

From: [Ron Chesshire](#)
To: [FORA Board](#)
Subject: Re: BCTCHolidayLuncheonInvite2017
Date: Friday, November 17, 2017 11:41:49 AM
Attachments: [BCTCHolidayLuncheonInvite2017.pdf](#)

Please note invite.

In Solidarity,

Ron Chesshire

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FPPC No. 850048

Andy Hartmann
President

John Papa
Vice President

Rod Smalley
Treasurer

Steve MacArthur
Recording Secretary

Ron Chesshire
CEO

YOU'RE INVITED!

The Monterey/Santa Cruz Counties Building & Construction Trades Council will be having a Holiday Luncheon on **Monday, December 11, 2017**. The luncheon will be from 11am until 1:30pm. It has become a tradition to invite Friends of the Building Trades to join us. We wish for you to consider stopping by and having lunch and conversation with us at this most joyous time of year.

Building Trades Holiday Luncheon

Monday, December 11th @ 11am

10300 Merritt Street, Castroville

RSVP with Ron Chesshire (831) 869-3073 by Friday, December 8th.

Thank you, Merry Christmas and Happy Holidays to all.

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

From: [Molly Erickson](#)
To: [FORA Board](#)
Subject: Exhibits to KFOW letter to Board of Directors on South Boundary Road/Gigling agenda item
Date: Friday, November 17, 2017 2:06:38 PM
Attachments: [17.11.17.KFOW.ltr.EXHIBITS.compiled.pdf](#)

Hard copies will be delivered today. Thank you.

Molly Erickson
STAMP | ERICKSON
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tel: 831-373-1214, x14

From: [Molly Erickson](#)
To: [FORA Board](#)
Subject: KFOR Letter to Board of Directors
Date: Friday, November 17, 2017 3:12:22 PM
Attachments: [17.11.17.KFOR.Ltr.to.FORA.BOD.to.re.S.Boundary.Gigling.pdf](#)
[ATT00001.htm](#)

FORA Board members:

Attached please find a letter on behalf of our client Keep Fort Ord Wild. The letter is being delivered to you today in hard copy, along with the exhibits.

The letter and exhibits have been delivered to FORA on a CD. Thank you.

Regards,

Molly Erickson
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November 17, 2017

Via email and personal delivery

Ralph Rubio, Chair
Members of the Board of Directors
Fort Ord Reuse Authority
Marina, CA

Re: Board agenda item(s) re South Boundary Road and Gigling Road projects

Dear Chair Rubio and FORA Directors:

My client Keep Fort Ord Wild continued to object to the proposed revised Board actions with regard to the South Boundary Road and Gigling Road projects. The Board should neither consider nor approve the items due to numerous problems, including violations of the California Open Government Act (a.k.a. Brown Act), the California Environmental Quality Act (CEQA), and FORA requirements.

October Comments by KFOW and the Changes Made by FORA in Response

On October 12, 2017, KFOW submitted a letter to FORA commenting on problems with the proposed contracts. KFOW pointed out that the scope of the contracts far exceeded the scope of the projects defined in the environmental documents. In direct response to KFOW's comments, at the Board meeting FORA staff proposed to make significant material changes to the scope of work, as follows.

- (1) Significantly reducing the length of the South Boundary Road project by approximately 1,600 feet.
- (2) Significantly reducing the Gigling Road project by 1/8 of its proposed length – from 8 blocks to 7 blocks.

FORA Would Still Have Remaining CIP Projects.
FORA Proposes to Piecemeal the Projects and the CEQA Review.

FORA's position is that FORA has three remaining road "obligations" (the term FORA uses):

1. Eastside Parkway.
2. South Boundary Road from General Jim Moore to York Road.
3. Gigling Road from General Jim Moore to 8th Avenue.

The proposed Gigling and South Boundary road projects are not the same as the projects described in the FORA CIP and the FORA annual report. Those documents

Chair Rubio and FORA Directors
Re: South Boundary Road and Gigling Road projects
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specifically state that the road “obligations” are Gigling Road out to 8th Avenue and South Boundary Road out to York Road. As currently proposed in the revised contract, South Boundary Road and Gigling Road would be developed to a materially shorter distance than what was envisioned in the Reuse Plan and the CIP.

Thus, the proposed project will not satisfy the CIP directives. FORA will have remaining CIP obligations: the rest of the roads, e.g., Gigling out to 8th Avenue and South Boundary out to York. FORA has not disclosed those remaining CIP obligations to the public and the Board. This is a piecemeal approach to CIP projects. Even if you approve this contract FORA still will have CIP projects remaining and incomplete.

The piecemealed project review violates CEQA. The FORA CIP and other FORA documents clearly show FORA’s intent to expand Gigling to 8th and to expand South Boundary Road to York Road. The environmental documentation for the projects is inadequate because it does not adequately consider and evaluate and mitigate for the entire road projects that FORA indisputably plans to build. CEQA requires review of the whole of the action, instead of pieces of it.

Additionally, the approval of the Gigling and South Boundary Road projects now will foreclose potential alternatives and mitigations in developing future road projects such as the Eastside Parkway. Gigling is an important alternative to the now-discredited Eastside Parkway, and changes to Gigling now could affect its viability as an alternative.

Gigling and South Boundary Roads Are Not CEQA Mitigations.

The roads are not CEQA mitigations, despite the repeated claims by FORA to that effect. They were proposed are part of the original Reuse Plan project and their development is not mandatory.

Additional Problems with the Environmental Review to Date.

The utilities proposed to be included as features of the project include potable water pipelines, wastewater pipelines and laterals, future recycled water transmission and distribution pipelines, and street lighting. The project impacts of the addition of utilities were not adequately evaluated and mitigated. The comment letter from LandWatch on this point was not included in the materials presented to the Board and the public, and it appears that FORA did not respond to it; thus, FORA’s responses to the comments are inadequate. The contract scope of work proposes that the project include the construction of a large amount of pipeline and utility capacity, which would be growth inducing. Growth inducement is an environmental impact that must be considered under CEQA. FORA has not considered it. It is no accident that there is no development on either side of South Boundary Road, because there are no utilities to that area.

The project's proposed expansion of potable water distribution capacity is particularly concerning because the Deep Aquifers are known to be unsustainable and their supply is known to be "small" according to the WRIME report. In 2010, FORA did not know about the WRIME report. Mr. Houlemard publicly admitted a few years ago that he had not read the WRIME report and did not know of its existence. The IS/MND for this project failed to consider the WRIME report or the broader issue of water supply. The Monterey County Water Resources Agency has recommended an "immediate moratorium on groundwater extractions from new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin until such time as an investigation of the Deep Aquifers is completed and data pertaining to the hydraulic properties and long-term viability of the Deep Aquifers are available for knowledge-based water resource planning and decision making." (MCWRA report to MCWRA Board of Supervisors, Nov. 14, 2017.) Seawater intrusion made huge inroads in the Salinas Valley from 2013 to 2015, placing the basin at risk and particularly threatening the Fort Ord water supply, because Fort Ord gets the vast majority of its water from the Deep Aquifer. The Deep Aquifers contain ancient water. They are not being recharged except by the overlying aquifers, which are now intruded with saltwater. The MCWRA staff has admitted that it does not have enough information about the Deep Aquifers, which are not proven to be reliable or sustainable in the long term. According to MCWRA, the amount of pumping from the Deep Aquifers in 2016 was more than double the amount of pumping in 1995. The number of wells in 2016 is more than triple the number of wells in 1995. Despite the studies and the new information, FORA has not sounded the alarm and has failed to consider this information in any way with regard to project approvals by the FORA Board.

Since 2010, when FORA purported to approve the environmental documents, Del Rey Oaks has approved a project that relies directly on the road - a large RV Park. Del Rey Oaks did not prepare CEQA documentation for the RV Park project. Instead, with the cooperation of Del Rey Oaks, the developer circulated a petition that the Del Rey Oaks City Council adopted without any CEQA review, even though the petition had only 174 signatures. FORA made consistency findings even though there was no CEQA review, even though FORA as a regional agency is responsible to more than 100,000 residents, and even though FORA did not properly assign any of the County policies and programs to Del Rey Oaks. The RV Project is waiting for the completion of the South Boundary Road project.

The proposed expansion of utilities along Gigling also would be growth inducing, and those impacts have not been adequately analyzed. One example of this is the new proposal to develop the Nurses' Barracks, which was not contemplated in the 2010 environmental documents. The attached exhibit shows the location of the site off of Gigling Road.

Protections for Polygon 31a and 31b in the RP and the RP EIR were not adequately evaluated in the MND/IS. This includes Hydrology and Water Quality policy

A-2, applicable to the project sites because Del Rey Oaks took over the land originally intended in the Reuse Plan to be transferred to the County. The environmental documents improperly failed to consider the project's lack of compliance and lack of consistency with this important policy. The South Boundary Road project likely would have adverse effect on groundwater recharge and downstream surface water users, including wildlife and rare plants in reserve and in Frog Pond.

As explained in our past communications, the environmental documents addressed Reuse Plan policies in City of Seaside/Gigling project area only. They improperly failed to address Reuse Plan policies applicable to South Boundary Road project area. The policies originally assigned to the County of Monterey are applicable to the property eventually acquired by the Cities of Del Rey Oaks and Monterey. (See FORA Fort Ord Reuse Plan Reassessment Report: "FORA assumes that the Monterey County policies applicable to the present Del Rey Oaks and Monterey territories, remain applicable to those areas." Thus, the Reuse Plan required the County, and its successor in interest Del Rey Oaks, as follows: the agency "shall ensure that land use and drainage facilities on newly developed lands do not decrease the magnitude and duration of flows less than or greater than the mean annual flow in creeks downstream of the development sites. (See 2001 "republished" Reuse Plan, p. 226; se Final EIR, pp. 3-16 and 3-17.)

Polygon 31a is designated as "Natural Area Expansion (NAE) Habitat Management" in the 1997 Reuse Plan and its FEIR.

The project does not comply with Biological Resources Policy C-2: The County (Del Rey Oaks) "shall encourage the preservation and enhancement of oak woodland elements in the natural and built environments." There are hundreds if not thousands of oak trees in the project area, many of them tall and majestic. CEQA requires protection of oak woodlands. The project's impacts on oak trees and oak woodlands have not been adequately quantified or mitigated in the environmental documents oak trees. The review does not comply with the Reuse Plan policies or CEQA.

The proposed mitigations requiring permits from the cities of Seaside, Del Rey Oaks and Monterey for future tree removals are inadequate mitigation for the potential impacts to trees. Obtaining tree removal permits is not a mitigation for potentially significant impacts to trees and woodland. In any event, the cities are prohibited from requiring permits or controlling the roads proposed by FORA, pursuant to the Government Code, and the mitigations are ineffective for that reason, as well.

The number and size of trees that the road projects potentially would impact should have been researched, presented, and mitigated in the IS/MND. There are likely and potentially significant impacts because the projects would adversely impact 1000 or more trees, based on personal observation. The significance is determined by how many oaks will be removed, how many acres of oak woodlands will be impacted, the

diameter of the individual trees removed or their collective, average canopy cover per acre and proximity to other habitat elements. The environmental documents for the projects guess only at the acres of oak woodlands, and fail to adequately address the other issues. KFOR will present photographs of the oak woodlands at the Board meeting, showing a few of the pines, oaks and oak woodland along South Boundary that would be impacted by the project. The ability to take photographs is severely limited by the lack of shoulder along much of the road, the barbed wire fencing, and even where it is possible to pull over, it is often not safe to take photographs because passing vehicle drivers are not accustomed to seeing a person by the side of the road and they can have the afternoon sun in their eyes.

The proposed mitigation enforcement by Seaside, Del Rey Oaks and Monterey is ineffective because FORA cannot bind other agencies to the duty of enforcement. Additionally, the cities have not acted to take on those duties.

The environmental documents venture into pure speculation as to whether the Monterey pines are planted. There is no evidence of that, and there are many younger pines on both sides of South Boundary that are less than 40 years old. Those were not planted.

Project Design, Description and Environmental Documentation for
Road Projects Failed to Comply with RUDG.

The proposed approvals are improper and illegal because they do not comply with the Regional Urban Design Guidelines (RUDG). As a Reuse Plan mitigation, FORA was required in 1997 to adopt urban design guidelines. FORA failed to do adopt guidelines until 2016. The environmental documents for the proposed roads do not mention the RUDG or the even the Reuse Plan requirement for guidelines. In 2016 FORA adopted the RUDG with great fanfare. In 2017 FORA announced it had won an American Planning Association award for the RUDG. But FORA is ignoring them here.

The proposed projects are not consistent with the RUDG in material ways, including as follows:

- RUDG says "Vehicle lanes of 12 to 14 feet are to be avoided because they will encourage highway speeds and lead to potentially lethal outcomes." Gigling Road is proposed to have 14 feet wide vehicle lanes. South Boundary proposed to be 12 feet wide vehicle lanes. Both roads are proposed to have large paved shoulders of 5 to 8 feet which will make the 12-14 foot wide lanes will feel very wide.
- RUDG states at South Boundary Road and Gigling Roads are roads "where the RUDG are required for BRP consistency."

- RUDG identifies General Jim Moore Boulevard at South Boundary Road as a gateway “where the RUDG are required for BRP consistency.”
- The layout, design, and size of the proposed roads and features are materially inconsistent with the specific guidance stated in the RUDG.

RUDG provide specific guidance as to gateways and roads. This guidance has not been applied or considered. The Gigling/South Boundary Road projects has not been approved. The road projects should follow the Guidelines should be followed. Otherwise, FORA will have approved all of its road projects without complying with the Design Guidelines required in 1997 as a Reuse Plan mitigation. No future discretionary approvals by FORA of the road projects is contemplated. This is the only time the FORA decision makers will have to ensure consistency of the road projects with the Reuse Plan and the RUDG.

FORA Is Not in Compliance with the Reuse Plan Mitigation that Requires FORA to Prepare a Drainage Plan for this Area.

The Reuse Plan Final EIR stated in key part as follows:

The Conservation Element conveys goals and policies related to soils and geology, hydrology and water quality, biological resources, and air quality. The Conservation Element, which is state-mandated, requires that the natural resources within the boundaries of former Fort Ord are supervised in perpetuity and that these resources are not diminished. It identifies important natural resources at former Fort Ord, recognizes their irreplaceable value and limited quantities, and provides specific strategies for their preservation. The Conservation Element’s contents respond to California environmental laws, including the Clean Water Act and the Clean Air Act.

The Reuse Plan Final EIR (at p.66) required the following CEQA mitigation:

Mitigation: Add a new program that shall require preparation of a Master Drainage Plan should be developed for the Fort Ord property to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan and develop plans for the control of storm water runoff from future development, including detention/retention and enhanced percolation to the ground water.

This plan shall be developed by FORA with funding for the plan to be obtained from future development. All Fort Ord property owners (federal, state, and local) shall participate in the funding of this plan. Reflecting the incremental nature of the funding source (i.e. development), the assessment of existing facilities shall be completed first and by the year 2001 and submitted to FORA. This shall be followed by recommendations for improvements and an implementation plan to be completed by 2003 and submitted to FORA.

FORA did not comply with the required mitigation. Instead, FORA came up with a plan that addressed only some of the land at Fort Ord, and ignored large parts of it including the Del Rey Oaks and City of Monterey land on which the South Boundary project is located. Thus, there is no master drainage plan that provides guidance for this area, even though the Reuse Plan required such a plan. FORA is improperly proceeding with development before FORA complies with the Reuse Plan CEQA mitigations that were intended to shape and control future development. FORA is once again putting the cart (the development) before the horse (the mitigations).

The conditions/mitigations in the environmental documents and in the proposed FORA-Whitsun contracts regarding pavement drainage and onsite storm water disposal rely on something called the "FORA Storm Drainage Master Plan." There is no such Plan. Thus, the conditions/mitigations are not cognizable and measurable. To the extent that the reference is meant to be to the FORA storm water master plan, that plan did not address the South Boundary Road area, and thus the plan does not provide the guidance necessary to be an enforceable mitigation. The condition is not measurable or enforceable and is ineffective, and the potential impacts on storm water and drainage have not been adequately mitigated.

The environmental documentation for the South Boundary Road inadequately addresses drainage impacts. There is a swale near the road that supplies the Frog Pond, as the environmental documents generally acknowledge. ("existing runoff from the south side of the South Boundary Road right-of-way feeds a small existing drainage swale, which parallels South Boundary Road and ultimately runs through the Park District Parcel to the low-lying pond referred to as the "Frog Pond.") However, the environmental documents fail to consider that the swale is supplied by runoff from the road itself and from the north side of South Boundary Road. Several large drainage pipes drain water from the north side of South Boundary Road into the drainage swale on the south side of South Boundary Road. These pipelines are visible and operating. This is evidence from on-site inspection and photographs. The environmental documentation incorrectly conclude that "This alignment and flow in the existing drainage swale will not be affected by the proposed action/project. As the existing drainage swale flows west, it will remain an independent system."

The Scope of Work includes New Project Features that Were Not Included in the Project Description of the Environmental Documentation and Not Evaluated in the Documents.

The proposed scope of work includes numerous new intersections and roundabouts and designs to support installation of new traffic signals on South Boundary Road. These were not included in the MND project description and in the analysis, and their impacts were not adequately evaluated and mitigated. No new intersections and roundabouts were included in the project description of the 2010 environmental documents. Roundabouts and intersections would have impacts that the documents have not adequately investigated, analyzed, mitigated, and considered alternatives for. Mere driveway access is different from an intersection and a roundabout. It cannot be disputed that an intersection requires additional development from a road. The single stubout proposed for the south side of South Boundary also has growth-inducing aspects that were not adequately addressed or mitigated. The environmental documents did not adequately investigate, discuss or mitigate this issue.

The proposed contract includes approximately five new intersections or roundabouts on South Boundary Road. One or more would have a significantly larger project footprint and greater and more significant environmental impacts, including drainage, trees, maritime chaparral, and more. Roundabouts should have been designed and included as part of project reviewed under CEQA, not added after the fact.

“Roundabouts need more right-of-way at the intersections. The diameter of a roundabout can be up to 150 feet for a single-lane and 200 feet or more for a dual-lane. Typical right-of-way at an intersection may be as low as a 60-foot by 60-foot square for a local road up to a 120-foot by 120-foot square for an expressway. More room on the corners is likely necessary.”

(<http://www.mikeontraffic.com/roundabouts-not-silver-bullet/>, statements of traffic engineer Mike Spack, PE, PTOE; a licensed civil engineer and a certified professional transportation operations engineer who taught in the civil engineering department at the University of Minnesota, past president of the North Central Section of the Institute of Transportation Engineers, fellow of the Institute of Transportation Engineers.)

Roundabouts “can require a larger footprint than a traditional intersection” (<https://americaninfrastructuremag.com/roundabouts-benefits-old-new-trend/>). And “roundabouts usually require more space for the circulatory roadway, central island, and sidewalks than the typically rectangular space inside traditional intersections.” <https://safety.fhwa.dot.gov/intersection/innovative/roundabouts/fhwasa10006/>

There are a number of situations that may adversely affect the feasibility of roundabouts. As with any decision regarding intersection treatments, care should be taken to understand the particular benefits and trade-offs for each project site. Physical complications exist here, including unfavorable topography that slopes downhill immediately to the south of South Boundary Road, environmental constraints, drainage problems, that make it essential that the environmental documents evaluate any roundabout.

Roundabouts operate most safely when their geometry forces traffic to enter and circulate at slow speeds. Poor roundabout geometry has been found to negatively impact roundabout operations by affecting driver lane choice and behavior through the roundabout. Many of the geometric parameters are governed by the maneuvering requirements of the design vehicle and the accommodation of nonmotorized users. Thus, designing a roundabout is a process of determining the optimal balance among safety provisions, operational performance, and accommodation of design users. This design balance is further influenced by physical, environmental, economic, and political constraints and opportunities, which further increases the variability from site to site.

Since roundabouts are applied in many different situations and under differing site specific conditions, each roundabout design requires distinctive design choices. The general nature of the roundabout design process is an iterative one. Minor adjustments in geometric design attributes can result in significant effects on the operational and safety performance of the roundabout. Also, many of the individual design components interact with each other, and therefore considering the roundabout design in whole (the outcome of the design) is more important than focusing on the isolated components.

Contrary to the proposed contract term, the issue is not whether a roundabout would be compliant with past CEQA findings. The issue is whether a new project feature would be consistent with the project description analyzed and mitigated under CEQA/NEPA.

Rare Plant Reserve Information Is Garbled and Inconsistent.

In September, KFOW raised concerns with FORA's lack of communication with the California Native Plant Society regarding the rare plant reserve. The location of the reserve shown on the environmental documentation is inconsistent with the signage and the FORA documents and agreements to preserve the plant reserves. The FORA letter agreement with CNPS makes statements that do not make sense in light of the facts on-the-ground. The IS/MND does not adequately describe the CNPS agreement as part of the project description or analysis, nor make the terms of that agreement into an enforceable mitigation. The FORA-CNPS commitment is that "FORA expressly agreed that the Project will not cause any removal of chaparral adjacent to the north side of South Bounday Road." The Agreement emphasized that "All parties agree that it is the intent of this agreement to preserve the appearance of native chaparral along the

northeasterly side of the North-South Road [Gen. Jim Moore Blvd.] intersection with South Boundary in the Project area." But the project proposes to take out chaparral along the northeasterly side of the intersection.

