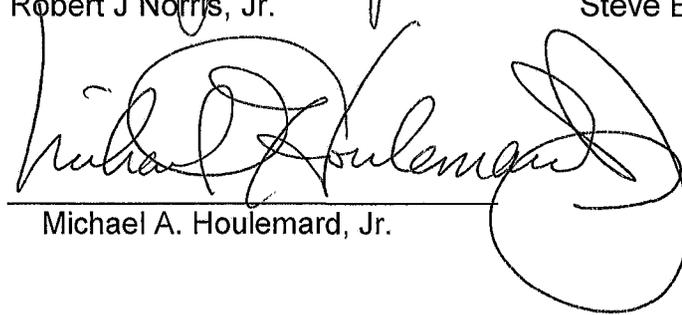
Prepared by

  
Robert J. Norris, Jr.

Reviewed by

  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.