The IS MND did not evaluate those biological impacts. The proposed project would remove chaparral adjacent on the north side of South Boundary Road. The proposed road project would impact the north easterly side of the General Jim Moore Boulevard (the North-South Road) intersection with South Boundary in the Project area. That is exactly what the project proposes to do – move the intersection in a northeasterly direction.

The CNPS/FORA agreement also states that the preservation of a minimum of two acres of maritime chaparral located approximately at the northeast corner of South Boundary Road and North South Road [General Jim Moore Blvd.] will compensate for the loss of chaparral to be caused by the South Boundary widening project." There is inadequate discussion in the IS/MND of this requirement and no mitigation requiring that. "The boundaries must avoid road widening that would affect the reserve." There is inadequate discussion in the IS/MND of this requirement and no mitigation requiring that. And "no spraying or irrigation drainage should be directed toward the habitat area." There is inadequate discussion in the IS/MND of this requirement and no mitigation requiring that.

Attached Evidence.

We have provided evidence in the past in support of KFOR's claims and we attach additional supporting evidence to this letter. We ask that you review it carefully before you act.

The November 17 Action Is a Proposed Project Approval Subject to CEQA.

KFOR reiterates its position that the road projects were not approved in 2010 and this proposed action would be the first project approval under CEQA. Neither the 2010 FORA agenda nor the agenda materials provided adequate notice that a project approval was on the FORA agenda, and the Board action did not include a project approval, in any event.

Brown Act Problems.

FORA has continued to fail to provide adequate notice of this item as a project approval. The FORA agenda fails to disclose that the Board will consider approving a project based on a mitigated negative declaration.

Chair Rubio and FORA Directors
Re: South Boundary Road and Gigling Road projects
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Reiterated Offer to Meet.

KFOW again offers to meet with you to discuss these concerns in the hope of resolving them. KFOW urges FORA not to act on this item or any item regarding South Boundary Road and Gigling Road until FORA has understood and resolved the issues raised in this letter and previous letters and the evidence attached, FORA has provided the written responses to KFOW and all interested persons, FORA has met with KFOW, and FORA has held a properly noticed public meeting to consider the action FORA is contemplating. FORA controls the schedule with regard to its actions. KFOW does not control the schedule.

Request.

KFOW urges the Board to continue the item to allow time for FORA to publicly address the issues raised in this letter and by other commenters. KFOW urges the Board to continue the item to ensure proper environmental review of the road projects to comply with the requirements of CEQA, NEPA and FORA. The Board should not approve the projects based on the environmental documentation (EA/IS) dating from in 2010.

Reiterated Request for Notice.

KFOW again requests at least ten days' advance notice of any action by FORA as to the Gigling and South Boundary Road projects. FORA did not provide notice other than sending links to the agenda packet which was only general notice and required several additional steps for me to dig out the limited descriptions of items were on the agenda and what the items were actually going to cover, based on an additional review of the packet materials. KFOW wants to participate in future hearings on these and all other FORA road projects. Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Table of Exhibits

- A FORA Regional Urban Design Guidelines and FORA website printout (collective)
- B 2017-2018 FORA CIP showing priorities and project descriptions
- C Polygon identification map produced by FORA in response to CPRA request
- D Frog Pond information printed from MPRPD website (collective)
- E CNPS plant reserve information and maps (collective)
- F FORA public records re: Board approvals of other road projects at Fort Ord (collective)
- G Map showing Gigling Road to north and 1250-foot length to Nurses Barracks
- H 2017 information on seawater intrusion and deep aquifers presented by Monterey County Water Resources Agency (collective)

From: [Sean Marciniak](#)
To: ["bdelegado62@gmail.com"](#); ["frank.oconnell93933@gmail.com"](#); [Councilmember Morton](#); [Councilmember Amadeo](#); [David Brown](#); [attys@wellingtonlaw.com](#)
Cc: ["jgiffen@kahlaw.net"](#); ["McKeeCJ@co.monterey.ca.us"](#); ["Attys@WellingtonLaw.com"](#); [Art Coon](#); [Giselle Roohparvar](#); [Wilson Wendt](#); [FORA Board](#); [Supervisor Alejo](#); [Supervisor Phillips](#); ["district4@co.monterey.ca.us"](#); [Supervisor Salinas](#); [Supervisor Adams](#); ["COB@co.monterey.ca.us"](#); ["laberkley@gmail.com"](#); ["kbiala@icloud.com"](#); ["MRB93933@gmail.com"](#); ["David.Burnett454@sbcglobal.net"](#); ["timledesma12@gmail.com"](#); ["Tommann524@gmail.com"](#); ["adam_urrutia@yahoo.com"](#); [Josephine Velazquez](#)
Subject: November 22, 2017 Ltr. to City of Marina re Exercise of Development Review Authority.PDF [IWOV-IManage.FID961270]
Date: Wednesday, November 22, 2017 9:18:00 AM
Attachments: [November 22, 2017 Ltr. to City of Marina re Exercise of Development Revi....pdf](#)

Dear Honorable Members of the Marina City Council,

Please find attached a letter, sent on behalf of Marina Community Partners, respectfully requesting that the City Council exercise development review authority over the County of Monterey's approval of its Safe Parking Program at 2616 First Avenue in the City of Marina.

Sincerely,

Sean Marciniak | Miller Starr Regalia

1331 North California Boulevard, Fifth Floor, Walnut Creek, CA 94596

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MILLER STARR REGALIA CONFIDENTIAL COMMUNICATION

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November 22, 2017

VIA E-MAIL

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Monterey, CA 93940
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Re: Request that City of Marina Exercise Development Review Authority Over
County of Monterey's Approval of Safe Parking Program at 2616 First Ave.

Dear Honorable Members of the City Council

As you know, Miller Starr Regalia represents Marina Community Partners with respect to its management of The Dunes Project in the City of Marina. As you also know, on November 14, 2017, the Monterey County Board of Supervisors appears to have approved, at least in part, the operation of a Safe Parking Program at 2616 First Avenue in the City of Marina. By this letter, our client requests that the City Council exercise its development review authority over the County's approval, as required by the Fort Ord Reuse Authority Act (the "Act"). (Pub. Res. Code, § 67650 et seq.) Because the County's decision violates the Act, the City should also deny the County's proposal.

The Act requires that, after a city or county's general plan has been certified as consistent with the Fort Ord Base Reuse Plan, "development review authority shall be exercised by the respective county or city over any development proposed within the area to which the general plan applies." (See Pub. Res. Code, § 67675.8(b).)

Here, it is indisputable that (1) 2616 First Avenue sits within the area governed by the City's General Plan (see General Plan, Figure 1.1); and (2) that the City's General Plan and Zoning Ordinance have been certified as consistent with the Base Reuse Plan (see, e.g., FORA Resolution Nos. 7-03, 16-13).

Meanwhile, the County's Safe Parking Program, which would permit overnight camping in recreational vehicles on 2616 First Avenue (the "Project Site"), constitutes a change of use and a de facto rezoning of this property. This conclusion stems from the fact that (1) the Project Site currently is used as accessory parking to the County's on-site public institution uses; and (2) the City already has addressed the permissibility of camping at the Project Site — and prohibited it. The University Villages Specific Plan, which sets forth the zoning regulations for the area, designates 2616 First Street as an "Office Research" zone. In such zones, the Specific Plan explicitly prohibits camping. (Specific Plan, p. 106, Table 5.6.) The Marina Municipal Code, meanwhile, directly prohibits camping overnight in vehicles. (MMC, § 10.40.150.) The effect of the Safe Parking Program, then, is to modify the zoning that applies to the Project Site, as well as change the land uses allowed at the location, thereby qualifying as "development proposed within the area." (See Pub. Res. Code, § 67675.6(a).)

Accordingly, the City Council is obligated to exercise its development review authority over the County's proposed development. To the extent the County has indicated it enjoys sovereign immunity, and need not follow any City laws, this assertion is incorrect. While there are some instances where a county, owning property in a city, can ignore that city's land use regulations, those instances are limited and are not present here. A county only enjoys sovereign immunity in the maintenance and operation of county-owned property where (1) the county is addressing a matter of statewide concern, as opposed to a local affair; and (2) the county is seeking to avoid purely local, city-adopted ordinances.

Here, the County's Safe Parking Program is intended to reduce "crime and dumping of trash and refuse" and human waste on local County roads and fields. (November 14, 2017 County Staff Report, p. 3; November 14, 2017 Board of Supervisors hearing.) These are local affairs. More importantly, the County's proposal to operate the Safe Parking Program at 2616 First Avenue not only conflicts with ordinances and land use plans adopted by the City of Marina, but the land use blueprint appearing in the Base Reuse Plan. This Plan, in turn, highlights The Dunes Project area as a sensitive site due to its visibility from Highway 1 and its location in a scenic corridor, and calls the site a "key mixed-use district" that has the potential to provide "streetscape vitality" and a "neighborhood image." (Base Reuse Plan, pp. 152-154.) In planning for this area's development, the authors of the Base Reuse Plan designated this area as a Planned Development Mixed Use zone, and set forth a menu of land uses allowed on the site. (Base Reuse Plan, p. 100, Table 3.4-1.) Overnight camping in recreational vehicles, or any other location, is not a permitted use in this area. (See *id.*)

Finally, any claim of sovereign immunity is abrogated by the Fort Ord Reuse Authority Act, which provides that "[n]o local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base *that is outside the jurisdiction of that local agency.*" (Pub. Res. Code, § 67675.8(b)(1) [Emph. added].)

The County has developed the Safe Parking Program in an effort to provide a small segment of the County's homeless population with a safe and controlled area to sleep. Our client believes the initiative, in principle, is venerable, and we suspect the City of Marina feels the same way. However, locating the program at 2616 First Street constitutes poor planning. The Project Site is bordered on three sides by dozens of abandoned military barracks in various states of disrepair and, a short distance to the west, there is a highway underpass (Divarty Street) that is poorly lit. This area is already unsafe at night, presenting a danger to students and other citizens who pass through the area. Since April of this year, Marina police have been called to the area 149 times.

The conditions that originally spurred the County to create the Safe Parking Program included "crime and the dumping of trash and refuse." While we understand the Safe Parking Program will include social services, we ask the City to consider the impacts — both social and environmental — of placing an at-risk population next to a sea of abandoned buildings and the Divarty Street underpass.

We also submit, respectfully, that the City must deny the County's proposal. Again, the Safe Parking Program is in conflict with the University Specific Plan, the Base Reuse Plan, and the Fort Ord Reuse Authority Act. (See Specific Plan, p. 106, Table 5.6; MMC, § 10.40.150; Base Reuse Plan, pp. 100, 152-154, Table 3.4-1; Pub. Res. Code, §§ 67675.6, 676765.8.) As a matter of law, it cannot be approved or implemented.

Please confirm that the City will review, and make formal determinations regarding, the County's Safe Parking Program, and advise us when the matter will be set for hearing. This issue is extremely important to our clients, area residents, and other stakeholders in the City of Marina.

Sincerely,

MILLER STARR REGALIA



Sean Marciniak

cc: Clients
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Arthur F. Coon, Esq., Miller Starr Regalia
Giselle S. Roohparvar, Esq., Miller Starr Regalia
Members of the City of Marina Planning Commission (lakerkley@gmail.com;
kbiala@icloud.com; MRB93933@gmail.com; David.Burnett454@sbcglobal.net;

Hon. Members of the Marina City Council
November 22, 2017
Page 4

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Fort Ord Reuse Authority Board of Directors (board@fora.org)
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Members of the Monterey County Board of Supervisors
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Monterey County

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Board Report

File #: A 17-442, **Version:** 1

- a. Adopt a Resolution to allow the Department of Social Services to create and implement a temporary Safe Parking Program to assist those living in their vehicles (4/5th vote required);
- b. Approve and authorize the Director of the Department of Social Services to sign an agreement with Orphan Productions for \$150,000 to provide a safe parking program for the period of November 30, 2017 through November 29, 2018;
- c. Authorize the Director of the Department of Social Services to sign up to three amendments to this agreement where the total amendments do not exceed 10% of the original contract amount (\$15,000), and do not significantly change the scope of work;
- d. Find the project Categorical Exempt per Section 15269(c) of the CEQA Guidelines as an Urgent Threat to the Public Health and Safety;
- e. Approve the attached Resolution with findings and evidence supporting this recommendation for consideration. Staff recommends approval; and
- f. Approve and authorize the Auditor-Controller to increase appropriations in the adopted FY 17/18 Community Programs Budget 001-5010-SOC004-8258 in the amount \$87,500 using funds from one of the options discussed in the Financing Section of this Board Report (4/5ths vote required).

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a Resolution to allow the Department of Social Services to create and implement a temporary Safe Parking Program to assist those living in their vehicles (4/5th vote required);
- b. Approve and authorize the Director of the Department of Social Services to sign an agreement with Orphan Productions for \$150,000 to provide a safe parking program for the period of November 30, 2017 through November 29, 2018;
- c. Authorize the Director of the Department of Social Services to sign up to three amendments to this agreement where the total amendments do not exceed 10% of the original contract amount (\$15,000), and do not significantly change the scope of work;
- d. Find the project Categorical Exempt per Section 15269(c) of the CEQA Guidelines as an Urgent Threat to the Public Health and Safety;
- e. Approve the attached Resolution with findings and evidence supporting this recommendation for consideration. Staff recommends approval; and
- f. Approve and authorize the Auditor-Controller to increase appropriations in the adopted FY 17/18 Community Programs Budget 001-5010-SOC004-8258 in the amount \$87,500 using funds from one of the options discussed in the Financing Section of this Board Report (4/5ths vote required).

SUMMARY/DISCUSSION:

In the County of Monterey, there are increasing numbers of homeless individuals living in their vehicles as a last resort form of housing. Vehicle dwelling by persons experiencing homelessness is scattered throughout the County, with some areas having greater density of occupied vehicles than others. Vehicles provide a sense of security for persons experiencing homelessness, as they help alleviate fears that are commonly associated with living on the streets or in a shelter. Throughout the County, several ordinances have been enacted that do not allow for overnight parking. Thus, homeless individuals living in their vehicles must move repeatedly, or risk

citations and towing. This lack of stability further entrenches individuals into homelessness, and negatively impacts their path to self-sufficiency and housing.

In response to a referral from a member of the Board of Supervisors, as well as the issues of homeless vehicle dwellers on Lapis Road, in Monterey County, a meeting was convened to discuss emergent Safe Parking needs in the County. Several subsequent meetings were held with multiple County departments represented. These discussions resulted in a recommendation that a location for Safe Parking be identified to avoid imposing additional hardships on vehicle dwellers and that a formal solicitation for a service provider to manage and operate the Safe Parking program in multiple sites throughout Monterey County be released by the Department of Social Services (DSS).

In August 2017, DSS released Request for Qualifications (RFQ) #10639 to find a qualified vendor to provide the Safe Parking Program. DSS received one response to the RFQ and Pass the Word Ministry (PTWM) was tentatively awarded the contract through this formal solicitation process. PTWM later withdrew from contract negotiations due to liability concerns. A new vendor has been identified and a sole source justification has been approved by the County's Contracts/Purchasing Officer.

This agreement with Orphan Productions provides a Safe Parking Program that allows for overnight parking in the lot of the District 4 Supervisor Office, in the Coastal Office Building at 2616 First Ave. Marina, CA 93933. Hours of operations of the site will be 7PM to 7AM seven days a week. The term of planned operation is November 30, 2017 to November 29, 2018. The Safe Parking Program also includes information about, and referral to, community resources to connect persons experiencing homelessness with homeless service providers.

Other locations may emerge as sites for the program to expand, if necessary, to accommodate the large need for parking sites. Any future sites will be brought back to the Board of Supervisors for approval and discussed with County Counsel and the Resource Management Agency - Planning Department for a CEQA evaluation before approval of any new sites.

Resource Management Agency - Planning Department, evaluated the Coastal Office Building parking lot site and found it is Categorically Exempt per Section 15269(c) of CEQA Guidelines, as an Urgent Threat to the Public Health and Safety.

As part of this resolution to create and implement a temporary Safe Parking Program to assist those living in their vehicles, the Board of Supervisors makes the following findings:

- a) Homelessness is a serious and ongoing problem within the County of Monterey which requires immediate action by the Board of Supervisors for the preservation of the public peace, health, and safety.
- b) According to the 2017 Monterey County Homeless Census and Survey, the population experiencing homelessness within the County of Monterey has increased by 23% since 2015, with a 57% increase being experienced in the City of Salinas.
- c) Lapis Road is a County road just north of the City of Marina and just west of Del Monte Boulevard and east of Highway 1 in the unincorporated area of Monterey County. Homeless individuals are living in vehicles along the side of this road without appropriate services. These individuals park a variety of vehicles, including motor homes, cars, and trailers, on the shoulder of the road and use these vehicles to sleep and live in. The uncontrolled use of the road for this purpose has resulted in serious health and safety problems with the condition and use of the road and the County right-of-way, including crime and dumping of trash and refuse, that required County intervention to control. Implementation of a

temporary Safe Parking Program will give these individuals a place to park their vehicles overnight and also to receive services to help them break the cycle of homelessness.

- d) The Board of Supervisors has recently directed staff to pursue short and long term solutions for homeless housing, including but not limited to, development of a Safe Parking program, as proposed in this Resolution.
- e) Creation and implementation of a temporary Safe Parking Program to assist those living in their vehicles, is statutorily exempt from the California Environmental Quality Act pursuant to section 15269 (c) of the CEQA Guidelines because it is necessary to mitigate an immediate threat to public peace, health, and safety and to address an immediate need for shelter for some homeless in the upcoming winter pending development of a longer-term solution.

OTHER AGENCY INVOLVEMENT:

This policy has been reviewed and approved as to form by County Counsel.

Purchasing has reviewed and approved this agreement. County Counsel has approved the agreement as to form.

FINANCING:

The recommended action will result in a total financial commitment of \$87,500 in the current year and \$62,500 in FY 2018-19. On October 10, 2017, the Board of Supervisors received the First Quarterly Budget Update from the County Administrative Budget Office that disclosed over \$13 million in unfunded issues that have emerged since the adoption of the FY 2017-18 Budget. The County Administrative Budget Office proposed using transient occupancy tax (TOT) revenues in excess of the required road fund maintenance of effort to finance various community needs. The Board requested follow up reports come back to discuss the impacts to the road fund under the TOT proposal and any other possible alternative funding solutions. Options to fund the \$87,500 appropriation required to implement recommended actions in FY 17/18 include:

- Option 1 - Use \$87,500 from savings in the County Contributions-Other Budget 001-CAO013-1050-8029 that come from reduced financing needs for the Monterey Bay Community Power Project.
- Option 2 - Use of \$87,500 from Transient Occupancy Taxes currently allocated to the Road Fund above the required maintenance of effort as proposed by the County Administrative Office during the October 10, 2017 Quarterly Budget Update by reducing the operating transfers out from the General Fund (001-CAO017-1050-8038).
- Option 3 - Use of \$87,500 unrecognized Cannabis Revenues.
- Option 4 - By reducing appropriations by \$87,500 in Social Services Budget 001-5010-SOC005-8282 for child abuse prevention contracts. These services offer cost effective support to families in overcoming challenges and concerns that could otherwise result in foster care placement for children.
-

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Homelessness is an issue that has compounding effects on those experiencing it and the average life expectancy for individuals experiencing homelessness is 25 years less than those in stable housing. This safe parking program provides a safe and sanitary short-term solution for homeless individuals who are living in their vehicles while they are paired with support services that will assist them in finding permanent housing. Services that support families in obtaining stable, permanent housing create a pathway to other systems that can ultimately lead to better health and quality of life.

Mark a check to the related Board of Supervisors Strategic Initiatives

Economic Development

Administration

Health & Human Services

Infrastructure

Public Safety

Prepared by: Lauren Suwansupa, MA II, x3584

Approved by: Elliott Robinson, Director Social Services, x4430

Attachments: Orphan Productions Agreement, Orphan Productions Sole Source

Proposed agreement is on file with Clerk of the Board as an attachment to this Board Report

Adopt a resolution to:

- a. Adopt a Resolution to allow the Department of Social Services to create and implement a temporary Safe Parking Program to assist those living in their vehicles;
- b. Approve and authorize the Director of the Department of Social Services to sign an agreement with Orphan Productions for \$150,000 to provide a safe parking program for the period of November 30, 2017 through November 29, 2018;
- c. Authorize the Director of the Department of Social Services to sign up to three amendments to this agreement where the total amendments do not exceed 10% of the original contract amount (\$15,000), and do not significantly change the scope of work;
- d. Find the project Categorically Exempt per Section 15269(c) of the CEQA Guidelines as an Urgent Threat to the Public Health and Safety;
- e. Approve the attached Resolution with findings and evidence supporting this recommendation for consideration. Staff recommends approval; and
- f. Approve and authorize the Auditor-Controller to increase appropriations in the adopted FY 17/18 Community Programs Budget 001-5010-SOC004-8258 in the amount \$87,500 using funds from one of the options discussed in the Financing Section of this Board Report.

WHEREAS, Monterey County Board of Supervisors directed that a location for temporary Safe Parking be identified and a formal solicitation for a service provider to manage and operate a Safe Parking Program be released to assist those living in their vehicles who desire permanent housing and the skills and income necessary to support permanent housing; and

WHEREAS, The County of Monterey, through the Department of Social Services, advertised a Request for Qualifications (RFQ) for a Safe Parking Program and received one proposal from Pass the Word Ministry, a non-profit 501(c)(3) based in Monterey; and

WHEREAS, The County of Monterey, through the Department of Social Services released Request for Qualifications (RFQ) #10639 and tentatively awarded Pass the Word Ministry as the only responsive provider through this formal solicitation process; and

WHEREAS, Pass the Word Ministry withdrew from contract negotiations due to liability concerns and the Department of Social Services identified Orphan Productions to operate the Safe Parking program through a Sole Source request, as Orphan Productions is operated by the same person who was part of the Pass the Word Ministry, but Orphan Productions is a separate and distinct non-profit organization; and

WHEREAS, the Department of Social Services is contracting with Orphan Productions for the operation of the temporary Safe Parking Program at one location at the Monterey County Coastal Office parking lot, located at 2616 First Avenue Marina, California, 93933, operating between the hours of 7 p.m. and 7 a.m. from November 30, 2017, through November 29, 2018; and

WHEREAS, the County of Monterey through the Department of Social Services has negotiated an agreement with Orphan Productions to perform the services and said agreement is being brought to the Monterey County Board of Supervisors for approval with this resolution; and

WHEREAS, the agreement with Orphan Productions for the operation of the emergency safe parking program, will include, but is not limited to, assessment and referrals for a full range of case management services for those admitted to the program, a location monitor to oversee the

safety of those parking at the location and to monitor program compliance, development of a security plan, community outreach plan, and sanitation plan; and

WHEREAS, implementation of such agreement and establishment of temporary Safe Parking Program operated at the Coastal Office Building, 2616 First Ave., Marina, California, 93933, is statutorily exempt from the California Environmental Quality Act pursuant to section 15269(c) of the CEQA Guidelines because it is necessary to mitigate an immediate threat to public peace, health, and safety and to address an immediate need for shelter for the homeless in the upcoming winter pending development of a longer-term solution.

NOW, THEREFORE, BE IT RESOLVED, by the Monterey County Board of Supervisors, of the County of Monterey, adopts this Resolution To:

- a. Adopt a Resolution to allow the Department of Social Services to create and implement a temporary Safe Parking Program to assist those living in their vehicles;
- b. Approve and authorize the Director of the Department of Social Services to sign an agreement with Orphan Productions for \$150,000 to provide a safe parking program for the period of November 30, 2017 through November 29, 2018;
- c. Authorize the Director of the Department of Social Services to sign up to three amendments to this agreement where the total amendments do not exceed 10% of the original contract amount (\$15,000), and do not significantly change the scope of work;
- d. Find the project Categorical Exempt per Section 15269(c) of the CEQA Guidelines as an Urgent Threat to the Public Health and Safety;
- e. Approve the attached Resolution with findings and evidence supporting this recommendation for consideration. Staff recommends approval; and
- f. Approve and authorize the Auditor-Controller to increase appropriations in the adopted FY 17/18 Community Programs Budget 001-5010-SOC004-8258 in the amount \$87,500 using funds from one of the options discussed in the Financing Section of this Board Report.

PASSED AND ADOPTED on this _____ day of _____, 2017 by the following vote, to wit:

AYES:

NOES:

ABSENT:

I, Gail Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board Supervisors duly made and entered in the minutes thereof of Minute Book _____, for the meeting on _____.

Dated:

Gayle Borkowski, Clerk of the Board of Supervisors, County of Monterey, State of California.

By _____
Deputy



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November 13, 2017

VIA E-MAIL

Honorable Members of the Monterey County
Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, CA 93901

Re: November 14, 2017 Public Meeting, Item 18.1; File A 17-442

Dear Honorable Members of the Board:

Miller Starr Regalia represents Marina Community Partners-Shea Homes with respect to its management of The Dunes Project in the City of Marina. On our clients' behalf, we wish to comment on the County's proposal to operate a Safe Parking Program at 2616 First Avenue, which falls within The Dunes Project planning area.

While our client commends the County in its efforts to provide a safe place for homeless individuals to camp in their vehicles, it would constitute a violation of local and state law to situate the Safe Parking Program at 2616 First Avenue. Operating the Program at this site would constitute an incompatible land use that contradicts the Fort Ord Base Reuse Plan and the University Villages Specific Plan, and has the potential to significantly affect the environment. The County therefore must select an alternative site.

The Safe Parking Program is incompatible with the Base Reuse Plan. The Base Reuse Plan is a creature of State law that was designed to provide a comprehensive blueprint for reuse of the Fort Ord military base. (See Gov. Code, § 67675.) Much like a local agency's general plan, the Base Reuse Plan designates properties within Fort Ord for residential, commercial, and other uses, and provides standards and criteria for development and public safety within its planning area. (Gov. Code, § 67675(c).) The Base Reuse Plan highlighted The Dunes Project area as a sensitive site, due to its visibility from Highway 1 and its location in a scenic corridor, and called the site a "key mixed-use district" that had the potential to provide "streetscape vitality" and a "neighborhood image." (Plan, pp. 152-154.) In many respects, The Dunes Project area is a centerpiece of development within Fort Ord. In planning for its development, the authors of the Base Reuse Plan designated this area as a Planned Development Mixed Use zone, and set forth a menu of land uses allowed on the site. (Base Reuse Plan, p. 100, Table 3.4-1.)

Overnight camping in recreational vehicles, or any other location, is not a permitted use in this area. (*See id.*)

Even if the Base Reuse Plan was ambiguous on this point, or did allow for camping, it is not the County but the City of Marina that regulates The Dunes Project area, and what land uses ultimately are allowed there. The Base Reuse Plan explicitly provides that the “City or County containing the Base Reuse Planned Development Mixed Use land use designation shall have the authority in various parts or areas with such designation to prohibit some of the overall set of uses which might otherwise be allowable” (*Id.*)

The City of Marina’s land use regulations prohibit camping at 2616 First Avenue. The City has, in fact, addressed the permissibility of camping and similar activities at the proposed Safe Parking Program site. The University Villages Specific Plan, which guides development in The Dunes Project Area, designates 2616 First Street as an “Office Research” zone. In such zones, the Specific Plan explicitly prohibits camping. (Specific Plan, p. 106, Table 5.6.) The Marina Municipal Code, meanwhile, directly prohibits camping overnight in vehicles. (MMC, § 10.40.150.)

The University Villages Specific Plan is not just a local law, but an implementation of the Fort Ord Base Reuse Plan. (Base Reuse Plan, p. 154 [specific plan to be prepared to implement Plan goals].) The City’s zoning ordinances, meanwhile, are consistent with the Base Reuse Plan, and also serve to implement its goals. (*See, e.g.,* Gov. Code, § 67675.5 [setting forth requirement that zoning ordinances for cities within Fort Ord demonstrate consistency with Base Reuse Plan].) Amending the Specific Plan and applicable zoning, then, to allow for camping at 2616 First Avenue would require the consent of not only the City, but the Fort Ord Reuse Authority Board of Directors. Any such amendment would also have to be deemed consistent with the Base Reuse Plan. (*See, e.g.,* Gov. Code, §§ 67675.6, 67675.8) Without the consent of these agencies and a consistency determination, any proposed change of use within The Dunes Project area would be illegal.

While there are some instances where a county, owning property in a city, can ignore that city’s land use law, those instances are limited and are not present here. A county only enjoys sovereign immunity in the maintenance and operation of county-owned property where (1) the county is addressing a matter of statewide concern, as opposed to a local affair; and (2) the county is seeking to avoid purely local, city-adopted ordinances.

Here, the County’s Safe Parking Program is intended to reduce “crime and dumping of trash and refuse” on local County roads. (November 14, 2017 Staff Report, p. 3.) This is a local affair. More importantly, the County’s proposal to operate the Safe Parking Program at 2616 First Avenue not only conflicts with ordinances and land use plans adopted by the City of Marina, but the land use blueprint appearing in the Base Reuse Plan, which was adopted per the direction of the State Legislature.

Again, in crafting this plan, the State Legislature vested the City — and only the City — with land use authority over properties situated within its municipal limits. (See Base Reuse Plan, p. 100, Table 3.4-1.) The upshot is this: the County’s action not only violates local city law, but the laws of the State.

The Safe Parking Program is not exempt from environmental review. Finally, even if the County had the authority to establish a camping use in The Dunes Project area, it could not abbreviate the environmental review of this project as County staff have recommended. The County Board Report currently proposes to exempt the Safe Parking Program from the purview of the California Environmental Quality Act under section 15269(c) of the CEQA Guidelines. However, section 15269(c) exempts “[s]pecific actions necessary to prevent or mitigate an *emergency*.” (Emph. added.) An “emergency,” meanwhile, is defined under CEQA to mean a “sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” (Pub. Res. Code, § 21060.3.) Under applicable law, an “emergency” includes “such occurrences as fire, flood, earthquake or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.” (*Id.*) While homelessness is both a serious and tragic issue, it is not a sudden, unexpected occurrence, nor does it fall within the list of qualifying emergencies articulated above. In short, the social problems that the Safe Parking Program seeks to address do not qualify as an “emergency,” as defined under CEQA.

Meanwhile, to the extent that County staff believes the Safe Parking Program is exempt from environmental review because it is “temporary,” we wish to point out that the Program is proposed to operate for at least one year, until November 29, 2018, with no definitive sunset date (e.g., there is no provision that prevents it from being renewed). To the extent CEQA exempts temporary uses, it only contemplates seasonal uses with negligible impacts such as carnivals or the sale of Christmas trees. (14 CCR, § 15304.) The Safe Parking Program does not fall within this contemplation.

Finally, we ask the Board to consider that, bordering on three sides of 2616 First Avenue, there exist dozens of abandoned military barracks in various states of disrepair (see photos below), as well as access under Highway 1 to the beach (via Divarty Street; see photo below). A rock crushing operation, meanwhile, is located west of 2616 First Avenue. The abandoned barracks, the frontage along the rock crushing operation, and the area beneath the bridge are already unsafe at night, presenting a danger to students and other citizens who pass through the area. The conditions, meanwhile, that originally spurred the County to create the Safe Parking Program included “crime and the dumping of trash and refuse.” While we understand the Safe Parking Program will include social services, we ask the County to reconsider the impacts — both social and environmental — of placing an at-risk population next to a sea of abandoned buildings and the Divarty Street underpass. This circumstance is unusual and creates a reasonable possibility of a

significant effect on the environment, and thus would prevent the Safe Parking Program from qualifying for any categorical exemption from CEQA. (See 14 CCR, § 15300.2.)



Photo showing 2616 First Avenue and dozens of surrounding, abandoned barracks



Abandoned barracks located adjacent to First Avenue



Divarty Street underpass, providing access under Highway 1 to the beach

The County must undertake a more robust environmental review of its Safe Parking Program proposal, either in the form of a negative declaration or environmental impact report. This study must focus, at minimum, on the public safety and blight impacts of the proposed action.

* * *

Our clients do not disagree that persons camping in vehicles should be directed toward safe, off-street locations, and provided with social services. However, any such action should be implemented on an appropriate site, should be cognizant of the Base Reuse Plan and its implementing regulations, and should undergo more thorough environmental review.

Sincerely,

MILLER STARR REGALIA



Sean Marciniak

cc: Cients
Wilson Wendt, Esq., Miller Starr Regalia



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Sean Marciniak
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November 17, 2017

VIA E-MAIL AND U.S. MAIL

Gail T. Borkowski
Clerk of the Board
Monterey County Board of Supervisors
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Email: COB@co.monterey.ca.us

Carl P. Holm
AICP, Director
County of Monterey
Resource Management Agency
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Email: 299-recordsrequest@co.monterey.ca.us

Re: Request for information under the California Public Records Act concerning Monterey County Board of Supervisor's partial approval of Safe Parking Program at November 14, 2017 Public Meeting (Item 18.1; File A 17-442)

Dear Ms. Borkowski and Mr. Holm:

Miller Starr Regalia represents Marina Community Partners and, on its behalf, hereby submits a request for information pursuant to the California Public Records Act (Government Code section 6250 et seq). This request seeks public records related to the County Board of Supervisor's partial approval of the Safe Parking Program (the "Program") at 2616 First Avenue (the "Project Site"), including public records prepared, received, or otherwise generated before, during, and after the Board's November 14, 2017 hearing, as specified below.

We also submit this letter to further protest the County's partial approval of the Program, based on positions that the Board of Supervisors and County staff took during their deliberations on November 14, 2017. As discussed in our letter of November 13, 2017, our client does not object to a safe parking program, but believes it constitutes poor planning to situate such a land use amid blocks of dilapidated, abandoned military barracks.

Our additional objections are discussed in further detail below.

Public Records Act Request. The public records¹ we seek include the following writings and documents:²

- Deeds, instruments, and other documents or writings that pertain³ to the County's ownership interests in the Project Site, including without limitation any deed restrictions or agreements that limit the County's use of the Project Site;
- Any and all documents or writings the County believes constitute the administrative record of proceedings for the County Board of Supervisor's consideration of the Program at its November 14, 2017 meeting;
- Any and all documents or writings that pertain to County File A 17-422;
- Any and all documents or writings that pertain to the County's Request for Qualifications ("RFQ") #10639, including without limitation any County rules, policies, or procedures that governed RFQ #10639, any responses to RFQ #10639, and any County deliberations regarding the aforesaid responses;
- Any and all documents or writing pertaining to how the County intends to comply with the American with Disabilities Act in implementing the Program;

¹ Any and all "public records", as that term is defined by Government Code Section 6252(e), which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, which pertain to the information listed in the categories below.

² For purposes of this Public Records Act Request, the term "writing" shall mean any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored; the term "document" or "documents" shall mean any kind of written matter, however produced or reproduced, of any kind of description, whether sent, received or neither, including originals, copies and drafts and both sides thereof, and including, but not limited to: papers, books, letters, electronic mail, photographs, objects, tangible things, correspondence, memoranda, notes, notations, work papers, minutes, reports and recordings of telephone or other conversations, manuals, reports, contracts, agreements, desk calendars, appointment books, computer printouts, data processing input and output, microfilms, all other records kept by electronic, photographic or mechanical means, and things similar to the foregoing however denominated.

³ For purposes of this Public Records Act Request, the term "pertain(s)" and "pertaining", shall include any writing which evidences, is about, relates to, constitutes, supports, repudiates, ratifies, memorializes, explains, addresses, comments upon, criticizes, or describes the particular topic or described subject matter.

- Public notices, staff reports, memoranda, environmental review documents, applications, feedback on applications, agreements, resolutions, conditions of approval, minutes, and findings pertaining to the Program and the County Board of Supervisor's consideration thereof on November 14, 2017;
- Any and all documents or writings pertaining to alternative locations to the Project Site that the County considered in choosing a location for the Program, including without limitation any alternative locations within unincorporated County lands; any selection processes or protocols to which the County adhered in deciding to operate the Program on the Project Site; what criteria the County used in deciding to operate the Program on the Project site; any tours that County personnel may have conducted or participated in pertaining to alternative locations; and any alternative locations rejected by the County or any other agency or third party ("Alternative Locations");
- Any and all documents or writings pertaining to the County's decision to claim the Program is exempt from the California Environmental Quality Act under CEQA Guidelines section 15269(c) or any other provision of California law; any County decision not to prepare a negative declaration, mitigated negative declaration, or environmental impact report; any and all project description materials not included in the County's November 14, 2007 staff report, which itself failed to satisfy CEQA requirements that a project description be complete and accurate; and any consideration of any Program-related impact on environmental resources, including without limitation public safety, blight, traffic, and noise impacts (collectively, the "Program's Environmental Review");
- Any and all documents or writings pertaining to the County's decision that the Safe Parking Program is necessary to address an emergency, including without limitation any specific evidence the Program is necessary to prevent an urgent or immediate risk of crime, blight, inclement winter weather, or harm to agricultural fields (the "Claimed County Emergency");
- Any and all documents pertaining to homeless populations currently residing and/or using the military barracks surrounding the Project Site, or any other instances of crime or blight affecting these military barracks and surrounding land uses (the "Project Site Vicinity Issues");
- Any statistics, reports, or other documents or writings prepared within the past 5 years pertaining to the County's homelessness population, including without limitation the number of persons camping or otherwise sleeping overnight in their vehicles on roads or other areas within the County's jurisdiction; what the County means when it refers to a 23 percent increase in homelessness since 2015, as discussed during the County's November 14, 2017 hearing; what homeless population is contemplated by the 23 percent increase statistic (i.e., all homeless individuals or simply those living

in recreational vehicles that the Program is intended to address); and how many people (irrespective of percentages) are contemplated by the 23 percent statistic (the "County Homelessness Condition").

- Any and all documents or writings pertaining to and providing evidence of the following:
 - The County's evaluation of the Program and its consistency with the Fort Ord Reuse Authority Act (Gov. Code, § 67650), the Fort Ord Reuse Authority's Base Reuse Plan, the City of Marina's University Villages Specific Plan, or the City of Marina's Municipal Code;
 - The County's acknowledgement that it must comply with the Fort Ord Reuse Authority's Base Reuse Plan;
 - The County's position that it has sovereign immunity and need not comply with local and state law governing use of the Project Site;
 - The County's position that Government Code sections 53090 and 50391 confer sovereign immunity on the County, where these statutes do not apply to counties (see Gov. Code, § 53090 ["Local agency' does not include the state, a city, a county" for purposes of relevant article]);
 - Any County determination that the County's General Plan has been certified pursuant to Government Code section 67675.6, enabling it to exercise development review authority over any proposal within the Fort Ord planning area; and
 - Any County determination or discussion that adoption of the change of use effected by the Program complies with Government Code section 67675.8 which, in part, mandates that a change of use cannot be inconsistent with the Fort Ord Reuse Authority's Base Reuse Plan, and that "[n]o local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is outside the jurisdiction of that local agency;"

and where the foregoing are referred to collectively herein as the "Program's Land Use Consistency;"

- Any correspondence between any County staff, member of the Board of Supervisors, or any other representative, agent, employee, elected official, or appointed official (collectively, "County personnel") and any third person or entity, including without limitation the City of Marina, California State University Monterey Bay, the Fort Ord Reuse Authority, and the Lapis Road Homeowners Association, concerning the Program, the Project Site, Alternative Locations, the Program's Environmental Review, the Claimed

County Emergency, the Project Site Vicinity Issues, the County Homelessness Condition, or the Program's Land Use Consistency, and where the term correspondence, as used in this Public Records Act request, shall include, without limitation, emails and text messages sent to or received from private devices, accounts, and servers used by County personnel, in accordance with the California Supreme Court's decision in *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal.5th 608.⁴ Again, the foregoing request shall include, without limitation, all emails, texts, and other messages sent before, during, and after the County Board of Supervisor's public hearing on November 14, 2017; and

- Any correspondence between or among the City personnel concerning the Program, the Project Site, Alternative Locations, the Program's Environmental Review, the Claimed County Emergency, The Project Site Vicinity Issues, the County Homelessness Condition, or the Program's Land Use Consistency. Again, the foregoing request shall include, without limitation, all emails, texts, and other messages sent before, during, and after the County Board of Supervisor's public hearing on November 14, 2017.

The Public Records Act requires that you respond to this request within ten (10) days. (Government Code Section 6253(c).). Should you decide that any of the requested material is not to be disclosed, pursuant to Government Code Section 6255, please describe the material withheld and specify in detail the statutory or administrative basis for withholding the requested material. If you decide that one of the emails, texts, or other correspondences sent, received, created, or otherwise generated by County personnel on their private devices is to be withheld on the basis that it is a personal communication, please submit an affidavit containing sufficient facts that a reviewing court can use to determine whether a given record is an agency record or a personal material, consistent with the California Supreme Court's holding in *Smith, supra*, 2 Cal.5th 608 and the federal court's holding in *Grand Central Partnership, Inc. v. Cuomo* (2d Cir. 1999) 166 F.3d 473.

If the requested material is disclosable, please inform me of when and where the records can be made available, and I will arrange for their pick up by courier. Also, please notify me as to the reasonable copying costs, and I will promptly send payment. For any responsive public record kept in electronic format, we request that an electronic copy of the document be produced in that format, pursuant to Government Code section 6253.9.

⁴ The Supreme Court of California's recent, landmark ruling in *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal.5th 608 held that communications related to the conduct of public business do not cease to be public records merely because they were sent or received using a personal account. The Court's cogent opinion ensures broad access to public records in all forms and in all locations, including emails and text messages located on private accounts, devices, and servers.

If documents are voluminous, then please indicate in your response the approximate volume of documents responsive to this request, and the location, dates, and times upon which inspection will be permitted. If you can provide documents in response to one or more of the above requests sooner than for others, please so indicate, and I will arrange for their pick up as such documents become available.

Objections to County's partial approval of the Program. Consistent with our letter to the County dated November 13, 2017, the County's adoption of the Program violates the Fort Ord Reuse Authority's Base Reuse Plan, the California Environmental Quality Act, and each of the provisions cited above in this letter. (See, e.g., Gov. Code, 67675.8 [precluding local agency from allowing change of use inconsistent with Base Reuse Plan and any change of use outside its jurisdiction].) Accordingly, we look forward to receiving public records from the County addressing these violations.

Second, we wish to comment on the propriety of the County Board of Supervisors directing that County staff come back to the Board's next meeting on December 5, 2017 with a declaration of emergency as it relates to shelter. In effect, the Program will be implemented before the County has considered all the necessary information and declarations, and made all the requisite findings, as the Program is set to begin on December 1, 2017. To the extent the County has approved the Program and its claim the Program is exempt from CEQA, these approvals are void and ineffective, and it would be improper and illegal to commence the Program on December 1, 2017.

Third, we wish to comment that the County's reliance on homelessness statistics with respect to the Program claimed "emergency" nature is disingenuous. The County, at the hearing, repeatedly indicated that a 23 percent increase in homelessness since 2015 has created an "urgency" that qualified the Program for a CEQA exemption and a declaration of emergency. Notwithstanding the fact that an emergency, as defined by applicable law, cannot include a condition that has developed during the course of two years, it appears this 23 percent statistic contemplates all homeless individuals in the County.⁵ Meanwhile, the population that would be served by the Program (at least in part) includes the residents of 60 to 80 recreational vehicles. Even if this small population increased by 23 percent since 2015, the size of this new subpopulation of homeless individuals would include the occupants of only 18 recreational vehicles, at most. An influx of 18 recreational vehicles into the County, in this context, cannot qualify as substantial evidence of an emergency.

As you may know, the County Board of Supervisors never closed the public hearing on November 14, 2017, and directed that at least a portion of the approvals

⁵ The 23 percent statistic appears to be derived from a biannual homeless count conducted by the Coalition of Homeless Service Providers, though the source never appears to have been identified by the County in its record of proceedings.

Gail T. Borkowski
Carl P. Holm
November 17, 2017
Page 7

supporting the County's decision come back for hearing on December 5, 2017. Therefore, this letter and the claims herein should be included in the administrative record of proceedings for the Program.

* * *

We want to reiterate that the County's consideration of the Program is commendable, but that the Project Site is not an appropriate location. We respectfully request that the County consider a safer property within the County's jurisdiction.

Thank you in advance for your prompt attention to this matter, including our Public Records Act request. Please do not hesitate to contact my office at the telephone number above should you have any questions or need further clarification of this request.

Thank you for your attention to this request.

Very truly yours,

MILLER STARR REGALIA



Sean Marciniak

NLC:srm

cc: clients
Arthur F. Coon, Esq., Miller Starr Regalia
Giselle S. Roohparvar, Esq., Miller Starr Regalia
Members of the Monterey County Board of Supervisors
(district1@co.monterey.ca.us; 'district2@co.monterey.ca.us;
district3@co.monterey.ca.us; district4@co.monterey.ca.us;
district5@co.monterey.ca.us)
Charles J. McKee, Monterey County Counsel (McKeeCJ@co.monterey.ca.us)

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

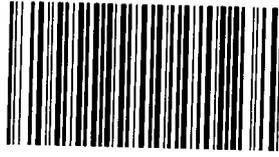
CRMARIA
3/09/2007
8:00:00

WHEN RECORDED MAIL TO:

**County of Monterey
168 W. Alisal St., 3rd Floor
Salinas, CA 93901
Attn: Nick Nichols**

DOCUMENT: 2007019527

Titles: 1/ Pages: 33



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

THIS SPACE FOR RECORDER'S USE ONLY

Documentary Transfer Tax \$ EXEMPT – Transfer to Governmental Agency

_____ Computed on Full Value of Property conveyed

_____ or Computed on Full Value less liens and
encumbrances remaining at time of sale.

As declared by the Undersigned.

TITLE(S) OF DOCUMENT

**QUITCLAIM DEED FOR BUILDING 1021 (CID) (Parcel E2b.3.1.2)
FORMER FORT ORD, MONTEREY, CALIFORNIA
(Fort Ord Reuse Authority to the County of Monterey)**

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WHEN RECORDED RETURN TO:

RECORDER STAMP

**QUITCLAIM DEED FOR BUILDING 1021 (CID) (PARCEL E2b.3.1.2)
FORMER FORT ORD, MONTEREY, CALIFORNIA
(Fort Ord Reuse Authority to the County of Monterey)**

THIS QUITCLAIM DEED ("Deed") is made as of the 21st day of ~~November~~ 2006, among the **FORT ORD REUSE AUTHORITY (the "Grantor")**, created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, and recognized as the Local Redevelopment Authority for the former Fort Ord Army Base, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense, and the **COUNTY OF MONTEREY (the "Grantee")**.

WHEREAS, The United States of America ("Government") was the owner of certain real property, improvements and other rights appurtenant thereto together with all personal property thereon, located on the former Fort Ord, Monterey County, California, which was utilized as a military installation;

WHEREAS, The military installation at Fort Ord was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; 10 U.S.C. § 2687 note);

WHEREAS, section 2859 of the National Defense Authorization Act for Fiscal Year 1996, (Public Law 104-106), authorized the Government to sell portions of the former Fort Ord to the **Grantor** as surplus property;

WHEREAS, the **Grantor** and the Government entered into the Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the 20th day of June 2000, ("MOA") and MOA

S

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 Amendment No. 1, dated the 23rd day of October 2001, which sets forth the specific terms and
2 conditions of the sale of portions of the former Fort Ord located in Monterey County, California;

3
4 **WHEREAS**, pursuant to the MOA, the Government conveyed the property known as
5 Parcel E2b.3.1.2 (“CID Building”) on the former Fort Ord by quitclaim deed to the **Grantor** on
6 August 8, 2000 (“Government Deed”);

7
8 **WHEREAS**, the **Grantor** and the **Grantee** have entered into the Implementation
9 Agreement dated May 8, 2001 and recorded in the Office of the Monterey County Recorder as
10 Document: 2001088380 (“Implementation Agreement”), which sets forth the specific terms and
11 conditions upon which the **Grantor** agrees to convey and the **Grantee** agrees to accept title to the
12 CID Building.

13 WITNESSETH

14
15
16 The **Grantor**, for and in consideration of the sum of one dollar (\$1.00) plus other good
17 and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,
18 releases and quitclaims to the **Grantee**, its successors and assigns forever, all such interest, right,
19 title, and claim as the **Grantor** has in and to Parcel E2b.3.1.2 consisting of approximately 1.76
20 acres more particularly described in Exhibit “A,” attached hereto and made a part hereof
21 (“Property”), and including the following:

22
23 A. All buildings, facilities, roadways, and other improvements, including the storm
24 drainage systems and the telephone system infrastructure, and any other improvements thereon,

25
26 B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and
27 privileges not otherwise excluded herein, and

28
29 C. All hereditaments and tenements therein and reversions, remainders, issues, profits,
30 privileges and other rights belonging or related thereto.

31
32 **Grantor** hereby assigns to **Grantee** the perpetual and assignable non-exclusive access
33 easement over, across, under, and through all paved roads retained by the Government for access
34 purposes as set forth in paragraph A of Section II of the Government Deed, subject to all terms and
35 conditions set forth in paragraph B of Section II of the Government Deed.

36
37 **Grantee** covenants for itself, its successors and assigns and every successor in interest to
38 the Property, or any part thereof, that **Grantee** and such successors and assigns shall comply with
39 all provisions of the Implementation Agreement including the Deed Restrictions and Covenants
40 set forth in Exhibit F of the Implementation Agreement as if such Deed Restrictions and
41 Covenants were separately recorded prior to the recordation of this Deed.

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 The Government Deed conveying the Property to the **Grantor** was recorded prior to the
2 recordation of this Deed. In its transfer of the Property to the **Grantor**, the Government provided
3 certain information regarding the environmental condition of the Property. The **Grantor** has no
4 knowledge regarding the accuracy or adequacy of such information.
5

6 The italicized information below is copied verbatim (except as discussed below) from the
7 Government deed conveying the Property to the **Grantor**. The **Grantee** hereby acknowledges
8 and assumes all responsibilities with regard to the Property placed upon the **Grantor** under the
9 terms of the aforesaid Government deed to **Grantor** and **Grantor** grants to **Grantee** all benefits
10 with regard to the Property under the terms of the aforesaid Government deed. Within the
11 italicized information only, the term "Grantor" shall mean the Government, and the term
12 "Grantee" shall mean the Fort Ord Reuse Authority ("FORA"); to avoid confusion, the words
13 "the Government" have been added in parenthesis after the word "Grantor", and "FORA" has
14 been added in parenthesis after the word "Grantee".
15

16 **III. EXCLUSIONS AND RESERVATIONS:**

17 *This conveyance is made subject to the following EXCLUSIONS and*
18 *RESERVATIONS:*
19

20
21 *A. All water allocations derived from the Salinas aquifer shall remain*
22 *with the GRANTOR ("the Government") consistent with the MOA. With regard to*
23 *the ultimate disposition of any water and water allocation rights, the GRANTOR*
24 *("the Government") shall cooperate with the GRANTEE ("FORA"), other grantees*
25 *of former Fort Ord property, and the Monterey County Water Resources Agency*
26 *(MCWRA), in seeking to ensure that GRANTEE ("FORA") and its successors and*
27 *assigns, will continue to be provided an equitable supply of the water at former Fort*
28 *Ord.*
29

30
31 *B. With regard to the ultimate disposition of any rights or interests the*
32 *GRANTOR ("the Government") has in wastewater discharge rights provided by the*
33 *Monterey Regional Water Pollution Control Agency (MRWPCA), the GRANTOR*
34 *("the Government") shall cooperate with GRANTEE ("FORA") in accordance with*
35 *the MOA, other grantees of property at Fort Ord, and the MRWPCA, in seeking to*
36 *ensure that GRANTEE ("FORA") and all other Fort Ord grantees will continue to*
37 *enjoy equitable utilization of the existing sewerage treatment capacity, including*
38 *existing connections to the Fort Ord sewerage collection system.*

39
40 *C. The GRANTOR ("the Government") retains ownership to all*
41 *Government-owned sewer, and water utility systems located on the Property. The*
retention point for the GRANTOR's ("the Government") retained ownership of

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 *the water systems will be to the meter location or future meter or utility box*
2 *location at a point on or near each building or facility. The retention point for*
3 *the sewer is where the laterals enter the collection lines. The GRANTOR ("the*
4 *Government") reserves transferable easements and access rights for all*
5 *GRANTOR ("the Government")-owned utility systems and for utility company*
6 *owned utility systems:*

7
8 *The GRANTOR ("the Government") reserves assignable non-exclusive easements*
9 *and rights-of-way, 15 feet in width, in, on, over and across the Property and*
10 *centered on the existing utility systems owned and retained by GRANTOR ("the*
11 *Government") at the time of this conveyance and located on the Property. Said*
12 *easements and rights-of-way shall be for the purpose of locating, constructing,*
13 *operating, maintaining, altering, repairing and patrolling utility systems together*
14 *with the right to trim, cut, fell and remove therefrom, consistent with the*
15 *Installation-Wide Multispecies Habitat Management Plan and applicable law*
16 *governing protection of endangered species, all trees, underbrush, obstructions*
17 *and other vegetation, structures, or obstacles within the limits of the easements*
18 *and right-of-way; reserving, however, to GRANTEE ("FORA") and its successors*
19 *and assigns, the right to relocate such easements and the rights-of-way at the*
20 *expense of GRANTEE ("FORA") and its successors and assigns; and reserving*
21 *the right to the GRANTEE ("FORA") to use and cross such easements and rights-*
22 *of way; however, such rights of GRANTEE ("FORA") are subject to existing*
23 *easements and rights-of-way.*

24
25 *D. The Property is taken by the GRANTEE ("FORA") subject to any*
26 *and all valid and existing recorded outstanding liens, licenses, leases, easements,*
27 *and any other encumbrances made for the purpose of roads, streets, utility systems,*
28 *rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations,*
29 *and agreements of record.*

30
31 *E. The GRANTOR ("the Government") reserves a perpetual*
32 *unassignable right to enter the Property for the specific purpose of treating or*
33 *removing any unexploded shells, mines, bombs, or other such devices deposited or*
34 *caused by the GRANTOR ("the Government").*

35
36 *F. Access to USA Media Group, LLC, or its successor in interest, TV*
37 *cable lines is reserved until expiration for its existing franchise agreement,*
38 *November 19, 2005.*

39
40 *G. The reserved rights and easements set forth in this Section are*
41 *subject to the following terms and conditions:*
42

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 1. *to comply with all applicable federal law and lawful existing*
2 *regulations;*

3
4 2. *to allow the occupancy and use by the GRANTEE ("FORA"), its*
5 *successors, assigns, permittees, or lessees of any part of the easement areas not*
6 *actually occupied or required for the purpose of the full and safe utilization thereof*
7 *by the GRANTOR ("the Government"), so long as such occupancy and use does not*
8 *compromise the ability of the GRANTOR ("the Government") to use the easements*
9 *for their intended purposes, as set forth herein;*

10
11 3. *that the easements granted shall be for the specific use described*
12 *and may not be construed to include the further right to authorize any other use*
13 *within the easements unless approved in writing by the fee holder of the land subject*
14 *to the easement;*

15
16 4. *that any transfer of the easements by assignment, lease, operating*
17 *agreement, or otherwise must include language that the transferee agrees to comply*
18 *with and be bound by the terms and conditions of the original grant;*

19
20 5. *that, unless otherwise provided, no interest granted shall give the*
21 *GRANTOR ("the Government") any right to remove any material, earth, or stone*
22 *for consideration or other purpose except as necessary in exercising its rights*
23 *hereunder; and*

24
25 6. *to restore any easement area so far as it is reasonably possible to*
26 *do so upon abandonment or release of any easement as provided herein, unless this*
27 *requirement is waived in writing by the GRANTEE ("FORA").*

28
29 H. *GRANTOR ("the Government") reserves mineral rights that*
30 *GRANTOR ("the Government") owns presently or may at a future date be*
31 *determined to own, below 500 feet below the surface, with the right of surface entry*
32 *in a manner that does not unreasonably interfere with GRANTEE's ("FORA")*
33 *development and quiet enjoyment of the Properties.*

34
35 I. *The GRANTOR ("the Government") reserves a non-exclusive*
36 *easement to allow continued access for the GRANTOR ("the Government") (or its*
37 *designated contractor) and the appropriate environmental regulatory agencies to*
38 *permit necessary groundwater monitoring at wells located on the Property. The*
39 *GRANTOR ("the Government") also reserves a right of entry and non-exclusive*
40 *easement for the establishment and use of new groundwater monitoring wells*
41 *deemed by the GRANTOR ("the Government") to be necessary for ongoing*
42 *groundwater remediation. The GRANTEE ("FORA"), its successors or assigns,*

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 *or any other person or entity acting for or on behalf of the GRANTEE ("FORA"),*
2 *its successors or assigns, shall not tamper with the groundwater monitoring wells*
3 *on the Property. Said groundwater monitoring wells shall remain the property of*
4 *the GRANTOR ("the Government").*

5
6 **TO HAVE AND TO HOLD** *the Property unto the GRANTEE ("FORA")*
7 *and its successors and assigns forever, provided that this deed is made and*
8 *accepted upon each of the following notices, covenants, restrictions, and*
9 *conditions which shall be binding upon and enforceable against the GRANTEE*
10 *("FORA"), its successors and assigns, in perpetuity, as follows:*

11 **IV. "AS IS"**

12
13 *The Property is conveyed in an "As Is, Where Is" condition without any*
14 *representation, warranty or guarantee, except as required pursuant to applicable*
15 *law or as otherwise stated herein, by the GRANTEE ("FORA") as to quantity,*
16 *quality, title, character, condition, size, or kind, or that the same is in condition or*
17 *fit to be used for the purpose for which intended, and no claim for allowance or*
18 *deduction upon such grounds will be considered. There is no obligation on the*
19 *part of the GRANTOR ("the Government") to make any alterations, repairs, or*
20 *additions, and said GRANTOR ("the Government") shall not be liable for any*
21 *latent or patent defects in the Property. This section shall not affect the*
22 *GRANTOR's ("the Government") responsibility under CERCLA or Section VI*
23 *herein.*

24 **V. FEDERAL FACILITIES AGREEMENT (FFA)**

25
26 *By accepting this deed, the GRANTEE ("FORA") acknowledges that the*
27 *GRANTEE ("FORA") has read the FFA, and recognizes that, should any conflict*
28 *arise between the terms of the FFA and the terms of this Deed, the FFA will take*
29 *precedence. Notwithstanding any other provisions of this conveyance, the*
30 *GRANTOR ("the Government") assumes no liability to the GRANTEE ("FORA")*
31 *should implementation of the FFA interfere with the GRANTEE's ("FORA") use*
32 *of the Property. GRANTOR ("the Government") shall give GRANTEE*
33 *("FORA") reasonable notice of its actions required by the FFA and GRANTOR*
34 *("the Government") shall, consistent with the FFA, and at no additional cost to*
35 *the GRANTOR ("the Government"), endeavor to minimize the disruption of the*
36 *GRANTEE's ("FORA"), its successors' or assigns' use of the Property. The*
37 *GRANTEE ("FORA") shall have no claim on account of any such interference*
38 *against the GRANTOR ("the Government") or any officer, agent, employee, or*
39 *contractor thereof.*
40

QUITCLAIM DEED FOR CID BUILDING PROPERTY

VI. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION

A. Pursuant to Section 120(h)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"), Finding of Suitability to Transfer (FOST) documents are attached as Exhibit "C" to the Deed; an Environmental Baseline Survey (EBS) report is referenced in the FOSTs and sets forth the existing environmental condition of the Property. The FOSTs set forth the basis for the Government's determination that the Property is suitable for transfer. The GRANTEE ("FORA") is hereby made aware of the notifications contained in the EBS and the FOSTs. The GRANTOR ("the Government") represents that the Property is environmentally suitable for transfer to GRANTEE ("FORA") for the purposes identified in the March 1997, Fort Ord Base Reuse Plan approved by the Fort Ord Reuse Authority. If, after conveyance of the Property to GRANTEE ("FORA"), there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, GRANTEE ("FORA") or its successor or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to GRANTOR's ("the Government") activities, ownership, use, presence on, or occupation of the Property, or the activities of GRANTOR's ("the Government") contractors and/or agents. GRANTEE ("FORA"), its successors and assigns, as consideration for the conveyance, agrees to release GRANTOR ("the Government") from any liability or responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such substance was placed on the Property by the GRANTEE ("FORA"), or its agents or contractors, after the conveyance.

B. Based on the FOSTs, all Parcels have been assigned Department of Defense Environmental Condition Category 1 (areas where no release or disposal of hazardous substances or petroleum products has occurred).

C. GRANTOR ("the Government") covenants that any remedial action due to the former activity on the Property by the GRANTOR ("the Government") found to be necessary after such date of transfer shall be performed by the United States unless the person or entity to whom the Property is transferred is a potentially responsible party under CERCLA with respect to the property.

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 D. GRANTEE ("FORA") covenants that the GRANTOR ("the
2 Government"), its officers, agents, employees, contractors and subcontractors, in
3 accordance with section 120(h) of the Comprehensive Environmental Response,
4 Compensation and Liability Act, as amended, reserves a right of access to any
5 and all portions of the Property for purposes of environmental investigation,
6 remediation, or other corrective actions found to be necessary after the date of
7 the conveyance of the Property. The GRANTOR ("the Government") and the
8 GRANTEE ("FORA") agree to cooperate in good faith to minimize any conflict
9 between necessary environmental investigation and remediation activities and
10 GRANTEE's ("FORA") or any Sublessee's operations. Any inspection, survey,
11 investigation, or other response or remedial action will to the extent practicable,
12 be coordinated with representatives designated by GRANTEE ("FORA").
13 Pursuant to this reservation, the GRANTOR ("the Government") and its officers,
14 agents, employees, contractors, subcontractors shall have the right (upon
15 reasonable notice to the GRANTEE ("FORA") or the then owner and any
16 authorized occupant of the Property) to enter upon the Property, and perform
17 surveys, drillings, testpitting, borings, data and/or record compilation, and other
18 activities related to environmental investigation, and to carry out remedial or
19 removal actions as required or necessary under applicable authorities, including
20 but not limited to installation of monitoring and extraction wells, and other
21 treatment facility.

22
23 E. The GRANTOR ("the Government") covenants that upon
24 completion of any removal or remediation action that removes the risk giving rise
25 to any restriction on future use or any limitation of activities contained in a Deed
26 or lease for the Property or in any other document relating to the Property, the
27 GRANTOR ("the Government"), without any payment of funds by the United
28 States, agrees to cooperate with the GRANTEE ("FORA"), its successors or
29 assigns, in any application, permit, easement or effort to obtain approval from
30 appropriate Federal, state or local authorities for the purpose of removing any
31 such restriction or limitation, which the GRANTEE ("FORA"), its successors or
32 assigns, shall seek to remove or eliminate.

33
34 F. The GRANTOR ("the Government") recognizes its obligation to
35 hold harmless, defend, and indemnify the Authority and any successor, assignee,
36 transferee, lender, or lessee of the Authority or its successors and assigns, as
37 required by Section 330 of the National Defense Authorization Act of 1993, as
38 amended (Pub. L. No. 102-484), and to otherwise meet its obligations under
39 Federal law.
40
41

QUITCLAIM DEED FOR CID BUILDING PROPERTY

VII. NOTICE OF THE PRESENCE OF ASBESTOS

1
2
3 A. The GRANTEE ("FORA") is hereby informed and does
4 acknowledge that non-friable asbestos or asbestos-containing materials (ACM)
5 have been found on Parcel 2, as described more fully in the Final EBS, associated
6 Asbestos Survey Reports of the Former Fort Ord and the attached FOST for
7 Parcel 2 (Exhibit "C"). To the best of GRANTOR's ("the Government")
8 knowledge, the ACM on the Property does not currently pose a threat to human
9 health or the environment.

10
11 B. The GRANTEE ("FORA") covenants and agrees that its use and
12 occupancy of the Property will be in compliance with all applicable laws relating
13 to asbestos; and that the GRANTOR ("the Government") assumes no liability for
14 future remediation of asbestos or damages for personal injury, illness, disability,
15 or death, to the GRANTEE ("FORA"), its successors or assigns, or to any other
16 person, including members of the general public, arising from or incident to the
17 purchase, transportation, removal, handling, use, disposition, or other activity
18 causing or leading to contact of any kind whatsoever with asbestos on the
19 Property after the date of this Deed, whether the GRANTEE ("FORA"), its
20 successors or assigns have properly warned or failed to properly warn the
21 individual(s) injured. The GRANTEE ("FORA") assumes no liability for
22 damages or remediation for personal injury, illness, disability, death or property
23 damage arising from (i) any exposure to asbestos or ACM that resulted prior to
24 the GRANTOR's ("the Government") conveyance of such portion of the Property
25 to the GRANTEE ("FORA") pursuant to this Deed or any leases entered into
26 between the GRANTOR ("the Government") and GRANTEE ("FORA"), or (ii)
27 any disposal of asbestos or ACM, prior to the GRANTOR's ("the Government")
28 conveyance of the Property to the GRANTEE ("FORA").
29

30 C. The GRANTEE ("FORA") acknowledges that it has had the
31 opportunity to inspect the property as to its asbestos content and condition and
32 any hazardous or environmental conditions relating thereto. The failure of the
33 GRANTEE ("FORA") to inspect or be fully informed as to the asbestos condition
34 of all or any portion of the property will not constitute grounds for any claim or
35 demand against the United States.
36

37 D. The GRANTEE ("FORA"), its successors and assigns are hereby
38 informed that unprotected or unregulated exposures to asbestos in product
39 manufacturing, shipyard, building construction workplaces have been associated
40 with asbestos-related diseases. Both the Occupational Safety and Health
41 Administration (OSHA) and the EPA regulate asbestos because of the potential
42 hazards associated with exposure to airborne asbestos fibers. Both OSHA and

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 *EPA have determined that such exposure increases the risk of asbestos-related*
2 *diseases, which include certain cancers and which can result in disability or*
3 *death.*

4
5 *E. The GRANTEE ("FORA") further agrees to indemnify and hold*
6 *harmless the GRANTOR ("the Government"), its officers, agents and employees,*
7 *from and against all suits, claims, demands or actions, liabilities, judgments,*
8 *costs and attorneys' fees arising out of, or in any manner predicated upon,*
9 *exposure to asbestos on any portion of the Property after this conveyance of the*
10 *Property to the GRANTEE ("FORA") or any future remediation or abatement of*
11 *asbestos or the need therefor. The GRANTEE's ("FORA") obligation hereunder*
12 *shall apply whenever the United States incurs costs or liabilities for actions*
13 *giving rise to liability under this section.*

14 **VIII. ORDNANCE AND EXPLOSIVES (OE)**

15
16 *An archival search conducted during compilation of the Fort Ord Comprehensive*
17 *Environmental Response Facilitation Act (CERFA) Report found there were **no OE***
18 ***related training areas within the Property.** In the event GRANTEE ("FORA"), its*
19 *successors, and assigns, should discover any ordnance on the Property, it shall not*
20 *attempt to remove or destroy it, but shall immediately notify the local Police*
21 *Department and the Directorate of Law Enforcement at the Presidio of Monterey*
22 *and competent GRANTOR ("the Government") or GRANTOR ("the Government")*
23 *designated explosive ordnance professional will be dispatched promptly to*
24 *dispose of such ordnance properly at no expense to the GRANTEE ("FORA"),*
25 *whenever OE may be discovered.*

26 **IX ENDANGERED SPECIES**

27
28 *The GRANTEE ("FORA"), its assigns, or successors shall comply with the*
29 *requirements, if any and if applicable, of the Installation-Wide Multi-species*
30 *Habitat Management Plan ("HMP") for Former Fort Ord, California.*

31
32 *A. The Parcels are within Habitat Management Plan (HMP)*
33 *Development Areas. No resource conservation requirements are associated with*
34 *the HMP for these parcels. However, small pockets of habitat may be preserved*
35 *within and around the Parcels.*

36
37 *B. The Biological Opinion identifies sensitive biological resources*
38 *that may be salvaged for use in restoration activities within reserve areas, and*
39 *allows for development of the Parcels.*

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 C. *The HMP does not exempt the GRANTEE ("FORA") from*
2 *complying with environmental regulations enforced by federal, state, or local*
3 *agencies. These regulations could include obtaining the Endangered Species Act*
4 *(ESA) (16 U.S.C. §§ 1531-1544 et seq.) Section 7 or Section 10(a) permits from*
5 *the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against*
6 *take of listed animals under ESA Section 9, complying with prohibitions against*
7 *the removal of listed plants occurring on federal lands or the destruction of listed*
8 *plants in violation of any state laws; complying with measures for conservation of*
9 *state-listed threatened and endangered species and other special-status species*
10 *recognized by California Department of Fish and Game (DFG) under the*
11 *California ESA, or California Environmental Quality Act (CEQA); and ,*
12 *complying with local land use regulations and restrictions.*
13

14 D. *The HMP serves as a management plan for both listed and*
15 *candidate species, and is a prelisting agreement between the USFWS and the*
16 *local jurisdiction for candidate species that may need to be listed because of*
17 *circumstances occurring outside the area covered by the HMP.*
18

19 E. *Implementation of the HMP would be considered suitable*
20 *mitigation for impacts to HMP species within HMP prevalent areas and would*
21 *facilitate the USFWS procedures to authorize incidental take of these species by*
22 *participating entities as required under ESA Section 10. No further mitigation*
23 *will be required to allow development on the Parcels unless species other than the*
24 *HMP target species are proposed for listing or are listed.*
25

26 F. *The HMP does not authorize incidental take of any species listed*
27 *as threatened or endangered under the ESA by entities acquiring land at the*
28 *former Fort Ord. The USFWS has recommended that all non federal entities*
29 *acquiring land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental*
30 *take permits for the species covered in the HMP. The definition of "take" under*
31 *the ESA includes to harass, harm, hunt, shoot, would, kill, trap, capture, or*
32 *collect, or attempt to engage in any such conduct. Although the USFWS will not*
33 *require further mitigation from entities that are in conformance with the HMP,*
34 *those entities without incidental take authorization would be in violation of the*
35 *ESA if any of their actions resulted in the take of a listed animal species, To*
36 *apply for a Section 10(a)(1)(B) incidental take permit, an entity must submit an*
37 *application form (Form 3-200), a complete description of the activity sought to be*
38 *authorized, the common and scientific names of the species sought to be covered*
39 *by the permit, and a conservation plan (50 CFR 17.22[b]).*
40

41 G. *The GRANTEE ("FORA") acknowledges that it has signed the*
42 *HMP dated April 1997 and will cooperate with adjacent property owners in*

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 *implementing mitigation requirements identified in the HMP for adjacent*
2 *sensitive habitat areas.*

3 **X. AIR NAVIGATION RESTRICTION**

4
5 *The Monterey Airport and the former Fritzsche Airfield now known as the*
6 *Marina Municipal Airport are in close proximity of the subject property.*
7 *Accordingly, in coordination with the Federal Aviation Administration, the*
8 *GRANTEE (“FORA”), covenants and agrees, on behalf of it, its successors and*
9 *assigns and every successor in interest to the Property wherein described, or any*
10 *part thereof, that, when applicable, there will be no construction or alteration*
11 *unless a determination of no hazard to air navigation is issued by the Federal*
12 *Aviation Administration in accordance with Title 14, Code of Federal*
13 *Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the*
14 *authority of the Federal Aviation Act of 1968, as amended.*

15 **XI. ENFORCEMENT AND NOTICE REQUIREMENT**

16
17 *A. The provisions of this Deed benefit the governments of the United*
18 *States of America, the State of California, acting on behalf of the public in general,*
19 *the local governments, and the lands retained by the GRANTOR (“the*
20 *Government”) and, therefore, are enforceable, by resort to specific performance or*
21 *legal process by the United States, the State of California, the local Governments,*
22 *and by the GRANTEE (“FORA”), and its successors and assigns. Enforcement of*
23 *this Deed shall be at the discretion of the parties entitled to enforcement hereof, and*
24 *any forbearance, delay or omission to exercise their rights under this Deed in the*
25 *event of a breach of any term of this Deed, shall not be deemed to be a waiver by*
26 *any such party of such term or of any subsequent breach of the same or any other*
27 *terms, or of any of the rights of said parties under this Deed. All remedies available*
28 *hereunder shall be in addition to any and all other remedies at law or in equity,*
29 *including CERCLA. The enforcement rights set forth in this deed against the*
30 *GRANTEE (“FORA”), or its successors and assigns, shall only apply with respect*
31 *to the Property conveyed herein and held by such GRANTEE (“FORA”), its*
32 *successor or assign, and only with respect to matters occurring during the period of*
33 *time such GRANTEE (“FORA”), its successor or assign, owned or occupied such*
34 *Property or any portion thereof.*

35
36 *B. The GRANTEE (“FORA”), its successors or assigns, shall neither*
37 *transfer the Property, or any portion thereof, nor grant any interest, privilege, or*
38 *license whatsoever in connection with the Property without the inclusion, to the*
39 *extent applicable to the Property or any portion thereof, of the environmental*
40 *protection provisions contained in Paragraphs, Exclusions and Reservations,*
41 *CERCLA Covenants, Notices and Environmental Remediation; Notice of Presence*

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 of Asbestos, Ordnance and Explosives; Endangered Species, Air Navigation
2 Restriction, and shall require the inclusion, to the extent applicable, of such
3 environmental protection provisions in all further deeds, transfers, leases, or grant
4 of any interest, privilege, or license.
5

6 C. The obligations imposed in this Paragraph upon the successors or
7 assigns of GRANTEE ("FORA") shall only extend to the property conveyed to any
8 such successor or assign.

9 **XII. NOTICE OF NON-DISCRIMINATION**

10
11 With respect to activities related to the Property, the GRANTEE ("FORA")
12 covenants for itself, its successors and assigns, that the GRANTEE ("FORA"), and
13 such successors and assigns, shall not discriminate upon the basis of race, color,
14 religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease
15 of the Property, or in their employment practices conducted thereon in violation of
16 the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.
17 Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and
18 the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). The
19 GRANTOR ("the Government") shall be deemed a beneficiary of this covenant
20 without regard to whether it remains the owner of any land or interest therein in the
21 locality of the Property hereby conveyed, and shall have the sole right to enforce
22 this covenant in any court of competent jurisdiction.
23

24 The responsibilities and obligations placed upon, and the benefits provided to, the
25 **Grantor** by the Government shall run with the land and be binding on and inure to the benefit of
26 all subsequent owners of the Property unless or until such responsibilities, obligations, or
27 benefits are released pursuant to the provisions set forth in the MOA and the Government deed.
28 **Grantee** and its successors and assigns, respectively, shall not be liable for any breach of such
29 responsibilities and obligations with regard to the Property arising from any matters or events
30 occurring after transfer of ownership of the Property by **Grantee** or its successors and assigns,
31 respectively; provided, however, that each such party shall, notwithstanding such transfer, remain
32 liable for any breach of such responsibilities and obligations to the extent caused by the fault or
33 negligence of such party.
34

35 **General Provisions:**

36
37 A. Liberal Construction. Any general rule of construction to the contrary
38 notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and
39 the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an
40 interpretation consistent with the purpose of this Deed that would render the provision valid shall
41 be favored over any interpretation that would render it invalid.
42

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1 B. Severability. If any provision of this Deed, or the application of it to any person
2 or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the
3 application of such provisions to persons or circumstances other than those to which it is found
4 to be invalid, shall not be affected thereby.

5
6 C. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of
7 title in any respect.

8
9 D. Captions. The captions in this Deed have been inserted solely for convenience of
10 reference and are not a part of this Deed and shall have no effect upon construction or
11 interpretation.

12
13 E. Right to Perform. Any right which is exercisable by the **Grantee**, and its
14 successors and assigns, to perform under this Deed may also be performed, in the event of non-
15 performance by the **Grantee**, or its successors and assigns, by a lender of the **Grantee** and its
16 successors and assigns.

17
18 The conditions, restrictions, and covenants set forth in this Deed are a binding servitude
19 on the herein conveyed Property and will be deemed to run with the land in perpetuity.
20 Restrictions, stipulations and covenants contained herein will be inserted by the **Grantee**
21 verbatim or by express reference in any deed or other legal instrument by which it divests itself
22 of either the fee simple title or any other lesser estate in the Property or any portion thereof. All
23 rights and powers reserved to the **Grantor**, and all references in this Deed to **Grantor** shall
24 include its successors in interest. The **Grantor** may agree to waive, eliminate, or reduce the
25 obligations contained in the covenants, PROVIDED, HOWEVER, that the failure of the **Grantor**
26 or its successors to insist in any one or more instances upon complete performance of any of the
27 said conditions shall not be construed as a waiver or a relinquishment of the future performance
28 of any such conditions, but the obligations of the **Grantee**, its successors and assigns, with
29 respect to such future performance shall be continued in full force and effect.

30
31
32
33
34

[Signature Pages Follow]

QUITCLAIM DEED FOR CID BUILDING PROPERTY

1
2

EXHIBIT A: Description of Property

LEGAL DESCRIPTION

BEING a portion of the former Fort Ord Military Reservation, Monterey County, California, and being more particularly described as follows:

Beginning at a point marked by a nail and washer in pavement, from which point the southwesterly corner of Parcel One, as shown on the Record of Survey map filed June 30, 2000 in Volume 23 of Surveys, at Page 107, bears North 82°05'39" East, 413.00 feet; thence

- 1) South 1°40'00" West, 131.13 feet to a nail and washer in pavement; thence
- 2) North 87°46'00" West, 502.04 feet to a nail and washer in pavement; thence
- 3) North 43°03'00" West, 21.32 feet to a nail and washer in pavement; thence
- 4) North 1°40'00" East, 123.08' feet to a nail and washer in pavement; thence
- 5) North 46°58'00" East, 21.10 feet to a nail and washer in pavement; thence
- 6) South 87°44'00" East, 411.76 feet to a nail and washer in pavement; thence
- 7) South 1°50'00" West, 22.02 feet to a nail and washer in pavement; thence
- 8) South 87°58'00" East, 90.34 feet to the Point of Beginning.

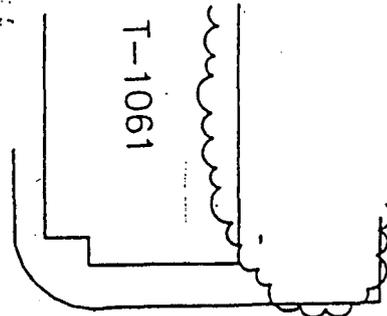
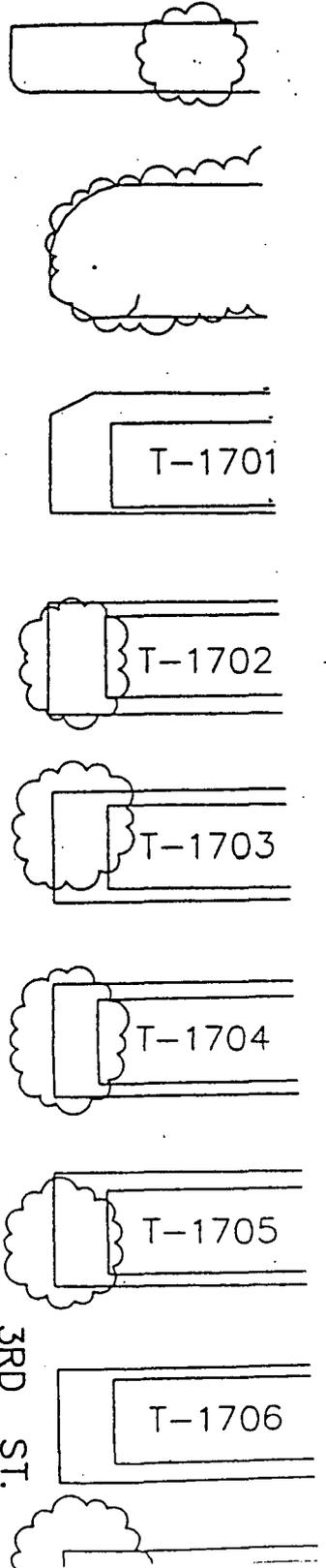
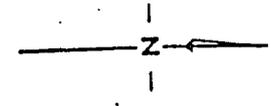
Containing 1.76 Acres, more or less.



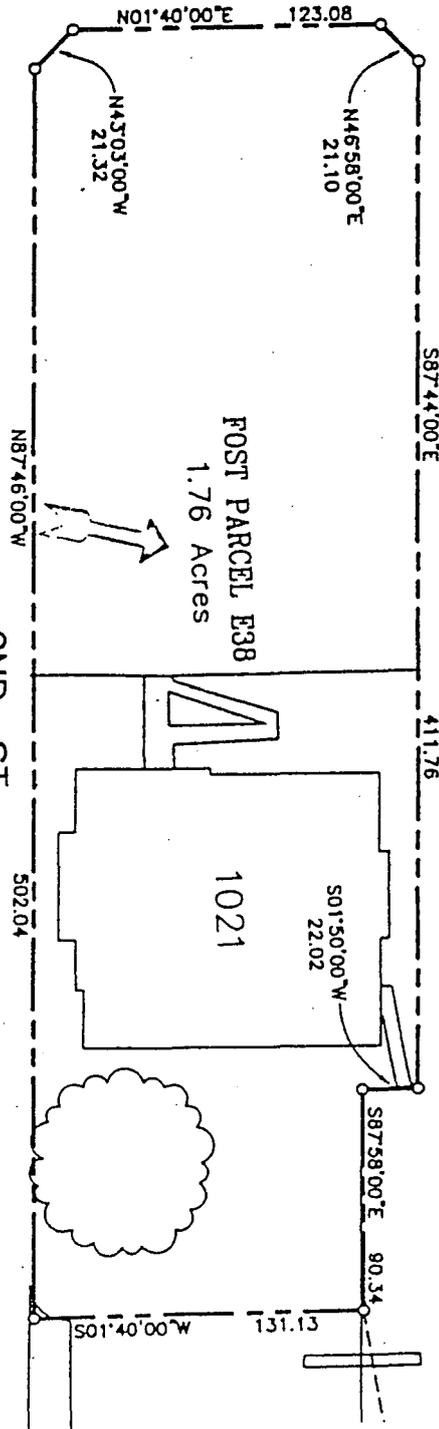
EXT 12/31/01

THIS MAP IS FURNISHED AS A MATTER OF ACCOMMODATION ONLY, AND NO LIABILITY IS ASSUMED BY ITS ATTACHMENT TO THE POLICY OF TITLE INSURANCE OF STEWARD TITLE GUARANTY COMPANY.

SCALE 1" = 30'



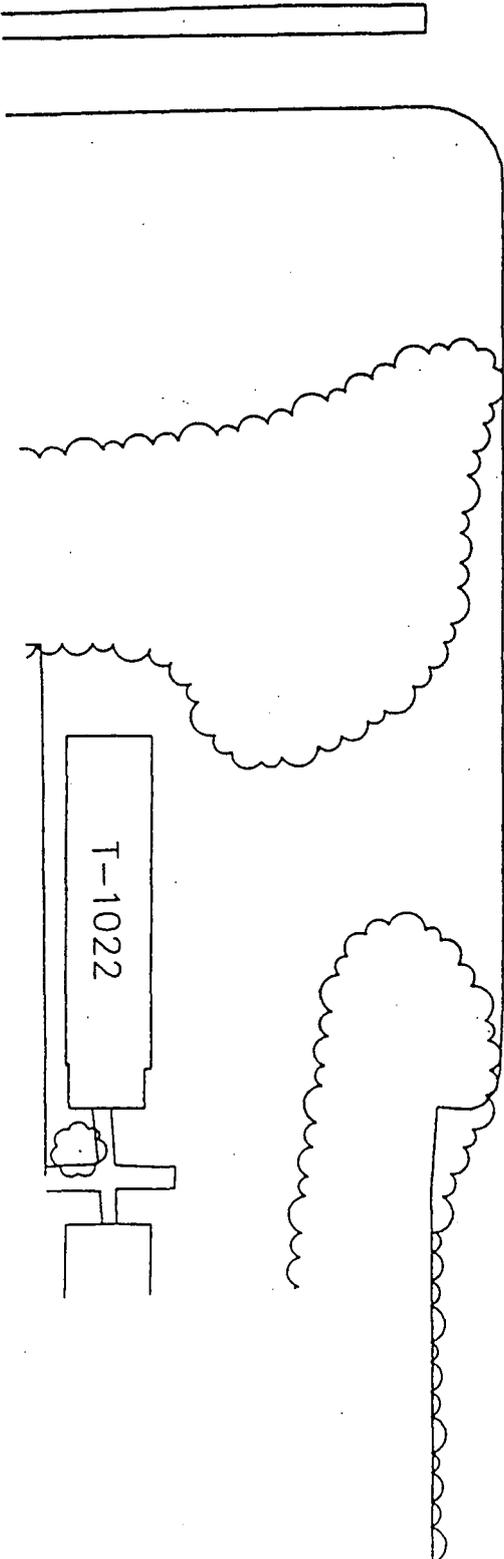
1ST AV.



2ND ST.

3RD ST.

Asphalt



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EXHIBIT C: FOSTS

**FINDING OF SUITABILITY TO TRANSFER (FOST)
BLANCO ROAD PARCEL
FORMER FORT ORD, CALIFORNIA**

On the basis of the Community Environmental Response Facilitation Act (CERFA) for Fort Ord, I have determined that the Blanco Road Parcel (L20.11), at former Fort Ord, California (the Property), is suitable for transfer to the State Highway Department for continued vehicular use. The Property to be transferred includes one roadway on a total of approximately 39 acres (Plate 1).

A determination of the environmental condition of the Property was made by the United States Army by reviewing existing environmental documents and making associated visual site inspections (9/27/96). The documents reviewed included the final CERFA Report (April 1994), U.S. EPA region IX's concurrence to the CERFA Report (19 April 1994), and various remedial investigation/feasibility study documents, remedial action reports, and subsequent approval memoranda. The results of this document review indicate that the Property is environmentally suitable for transfer to the State Highway Department. The results are as follows:

- The Property consists of 38.99 acres along the county highway easement from the intersection with Reservation Road to approximately 3,500 feet north/northeast along Blanco Road (Plate 1). There are no buildings or structures within this Property. Because no buildings are located on the Property, no investigations related to asbestos-containing materials (ACM), lead-based paint (LBP), radon or radiological commodities have occurred on the Property.
- No solid waste management units, underground or aboveground storage tanks, were present on the Property.
- There have been no reported releases of polychlorinated biphenyl (PCB)-contaminated dielectric fluids on the Property.
- Ordnance and explosive (OE) investigations, consisting of the Archive Search Report and Supplement No. 1 (December 1993 and November 1994, respectively), Site 39 Data Summary and Work Plan (February 1994), OE contractor after-action reports (December 1994, November 1995), working maps, Fort Ord Training Facilities Map, and associated interviews from various ordnance-related community relations activities, show no OE locations within or adjacent to the Property. However, because OE were used throughout the history of Fort Ord, the potential for OE to be present on the Property exists. This notice will be included in the deed.
- The Property lies within CERFA Parcel 221 and is adjacent to two CERFA Disqualified Parcels (56 and 62). The CERFA Disqualified sites within Parcel 56 are Installation Restoration Program (IRP) Sites 34, 36, and 40. Each of these sites is more than 1,000 feet west of Blanco Road. Site 34 was CERFA Disqualified because of the active Fritzsche Army Airfield (FAAF) Fueling Facility; Site 36 is CERFA Disqualified because of the inactive FAAF Sewage Treatment Plant; and Site 40 is CERFA Disqualified because of the FAAF Defueling Area. Parcel 62 is a CERFA Disqualified parcel because a former petroleum fuel storage tank (Tank No. 550B) is located at that site. The former fuel storage tank site was located approximately 100 feet (to the east) of the Property boundary.

- Three groundwater monitoring wells (MW-BW-01-A, MW-BW-02-180, and MW-BW-03-400) are located on the Property. Historically, no organic compounds have been detected in the three monitoring wells. The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to permit necessary groundwater monitoring at wells located on the Property. Furthermore, the deed will prohibit all others from tampering with the groundwater monitoring wells.

National Environmental Policy Act (NEPA) requirements for this transfer were satisfied by the analysis conducted in the June 1993 Fort Ord Disposal and Reuse Environmental Impact Statement (EIS) and the December 1993 Record of Decision (ROD).

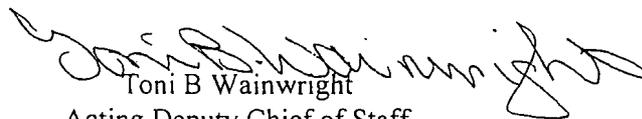
Clean Air Act General Conformity Rule requirements for this transfer were satisfied by a Record of Non-Applicability based upon an exemption for property transfers where the proposed action is a transfer of ownership, interest and title in the land, facilities, and associated real and personal property.

Comments received from U.S. EPA Region IX and California EPA DTSC on the Version 1 FOST were reviewed and incorporated where possible into this Version 2 FOST. All comments were resolved.

On the basis of the above information, I conclude that the Blanco Road Parcel should be assigned Department of Defense (DoD) Environmental Condition Category 1 (areas where no release or disposal of hazardous substances or petroleum products has occurred [including no migration of these substances from adjacent areas]) and is transferable under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120 (h)(4). As such, the deed for this transaction will contain:

- The covenant under CERCLA § 120 (h)(4)(D)(i) warranting that any response action under CERCLA or corrective action found to be necessary after the date of transfer shall be conducted by the United States.
- The covenant under CERCLA § 120 (h)(4)(D)(ii) granting the United States access to the Property in any case in which response action or corrective action is found to be necessary after the date of transfer.

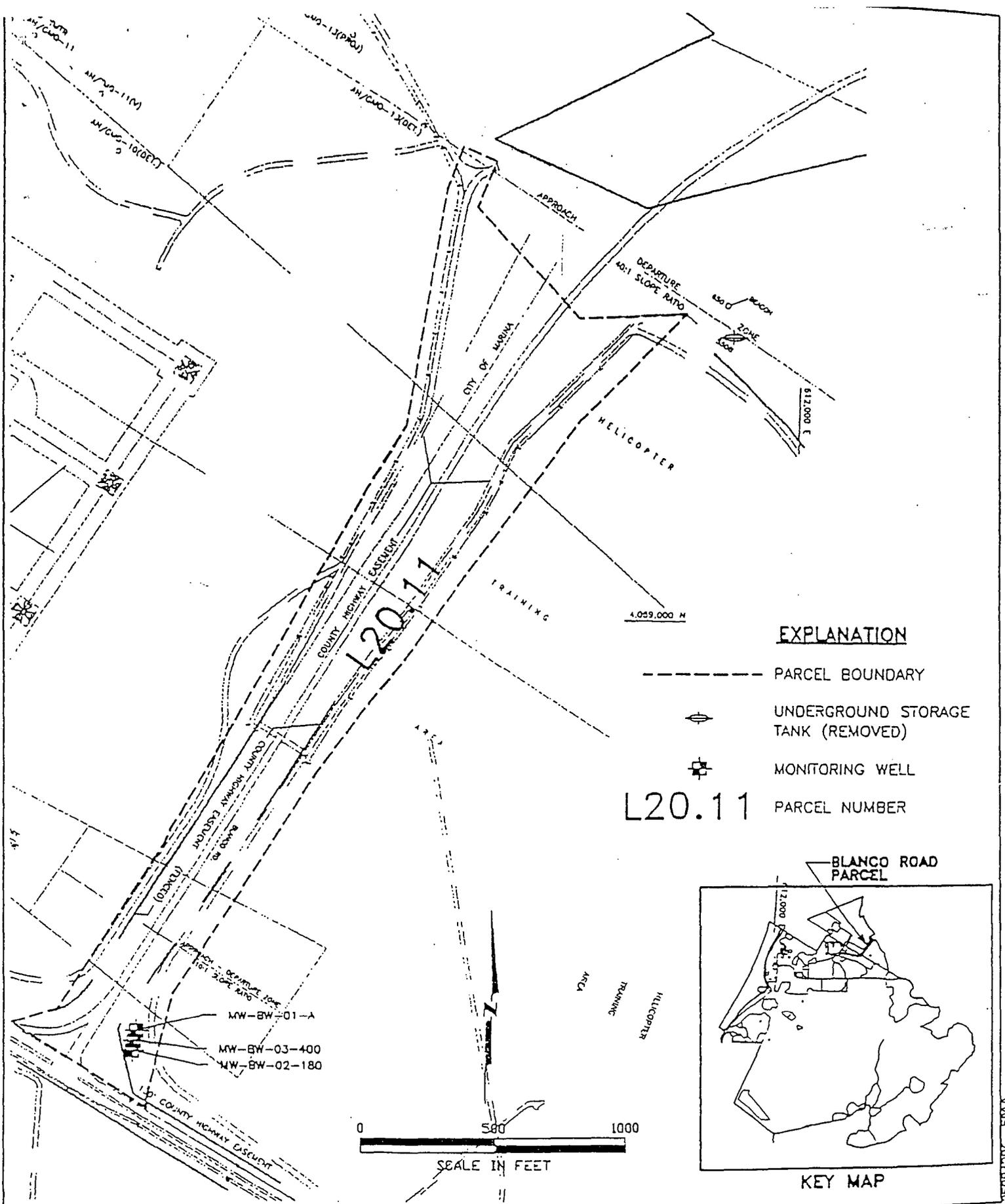
12 JUN 1997



Toni B Wainwright

Acting Deputy Chief of Staff
for Base Operations Support

United States Army Training and Doctrine Command



Harding Lawson Associates
 Engineering and
 Environmental Services

Parcel Map
 Blanco Road Parcel
 Finding of Suitability to Transfer
 Former Fort Ord, California

PLATE

1

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
CEG	25894 001761	[Signature]	10/96	4/30/97

0111



USEPA

Rec'd
5/12/97

Department of
Toxic Substances
Control

May 7, 1997

Pete Wilson
Governor

James M. Strook
Secretary for
Environmental
Protection

10 P Street,
10 Floor
P.O. Box 806
Sacramento, CA
95812-0806

Ms. Christine Lawson
Department of the Army
Commander, DLIFLC and POM (Fort Ord)
Presidio of Monterey, California 93944-5006

REVIEW OF THE DRAFT FINDING OF SUITABILITY TO TRANSFER
DOCUMENTS FOR BLANCO ROAD PARCEL DATED MAY 2, 1997 AND
MARINA SPORTS CENTER PARCEL DATED APRIL 29, 1997, FORMER
FORT ORD, CALIFORNIA

Dear Ms. Lawson:

The Department of Toxic Substances Control has reviewed
the subject documents and finds that the Army has adequately
addressed State regulatory comments.

If you have any questions, please feel free contact me
at (916) 323-3466 or Bill Kilgore, project manager, at
(916) 255-3738.

Sincerely,

Theresa McGarry
Environmental Assessment
and Reuse Specialist
Office of Military Facilities

cc: Ms. Lida Tan
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105



Ms Christine Lawson

May 7, 1997

Page 2

cc: Mr. Grant Himebaugh
California Regional Water Quality Control Board
Central Coast Region
81 Higuera Street, Suite 200
San Luis Obispo, California 93401-5414

Ms. Gail Youngblood
BRAC Coordinator
Department of the Army
Commandér, DLIFC and POM (Fort Ord)
Attn: ATZP-EP
Presidio of Monterey, California 93944-5006

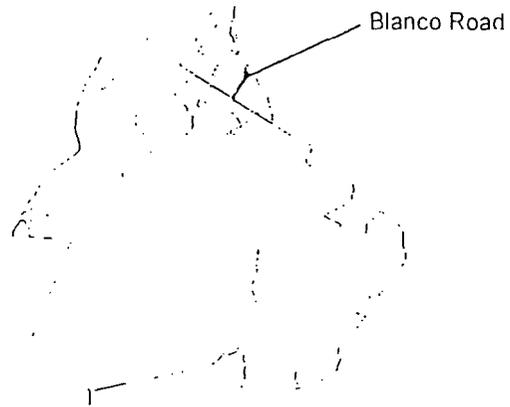
Mr. Dan McMindes
U.S. Army Corps of Engineers
1325 J. Street
Sacramento, California 95814

Former Ft. Ord

Blanco Road



Parcel Locator Map



No Buildings: -----

No Sq. Ft.: -----

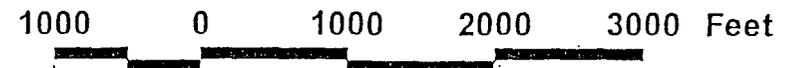
No. Acres: 38.99

DoD Category: 1

Reuse: Continued Vehicular Use

Recipient: California State

Highway Department



FOST/FOSL COMPLETION CHECK LIST

TYPE: FOST				
NAME: BLANCO ROAD PARCEL				
INITIAL REVIEW				COMPLETED
REGULATOR REVIEW				COMPLETED
FINAL REVIEW				6/12/97
IDENTIFY PROPERTY				APPROX 39 ACRES
IDENTIFY DOD CATEGORY				CAT 1
IDENTIFY CONTAMINANTS				NONE
IDENTIFY REMEDIATION STANDARDS				N/A
IDENTIFY REMEDIATION				N/A
IDENTIFY REUSE				ROADWAY
IDENTIFY RESTRICTIONS				NONE
EPA LETTER ATTACHED				N/R
STATE LETTER ATTACHED				N/R/5/7/97
UNRESOLVED COMMENTS ATTACHED				N/A
SATISFY NEPA REQUIREMENTS				EIS
SATISFY CLEAN AIR ACT REQS				RDNA
COORDINATION		PHONE	NAME	DATE
BRACO	ATCS-OR	727-3849	MR TAYLOR	6/9/97
ENVR	ATBO-SE	727-2299	R. AIKEY	6/11/97
REAL ESTATE	ATBO-GP	727-2569	MR BLANCHARD	6/12/97
LEGAL	ATJA	727-2773	MAJ EGAN	6/11/97
PAO	ATPA	727-3506	BOGFIED	6/12/97

MEMORANDUM FOR THE RECORD

SUBJECT: Record of Non-Applicability (RONA) to the Clean Air Act Amendment General Conformity Rule Regarding the Transfer of Real Property Designated for State Highway Department (SHD). This Action Covers Activities Associated with Land Conveyance Between the U.S. Army and SHD .

1. Scope Definition: The Department of the Army is granting parcels of land located at the former Fort Ord, California for use by SHD. Subject parcel requested by SHD was formerly utilized by the U.S. Army as road.
2. Presidio of Monterey, Defense Language Institute is required to make a review of direct and indirect air emission sources for each criteria pollutant as outlined in 40 CFR 51.853 and 93.153 for federal initiatives located within a region designated as nonattainment to national ambient air quality standards (NAAQS). The analysis is to ensure that federal actions will not delay or prevent an area from achieving attainment status.
3. Intended future reuse of subject parcel by grantee is as road.
4. In accordance with Section 51.853 of the General Conformity Rule, subject Federal action is exempt from conformity requirements where proposed action is a transfer of ownership, interest and title in the land, facilities, and associated real and personal property.
5. Any utilization of subject parcel by the grantee influencing facility emissions not identified in the State Implementation Plan, has neither been disclosed to Army Environmental personnel, nor considered in this determination.



CHRISTINE LAWSON
Air Pollution Environmental Coordinator
Directorate Environmental and Natural
Resources Management

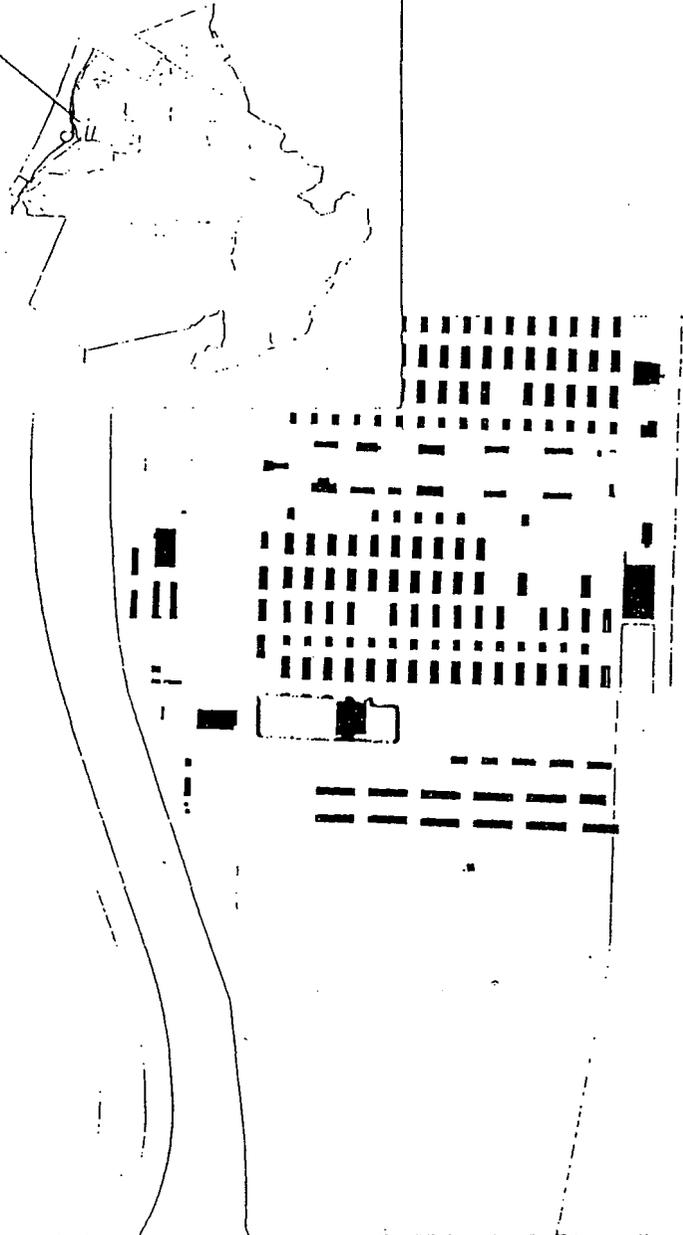
Former Ft. Ord

Building 1021



Parcel Locator Map

Building 1021



No Buildings: 1

No. Sq. Ft.: 14,884

No. Acres: 2.0

DoD Category: 1

Reuse: Emergency Service

Dispatching

Recipient: Monterey County



700 . 0 700 1400 Feet

**BEFORE THE BOARD OF SUPERVISORS IN AND FOR THE
County of Monterey, State of California**

Resolution No.: 07-050

Accept and authorize the Chair of the Board)
to sign an acceptance of a Quitclaim Deed)
transferring ownership of land and)
improvements on the former Fort Ord)
designated as Parcel E2b.3.1.2 (Building)
1021, CID Building) from the Fort Ord)
Reuse Authority to the County of Monterey.)

RECITALS

This Resolution is made with respect to the following facts and considerations:

- A. The U.S. Army is the owner of the former military installation in Monterey County known as Fort Ord.
- B. The U.S. Army closed this installation in 1990, and is transferring portions of the land as surplus property.
- C. In 2000, the Army entered into a Memorandum of Agreement with the Fort Ord Reuse Authority (FORA) to facilitate the sale of this land to local agencies for economic development.
- D. In 2001, FORA and the County entered into an Implementation Agreement setting forth the terms and conditions upon which FORA would transfer title of land in the unincorporated area of the former Fort Ord to the County.
- E. On August 8, 2000, the U.S. Army recorded Deed No. DACA05-9-00-598 transferring to FORA ownership of the property described as Parcel E2b.3.1.2 (Building 1021, CID Building).
- F. On September 1, 2001, FORA leased this parcel to the County of Monterey for use as public offices for the Department of Planning & Building Inspection.
- G. On November 27, 2006, FORA executed a Quitclaim Deed transferring ownership of Parcel land and improvements on the former Fort Ord designated as Parcel E2b.3.1.2 (Building 1021, CID Building) from the Fort Ord Reuse Authority to the County of Monterey.

Resolution No. 07-050
February 13, 2007

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Monterey hereby accepts and authorizes the Chair of the Board to sign an acceptance of a Quitclaim Deed transferring ownership of land and improvements on the former Fort Ord designated as Parcel E2b.3.1.2 (Building 1021, CID Building) from the Fort Ord Reuse Authority to the County of Monterey.

PASSED AND ADOPTED on this 13th day of February 2007, upon motion of Supervisor Smith, seconded by Supervisor Armenta by the following vote, to-wit:

AYES: SUPERVISORS ARMENTA, CALCAGNO, POTTER, SALINAS, AND SMITH

NOES: None

ABSENT: None

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on February 13, 2007.

Dated: February 16, 2007

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By



Darlene Drain, Deputy

END OF DOCUMENT

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
Stewart Title

CRBARBARA
10/18/2001
15:33:49

DOCUMENT: **2001088380**

Titles: 1/ Pages: 31



2001088380

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

WHEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th Street, Building 2880

Marina, CA 93933

ATTN: MICHAEL A. HOULEMARD, JR.

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

IMPLEMENTATION AGREEMENT

This instrument filed for record by Stewart Title is an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

IMPLEMENTATION AGREEMENT

THIS IMPLEMENTATION AGREEMENT (this "Agreement") is made as of May 8, 2001, between the Fort Ord Reuse Authority ("FORA") and the County of Monterey (the "Jurisdiction") with reference to the following facts:

RECITALS:

- A. FORA is a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the "Army") to the governing local jurisdictions or their designee(s).
- B. FORA will acquire portions of the former Fort Ord from the Army, under an Economic Development Conveyance Memorandum of Agreement (hereinafter the "EDC Agreement") between FORA and the Army and dated June 20, 2000. FORA has delivered to the Jurisdiction a complete copy of the EDC Agreement, which includes a conveyance schedule and terms for property transfers.
- C. The Jurisdiction intends to acquire former Fort Ord property conveyed to FORA under the EDC Agreement. Such property is described in the attached Exhibit A (the "Jurisdiction Property").
- D. FORA, as a regional agency, adopted a Base Reuse Plan in June 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the "Basewide Mitigation Measures"), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the "Basewide Costs").
- E. FORA is obligated by the California Environmental Quality Act, the Base Reuse Plan and the Authority Act (as defined in Section 1 below) to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA intends to arrange a financing mechanism to apply to all former Fort Ord properties.
- F. In the Base Reuse Plan, FORA identified land sale and lease (or "property based") revenues, redevelopment revenues, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.
- G. The Authority Act requires all revenues received by FORA and/or the Jurisdiction for the Jurisdiction Property to be divided equally between FORA and the Jurisdiction.
- H. In September 1999, Congress passed Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65), otherwise known as No-Cost Economic Development Conveyance Legislation. This legislation allows the Army to transfer property to FORA under the EDC Agreement without monetary consideration. Under this legislation any Sale or Lease Proceeds [as defined in Section 1r below] must be applied to the economic development of the former Fort Ord.
- I. FORA and the Jurisdiction (the "Parties") wish to enter into this Agreement to achieve orderly reuse of the Jurisdiction Property and to meet the mutual financial obligations of the Parties.

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

Section 1. Definitions.

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

- a. Agreement means this Implementation Agreement.
- b. Army means the United States Army.
- c. Authority Act means, collectively, SB 899 and AB 1600 adopted in 1994, as codified at (i) Government Code Title 7.85, Chapters 1 through 7, commencing with Section 67650, and (ii) selected provisions of the California Redevelopment Law, including Health and Safety Code Sections 33492 et seq. and 33492.70 et seq.
- d. Base Closure Act means Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, No-Cost EDC Legislation - Public Law 106-65.
- e. Base Reuse Plan means the Fort Ord Base Reuse Plan and its accompanying environmental impact report adopted and certified by the FORA Board in June 1997 to guide the reuse of the former Fort Ord. all as amended from time to time.
- f. Basewide Costs means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan.
- g. Basewide Mitigation Measures means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water line and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1(f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.
- h. Direct Leasing Expenses means those leasing expenses actually and reasonably incurred by the Jurisdiction or FORA for purposes of Section 4(d) in the leasing out and operating, as landlord, of a portion of the Jurisdiction-Owned Jurisdiction Property. Such expenses include (without limitation): utilities; administrative overhead; police and fire protection services, to the extent that the need for such services is created by the leasing; insurance; depreciation of capital investments in the leased property in accordance with reasonable depreciation schedules; reasonable contributions to maintenance and replacement reserves; and maintenance.
- i. Direct Sale Expenses means those expenses actually and reasonably incurred by the Jurisdiction or FORA for purposes of Section 4(e) in selling Jurisdiction-Owned Jurisdiction Property to a *bona fide* purchaser for value.
- j. EDC Agreement means the Economic Development Conveyance Memorandum of Agreement between FORA and the Army by which FORA acquires portions of the former Fort Ord from the Army, including Jurisdiction Property.
- k. Fair and Equitable Share means a financial contribution to FORA to be applied toward a Jurisdiction's share of Basewide Mitigation Measures and Basewide Costs. The Fair and Equitable Share is calculated in connection with a particular parcel of Jurisdiction Property, consisting of the sum of the following:

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

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

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

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

m. FORA means the Fort Ord Reuse Authority.

n. Jurisdiction means the County of Monterey.

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

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

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

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

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

Section 2. Compliance With Other Agreements.

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

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

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

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

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

Section 3. Compliance with Water/Waste Water Allocations.

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

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

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

Section 4. Acquisition from Army; Disposition to Jurisdiction.

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

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

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

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

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

Section 5. Subsequent Jurisdiction Disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Basewide Mitigation Measures and Basewide Costs.

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

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

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

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

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

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

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

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

Section 7. Formation of Financing District.

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

- (i) FORA's revenues from all other sources are reasonably expected to be inadequate to the Basewide Costs and Basewide Mitigation Measures consistent with FORA's policy adopted in January 1999 and previously approved in the Base Reuse Plan in 1997. (That cost is estimated to be as much as Two Hundred Twenty-Five Million Dollars [\$225,000,000]); and
- (ii) the special taxes or assessments from such Financing District are limited to the gap between the revenues needed by FORA for such purposes and the revenues otherwise reasonably available to FORA for such purposes.

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

Section 8. Unique Situations.

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

Section 9. Development and Service Costs.

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

Section 10. Redevelopment.

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

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

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

Section 11. Ordnance.

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

Section 12. Public Information.

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

Section 13. Audit.

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

Section 14. Notice.

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

Jurisdiction:

County of Monterey
ATTN: Sally Reed,
County Administrative Officer
P.O. Box 180
Salinas, CA 93902

FORA:

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

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

Section 15. Title of Parts and Sections.

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

Section 16. Severability.

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

Section 17. Dispute Resolution.

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

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

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

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

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

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

- (ii) The Parties shall jointly select a single arbitrator.
- (iii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Sections 1280 and following, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, the requirements of Section 17(d)(iv) shall apply.
- (iv) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

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

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

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

Section 18. Entire Agreement.

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

Section 19. Multiple Originals; Counterparts.

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

Section 20. Modifications.

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

Section 21. Interpretation.

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

Section 22. Relationship of the Parties.

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

Section 23. Waiver.

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

Section 24. Further Assurances.

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

Section 25. Days.

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

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

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

County of Monterey,
A Political Subdivision of the State of California

By: *Michael Holman*
Its: EXECUTIVE OFFICER

By: *Edith Johnson*
Its: Chair 05/01/01

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA, COUNTY OF MONTEREY

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

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

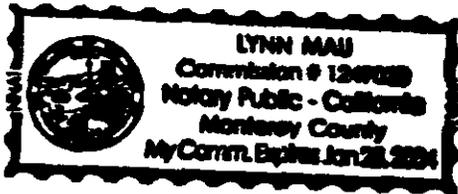
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Monterey } ss.

On May 1, 2001, before me, Lynn MAU, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Edith Ann Johnsen
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lynn Mau
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

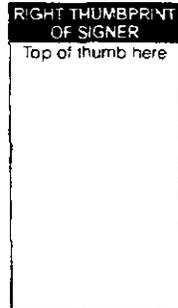
Title or Type of Document: Implementation Agreement For Monterey County
Document Date: 5/1/01 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited : | General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____



NOTARY SEAL
GOVERNMENT CODE SECTION 27361.7

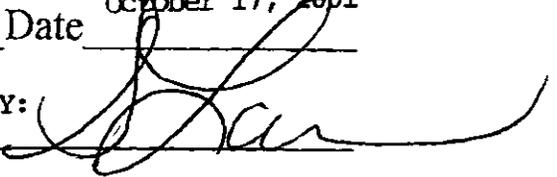
I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS
OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

Name of Notary LYNN MAU

Commission Number 1249020

Date of Commission Expires January 28, 2004

Place of Execution Monterey County, CA Date October 17, 2001

Signed STEWART TITLE OF CALIFORNIA INC., BY: 

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Monterey

On May 8, 2001 before me, Linda L. Stiehl, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

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

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



WITNESS my hand and official seal.

Linda L. Stiehl
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Implementation Agreement

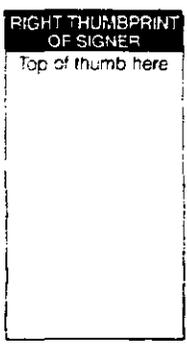
Document Date: May 8, 2001 Number of Pages: 29 (including 2 notary forms)

Signer(s) Other Than Named Above: Edith Johnson

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

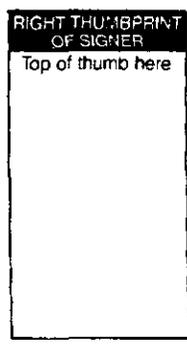
- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

EXHIBIT A
DESCRIPTION OF THE JURISDICTION PROPERTY

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

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

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

EXHIBIT B
Transaction Detail Report – Form
FORT ORD REUSE AUTHORITY

TRANSACTION #	JURISDICTION:
Seller/Lessor: Address:	Buyer/Lessee: Address:
Phone: Fax:	Phone: Fax:
Escrow Company:	
Title Company:	
Property Location:	
Parcel #:	Size:
Valuation Company/Firm:	Date of Valuation:
Valuation Instructions/Specifics:	
Demolition Required: No <input type="checkbox"/> Yes <input type="checkbox"/> \$ _____ Cost	
Instructions: _____	

Value:	

EXHIBIT C

Basewide Development Fee/Assessments

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

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

EXHIBIT D

UNIQUE SITUATIONS WITH UNIQUE ALLOCATIONS OF SALE OR LEASE PROCEEDS

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

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

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

2. Charges, including those paid to support Marina Public Safety services, may be taken and applied by the City in a manner consistent with the practices and policies, which have applied heretofore in the administration of the sublease and its implementing measures, for the term of the sublease and any extension thereto.
3. The action allocating Preston Park revenues to projects, as taken by the FORA Board of Directors in December 1999, shall continue to apply and the amount of net revenues allocated from the lease of the Preston Park Housing recommended by the Marina City Council and approved by the FORA Board shall continue to be allocated to capital projects and related costs at the former Fort Ord. Clarifications of the approved allocation list shall be made by joint action with a recommendation from the Marina City Council and approval by the FORA Board of Directors.
4. Upon recommendation from the Marina City Council and approval by the FORA Board of Directors, the lease and sublease of Preston Park Housing may be extended for the support of the Department of Defense mission in the Monterey Bay area, to include units within Abrams Park Housing.
5. Any sale of Preston Park housing, or leasing beyond the terms described in this Exhibit, and the distribution of the proceeds there from, shall be in accordance with the provisions of this Agreement.

HAYES HOUSING:

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

EXHIBIT E

WATER RESERVATIONS AND ALLOCATIONS (Current Year)

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

**EXHIBIT F
DEED RESTRICTION AND COVENANTS**

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

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

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

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

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

3. _____ (Left blank on purpose)

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

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

Owner

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _____, 2000, before me _____, Notary Public personally appeared _____ personally known to me or proved on the basis of satisfactory evidence to be the person whose name is subscribed on the accompanying instrument and acknowledged to me that he/she executed the instrument in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

FORA PARCELS USING COE PARCEL NUMBERS

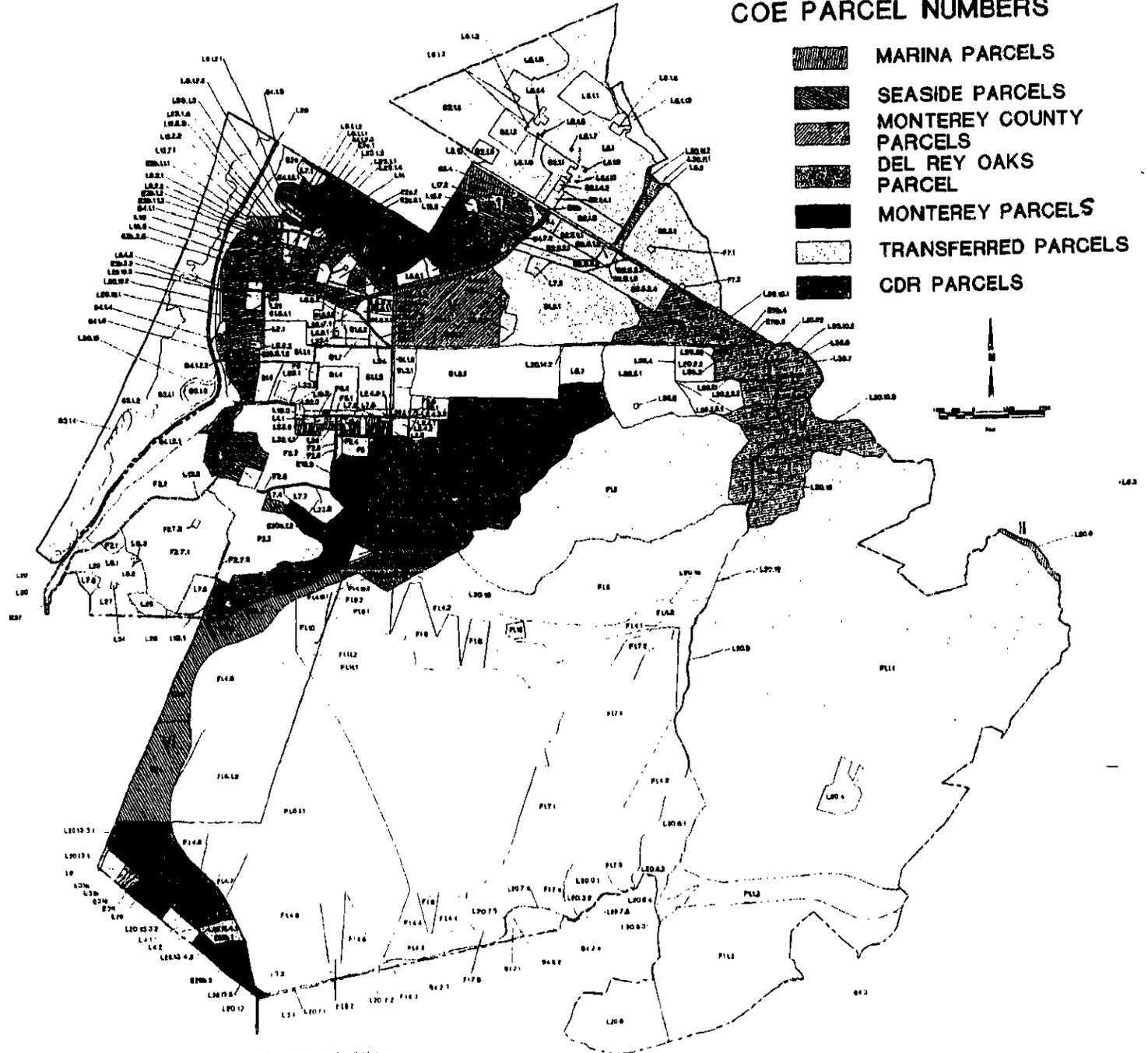


EXHIBIT "A"
DESCRIPTION OF PROPERTIES

Search Results: Click Back Button on Browser to Search Again.

Parcels Database last updated on: 10/4/99 1:54:42 PM

Total Acreage from Query is: 5188.101 Acres

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

E19a.2	housing SFD low density	218.4	County	EDC	in progress
E19a.3	housing SFD low density	209.3	County	EDC	in progress
E20b	housing Stilwell	101.8	Seaside	EDC	in progress
E20c.1.1.1	housing future	75	Seaside	EDC	in progress
E20c.1.1.2	housing future	113.9	Seaside	EDC	in progress
E20c.1.2	Cable TV area	0.3	Seaside	EDC	in progress
E20c.1.3	ROW N/S road	10.4	Seaside	EDC	in progress
E20c.2.1	housing future	92.5	Seaside	EDC	in progress
E20c.2.2	water tanks/pumps	2.3	Seaside	EDC	in progress
E21a	housing SF low density	138.7	County	EDC	in progress
E21b.1	housing SFD low density	156.7	County	EDC	in progress
E21b.2	housing SFD low density	134.2	County	EDC	in progress
E21b.3	housing SFD low density	58.5	County	EDC	in progress
E23.1	ROW / retail	47.5	Seaside	EDC	in progress
E23.2	ROW / housing future SFD med density	72.6	Seaside	EDC	in progress
F24	ROW / housing future SFD med density	197.1	Seaside	EDC	in progress
E29	BP/LI/O/R&D	34.5	County/Monterey	EDC	in progress
E29a	visitor center / bus park	273.3	Del Rey Oaks	EDC	in progress
E29b.1	ROW future Hwy 68 / habitat	34.5	Del Rey Oaks	EDC	in progress
E29b.2	ROW/BP/LI/O/R&D	30.1	County/Monterey	EDC	in progress

EXHIBIT A
Attachment 1
Page 3 of 8

E29b.1	BP/LI/O/R&D	28.4	County/Monterey	EDC	in progress
E29c	ROW/future Hwy 68/OP/R&D	9.5	County/Monterey	EDC	in progress
E2a	development / mixed use	63.7	Marina	EDC	in progress
E2b.1.1.1	development / mixed use	24	Marina	EDC	in progress
E2b.1.1.2	development / mixed use	1.2	Marina	EDC	in progress
E2b.1.2	ROW road	10.6	Marina	EDC	in progress
E2b.1.3	development / mixed use	33.6	Marina	EDC	in progress
E2b.1.4	ROW road	2.2	Marina	EDC	in progress
E2b.1.5	development / mixed use	12.2	Marina	EDC	in progress
E2b.2.1	development / mixed use	71.1	Marina	EDC	in progress
E2b.2.2	ROW road	0.8	Marina	EDC	in progress
E2b.2.3	ROW road	4.4	Marina	EDC	in progress
E2b.2.4	development / mixed use	7.5	Marina	EDC	in progress
E2b.2.5	2/12 Pump and Treat Facility	1.5	Marina	EDC	in progress
E2b.3.1.1	development / mixed use	108.6	Marina	EDC	in progress
E2b.3.1.2	CID Building	1.6	Marina	EDC	in progress
E2b.3.2	ROW 8th St	0.1	Marina	EDC	in progress
E2c.1	development / mixed use	13.2	Marina	EDC	in progress
E2c.2	OU2 Pump and Treat Facility	1.1	Marina	EDC	in progress
E2c.3.1	development / mixed use	10	Marina	EDC	in progress

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

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

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

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

END OF DOCUMENT

KEEP FORT ORD WILD

Problems with

**Proposed contracts for engineering services –
Project Approval of Gigling Road and South
Boundary Road Expansion projects**

November 17, 2017

PROJECTS DO NOT COMPLY WITH FORA RUDG.

- **RUDG says:**
 - **“Vehicle lanes of 12 to 14 feet are to be avoided because they will encourage highway speeds and lead to potentially lethal outcomes.”**
- **Gigling Road and South Boundary are proposed to have 14-foot and 12-foot vehicle lanes, respectively. Each road violates RUDG.**

RUDG APPLY, BUT RUDG ARE BEING IGNORED.

- **RUDG identifies GJM at South Boundary Road as Gateway “where the RUDG are required for BRP consistency.”**
- **RUDG states South Boundary Road and Gigling Roads are roads “where the RUDG are required for BRP consistency.” RUDG has not been applied or considered.**
- **FORA’s last chance. Otherwise all FORA roads would have been approved without *any* RUDG consistency.**

SCOPE OF WORK WAS REDUCED –
BUT DOLLAR AMOUNT OF CONTRACT WAS NOT.
LESS WORK FOR SAME \$1.5 MILLION.

- (1) significantly reducing the length of the South Boundary Road project by approximately 1650 feet.
- (2) significantly reducing the Gigling Road project by 1/8 of its proposed length – from 8 blocks to 7 blocks.
- Despite these significant and material reductions in scope, FORA has not proposed to reduce the amount of the fees to be paid to the consultant. FORA still proposes to pay the engineer \$1.5 million.

**ENVIRONMENTAL DOCUMENTS DO NOT COMPLY WITH
CEQA. EXAMPLE: OAKS ON SOUTH BOUNDARY ROAD.**

REQUEST

Deny the project.

Inconsistent with CEQA and the Brown Act.

Thank you.

Keep Fort Ord Wild

From: [Josephine Velazquez](#)
To: ["bdelgado62@gmail.com"](#); ["frank.oconnell93933@gmail.com"](#); [Councilmember Morton](#); [Councilmember Amadeo](#); [David Brown](#); ["llong@cityofmarina.org"](#)
Cc: [Wilson Wendt](#); [Art Coon](#); [Giselle Roohparvar](#); [Sean Marciniak](#); ["attys@wellingtonlaw.com"](#); ["aberkley@gmail.com"](#); ["kbijala@icloud.com"](#); ["MRB93933@gmail.com"](#); ["David.Burnett454@sbcglobal.net"](#); ["timledesma12@gmail.com"](#); ["Tommann524@gmail.com"](#); ["adam_urrutia@yahoo.com"](#); [FORA Board](#); ["jgiffen@kahlaw.net"](#); [Supervisor Alejo](#); [Supervisor Phillips](#); [Supervisor Salinas](#); ["district4@co.monterey.ca.us"](#); [Supervisor Adams](#); ["McKeeCJ@co.monterey.ca.us"](#)
Subject: Request that City of Marina Agendize and Render Determinations Regarding County of Monterey's Approval of Safe Parking Program at 2616 First Ave.
Date: Wednesday, November 29, 2017 3:41:58 PM
Attachments: [November 29 2017 Ltr. to City of Marina re Agendizing Review of Safe Parking Program.pdf](#)

The attached is being sent on behalf of Sean R. Marciniak. If you have any questions or comments, please do not hesitate to contact Mr. Marciniak directly at sean.marciniak@msrlegal.com. Thank you.

Josephine Velazquez | Miller Starr Regalia

Assistant to Sean R. Marciniak

1331 North California Boulevard, Fifth Floor, Walnut Creek, CA 94596

t: 925.935.9400 | d: 925.941.3284 | f: 925.933.4126 | josephine.velazquez@msrlegal.com | www.msrlegal.com



MILLER STARR REGALIA CONFIDENTIAL COMMUNICATION

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Sean R. Marciniak
Direct Dial: 925 941 3245
sean.marciniak@msrlegal.com

November 29, 2017

VIA E-MAIL

Hon. Members of the City Council
Layne Long, City Manager
City of Marina
211 Hillcrest Ave
Marina, CA 93933

Emails: bdelgado62@gmail.com;
frank.oconnell93933@gmail.com;
gmorton@montereyfamilylaw.com;
nancyamadeo@gmail.com;
davidwaynebrown@aol.com;
llong@cityofmarina.org

Re: Request that City of Marina Agendize and Render Determinations Regarding
County of Monterey's Approval of Safe Parking Program at 2616 First Ave.

Dear Honorable Members of the City Council and Mr. Long:

In supplementation of our letter to the City dated November 22, 2017, Miller Starr Regalia hereby requests that the City Council direct staff to agendize the County's Safe Parking Program for a public hearing and, at this hearing, consider the permissibility of the Safe Parking Program and its consistency with City ordinances and other municipal land use regulations. We understand the City Council's next public meeting is scheduled for December 5, 2017, and respectfully request this matter be heard on that date, or as soon thereafter as is feasible.

Sincerely,

MILLER STARR REGALIA

Sean Marciniak

cc: Clients
Wilson Wendt, Esq., Miller Starr Regalia
Arthur F. Coon, Esq., Miller Starr Regalia
Giselle S. Roohparvar, Esq., Miller Starr Regalia
Continued on next page

Hon. Members of the Marina City Council
November 29, 2017
Page 2

Robert Rathie, City Attorney, attys@wellingtonlaw.com
Members of the City of Marina Planning Commission (laberkley@gmail.com;
kbiala@icloud.com; MRB93933@gmail.com; David.Burnett454@sbcglobal.net;
timledesma12@gmail.com; Tommann524@gmail.com;
adam_urrutia@yahoo.com)

Fort Ord Reuse Authority Board of Directors (board@fora.org)

Jonathon Giffen, Counsel for FORA (jgiffen@kahlaw.net)

Members of the Monterey County Board of Supervisors

(district1@co.monterey.ca.us; district2@co.monterey.ca.us;
district3@co.monterey.ca.us; district4@co.monterey.ca.us;
district5@co.monterey.ca.us)

Charles J. McKee, Monterey County Counsel (McKeeCJ@co.monterey.ca.us)

From: [Richard Kiskis](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Friday, December 01, 2017 6:31:54 AM

The Eastside Parkway serves no demonstrated need, and our transportation dollars would be better spent on other more pressing projects. The \$800,000 in legal fees for the Eastside Parkway project would have been better spent there, too.

Richard K.
Salinas, CA

From: Mail.mbay.net
To: [FORA Board](#)
Subject: East side Parkway
Date: Saturday, December 02, 2017 9:47:39 AM

Dear FORA Board,

I am concerned about the Eastside Parkway. I do not want it built. I do not see a need to build it. I hike there often and enjoy the serenity. The EP would destroy that serenity. It would also cause damage to the flora and fauna there. I am not alone. I see hundreds of other like-minded hikers and bikers. I speak to them every time I go there. None of them wants the EP either. Please leave the natural beauty of Fort Ord just as it is. Monterey Downs was a mistake and so is this.

Skip Kadish, Marina
831-601-3057

From: chris_dale@comcast.net
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Saturday, December 02, 2017 5:54:25 PM

December 2, 2017

Dale McCauley
270 El Caminito Rd.
Carmel Valley Ca. 93924
chris_dale@comcast.net

Dear FORA Board,

I would suggest your goals be to first, use existing roads with some improvements to serve the current users.

Secondly, work with TAMC to improve the local circulation and address the current problems during rush hours.

Third, develop a transportation plan that focuses on bicycles, buses and electric cars to prepare for the future by starting at the campus.

As for the Eastside "Parkway" do not spend any more time and money on it.

If you want to be effective, start by listening to the community, become a trusted partner, think forward and deeply and become informed, then test your ideas with focus groups. You need to build support with the people first.

Your first step would be to do some house cleaning and acknowledge the past mistakes. It would be bold and take leadership but you need to make some major changes anyway.

I encourage you to lead if you want to survive.

Sincerely,

Dale McCauley

From: [John Manning](#)
To: [FORA Board](#)
Subject: Concerns over Eastside Parkway
Date: Sunday, December 03, 2017 3:30:14 PM

Dear Board,

I support the Landwatch opposition to the Eastside Parkway. Having hiked Ft. Ord , I appreciate the wild beauty that needs to be preserved.

Thank you,

Ruth Carter
Carmel Valley

Sent from my iPhone

From: [Edith Frederick](#)
To: [FORA Board](#)
Subject: In lieu of Eastside Parkway
Date: Sunday, December 03, 2017 7:41:36 PM

Please pay the owed \$35 million to TAMC first, then pay for regional road improvements on Highway 1, Highway 68 and Highway 156.

Please consider any further spending for cost efficient projects easing present traffic congestion areas and to improve safety for bikers and pedestrians.

We do not need more roads!

From: [Edith Frederick](#)
To: [FORA Board](#)
Subject: Fwd: In lieu of Eastside Parkway
Date: Sunday, December 03, 2017 7:43:50 PM

The previous email is from
Edith Frederick, MST rider, pedestrian, bicyclist and driver in that order
121 Winham Street
Salinas
831 998 1007

Begin forwarded message:

From: Edith Frederick <ediesan115@gmail.com>
Subject: In lieu of Eastside Parkway
Date: December 3, 2017 at 7:41:26 PM PST
To: board@fora.org

Please pay the owed \$35 million to TAMC first, then pay for regional road improvements on Highway 1, Highway 68 and Highway 156.

Please consider any further spending for cost efficient projects easing present traffic congestion areas and to improve safety for bikers and pedestrians.

We do not need more roads!

From: [amy_wells](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Sunday, December 03, 2017 9:00:00 PM

Dear FORA board and staff,

I am writing you to express my dissatisfaction with your promoting of the "Eastside Parkway" and its alignment, stemming from the failed Monterey Downs development.

I cannot attend the public workshops on this matter and wish to, as clearly as possible, dissuade you from pursuing this unpopular road. We, as a community, should not expend public resources pursuing a project which has tremendous environmental, financial, and legacy costs for no discernible benefit.

I, like many residents, use the area in which the road is proposed for recreation, and I commute on highway 68 to work. By simply looking at the maps I realize the road will do next to nothing to improve my commute (actually it will likely increase traffic on highway 218 which intersects 68) and will significantly lower my, and others opportunities to recreate in the Parker Flats areas.

Please consider other less burdensome alternatives, such as improving existing roads (e.g. Inter Garrison, Eighth Ave. and Giggling) to achieve the same goals, if these goals are even arguably a priority. We know there are several other more pressing regional traffic issues.

I ask you not to attribute this letter as "public participation" in the forwarding of the ill advised Parkway: It is a call to abandon the project and process as a whole.

Sincerely,
Amy Wells D.V.M

From: [Danielle Martin](#)
To: [FORA Board](#)
Cc: [Supervisor Adams](#); district4@co.monterey.ca.us
Subject: Re: FORA's future funds usage for local highway improvements....
Date: Monday, December 04, 2017 8:15:54 AM

Dear FORA Board,

Please receive my request to NOT develop the Eastside Parkway.

I am concerned that our existing highways should still have additional improvements before considering ANY new roads. Also I am concerned that connecting the upper areas of Seaside to this additional road towards Salinas will result in destroying the family neighborhoods and school access streets on the way to accessing this proposed parkway/freeway area. Additionally this 'same' traffic would still get waylaid when eventually it would connect to Reservation Road, Highway 68 or Fremont Street areas, Canyon Del Rey areas, etc. Thus I highly encourage any 'remedies' possible to improve existing roads' infrastructure - particularly improving the worst Highway 156 bottlenecks and 'all' our commuting/gridlock zones as a higher priority which I understand FORA's budgeting privileges can be properly applied towards.

Lastly I consider the Ft. Ord National Monument and it's surrounding areas to be a 'priceless' treasure to it's surrounding communities and I predict that this area will become more and more 'beloved' as are our other regional parks and regional 'natural areas'. I've seen so many ages of users there, families with kids of all ages finally safe enough to bike on it's 'car free' roads, locals running, hiking, and biking to access the dirt trails without having to endure any worrisome traffic near the park's immediate boundaries.

Thanks you for your time in reading this email,

Sincerely,

Danielle Martin

From: [Paola Berthoin](#)
To: [FORA Board](#)
Cc: landwatch@mclw.org
Subject: Eastside parkway proposal
Date: Wednesday, December 06, 2017 11:20:23 AM

Dear Fora Board,

All other options other than the proposed Eastside Parkway (or any other environmentally destructive option) must be considered to the fullest extent as required by CEQA and other applicable laws. This proposal would destroy 10,000 oak trees and associated habitat that is home to much wildlife. It is also land that is used for recreation by many people. Now, more than ever, prime lands such as this maritime chaparral should be preserved. Monterey County is known for its environmental values. Destroying this habitat would be devastating and a real scar on the reputation of Monterey County. We know the far-reaching detrimental effects of the car culture, most significantly, climate change.

As an artist, I have spent many hours painting onsite of the proposed "parkway". All FORA members and others involved in the decision making process would benefit from spend time out on the land. As Aldo Leopold said many years ago:

"A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." ... [A] land ethic changes the role of Homo sapiens from conqueror of the land-community to plain member and citizen of it."

What message and legacy do you want to leave to the children of this area and beyond? One of destroyer of earth's support systems or one who creatively designs solutions that preserve the ecological integrity of the land we all depend on for physical and mental well-being? An approach of using Ecological Design Principles would provide a useful framework for all involved.

The painting and photograph included with this email depicts part of the area that would be destroyed if the already-deemed illegal parkway moves forward.

Sincerely,

Paola Berthoin

Paola Berthoin
25440 Telarana Way
Carmel, CA 93923
www.paolaforleleberthoin.com
www.passion4place.net
831.624.9467





From: [Michael McGirr](#) on behalf of mike.mcgirr@icloud.com
To: [FORA Board](#)
Cc: [Lisa McGirr](#); markeyka@co.monterey.ca.us; district4@co.monterey.ca.us
Subject: Not so fast on Eastside Parkway.
Date: Wednesday, December 06, 2017 12:59:23 PM
Attachments: [image001.png](#)

Dear FORA Board,

As a concerned citizen of Monterey County and an avid outdoorsman I believe Supervisor Jane Parker has given a clear and concise summary of why alternatives to the Eastside Parkway are a desirable course of action rather than pursuing a plan with the obvious disruptions and shortcomings of the Eastside Parkway.

I support the suspension of further planning or consideration of the Eastside Parkway. Supervisor Parker gives an excellent summary in her recent Face Book post and I support her efforts for conservation and better planning for use of constrained public funds.

It would be nice to see the County, Seaside and Marina come together to determine a Gateway to the Fort Ord Monument somewhere in the 8th and Giggling area. It could be both a recreational and economic boost to the community.

 **Jane Parker** · 3 hrs · 🌐

I'm not convinced that there is a need for a new road (Eastside Parkway) that carves through the middle of a popular recreation area. We need to be clear about the goals we are trying to achieve. I have expressed my opinion that FORA should instead be allocating its share towards improvements on existing regional roads including Highway 1, Highway 68, and Davis Road, before pursuing Eastside Parkway.

I encourage you to learn more and participate in the public process by attending one of the meetings today or sending an email to the FORA Board (board@fora.org).

Some of my concerns I have shared about this project include:

- Is Eastside Parkway needed? There are already existing roads that connect General Jim Moore Boulevard to Reservation Road, and much of the planned development in the upper end of Seaside has not occurred.
- Would Eastside Parkway create third route between Salinas and Monterey? One would have to cut through a series of roads that are currently heavily impacted at rushhour - Fremont Street and Canyon Del Rey. With additional development planned in Del Rey Oaks, this route will become even more difficult.
- There are much more cost effective alternatives to relieving traffic, such as improving existing roads as necessary.
- FORA hasn't yet paid for regional road improvements. FORA committed to helping pay for improvements on Highway 1, Highway 68 and Highway 156. To date, FORA owes \$35 million to TAMC.
- FORA's preferred alignment for Eastside Parkway will destroy a popular recreation area along with 10,000 oak trees.
- The approval of Eastside Parkway would open the door for a project similar to Monterey Downs to be built in the same location at Parker Flats.



DEC 6 **Eastside Parkway Environmental Review...**
 Today · 2 Times · Carpenters Union Hall, 910 2nd...
 5 people interested ★ Interested

 Like  Share

Thank you.

Kind Regards,

Mike and Lisa McGirr
 1081 San Vincente Ave.
 Salinas, CA 93901
 321.432.5322

From: [Juli Hofmann](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Wednesday, December 06, 2017 1:59:19 PM

Dear Board,

FORA needs to re-evaluate the priority that it has placed on developing the Eastside Parkway plan. This plan was originally envisioned to serve Monterey Downs; a project that is not longer a possibility of development. Why then, continue to fund and plan this road, when there is little data to support its current or future need? How does the board justify its stubborn desire to cling to this project when there are better infrastructure projects to support first?

Instead, resources would be better served to improve traffic flows where traffic impacts are clearly more evident and measurable. Please reconsider and look at other project alternatives that would serve more residents and users of the existing roads. It is evident that the parameters of need for the parkway, as originally designed, have changed. The board must recognize this shift and reassess new solutions beyond the Eastside Parkway concept.

Even removing the remaining blight on the base would be a better use of FORA resources as this will lead to development and infill instead of building a road to no where.

Juli Hofmann
Marina

From: [Paul Newman](#)
To: [FORA Board](#)
Cc: [Josh Metz](#)
Subject: Fort Ord Economic Development
Date: Thursday, January 04, 2018 7:16:46 AM

Dear Josh,

Site Selection Magazine's Annual California Report is coming in March!

*Over the last 3 years our subscriber's companies invest \$4.8 billion in new or expanded facilities/operations in California. Will they see what you have to offer to companies on the move?

Can we schedule a 10-minute call tomorrow or the next morning to discuss opportunities for exposure in this report?

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Ad Close Feb 2nd. Art Due February 9th.

*Publishers own data

Sincerely,

Paul

Paul Newman | Regional Director | Site Selection

(770)325-3421 | www.siteselection.com

From: [Molly Erickson](#)
To: [FORA Board](#)
Subject: KFOW letter to FORA BOD - re Eastside Parkway - for Friday's Board meeting
Date: Tuesday, January 09, 2018 2:04:35 PM
Attachments: [18.01.09.KFOW.ltr.to.FORA.BOD.to.re.ESP.item.8.d.pdf](#)

Please see attached. Thank you.

Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214, x14

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214
F: (831) 373-0242

January 9, 2018

Via email

Ralph Rubio, Chair
Members of the Board of Directors
Fort Ord Reuse Authority
Marina, CA

Re: Eastside Parkway - Item 8d, January 12, 2017 Board meeting

Dear Chair Rubio and FORA Directors:

Keep Fort Ord Wild objects to approval of the item. KFOR objects to the unreliable, inaccurate, imbalanced, and unfair presentation in the staff report. Some of the factual information is simply wrong. Numerous claims in the staff report are internally inconsistent with other claims in the report and/or inconsistent with adopted FORA documents and land use plans. Many general comments appear to be made from whole cloth by FORA staff or an anonymous source. FORA's secretive approach is inconsistent with good government, transparency, and a healthy public process. FORA staff should label its comments as by staff only, instead of pretending that the comments came from, or were reviewed by, the public.

The staff report has mischaracterized much of what happened at the "workshops":

- When asked for a show of hands, the afternoon workshop audience voted approximately 100 to 1 against a new Eastside Parkway.
- Many attendees said simply FORA should stop, period. FORA should focus on other projects such as implementing required Reuse Plan plans and policies, fostering healthy economic development, removing blight, and protecting oak woodlands.
- The FORA Executive Officer did not present at the "workshop" events. Instead, Mr. Houlemard required his lower level employees and consultants to make the presentations.
- The FORA presenters refused to answer questions from the public. The FORA presenters appeared fearful of public interaction and constructive dialogue on this very important issue of a controversial new roadway.

Chair Rubio and FORA Directors
Re: Eastside Parkway
January 9, 2018
Page 2

FORA Board members Parker, Adams, Morton, and O'Connell attended the events. They saw what happened and felt the unhappy mood of the public attendees.

The proposed Goals and Objectives "in Attachment A" are unreliable and inaccurate.

The FORA Board should not be lulled into thinking that FORA has learned anything from the past KFOR lawsuit.

There are many problems with the current staff analysis of the issues and the current staff report. Many so-called "primary objectives" (Attachment A; FORA Board packet, pp. 159-161) have been made up by whole cloth by anonymous authors, presumably the FORA staff. The staff report Attachment A does not reflect the comments of the public at the workshops. It is entirely staff's ideas of what staff wants; these ideas were not presented to the public at the workshop. Essentially, FORA staff has not included the public's written comments in the packet, and instead relegated those comments to a separate link that requires separate effort by Board members.

There are myriad problems with the FORA actions and documents to date. In this letter, we provide one example of the unreliable claims in the current FORA staff report:

The primary objectives for implementing the proposed project are:

- Connect the Fort Ord National Monument and California Central Coast Veterans Cemetery to regional roadways (BRP Vol.2 Objective A, pg. 298 and Recreation Policy A-1, pg. 327, . . .)

Contrary to the claim in the FORA staff report, the Reuse Plan did not mention the Fort Ord National Monument or the California Central Coast Veterans Cemetery because neither the Monument nor the Cemetery existed when the Reuse Plan was written and approved. Even worse for FORA, the republished Reuse Plan does not say what the FORA Staff report claims it says. Here is the "BRP Vol.2 Objective A, pg. 298" claimed by the FORA report:

Objective A: An efficient regional network of roadways that provides access to the former Fort Ord.

To a large extent, the attractiveness of the former Fort Ord for redevelopment within the national marketplace will depend on the ability of the regional transportation system to provide for efficient intra- and inter-regional travel. Critical facilities include those most proximate to the former Fort Ord (State Highway 1, Reservation Road, Del Monte Boulevard, Fremont Boulevard), those that connect to Salinas (State Highway 68, Blanco Road, Davis Road), and those

to the north that provide connections to Santa Cruz and the Bay Area (State Highway 1, State Highway 156, U.S. 101). As identified previously, a number of these facilities are currently operating at or near deficient levels of service. Regional growth and the redevelopment of the former Fort Ord will result in the worsening of these conditions. Thus, efforts and improvements that address the efficient operation of these facilities are required.

Adding system capacity through roadway improvements represents the most direct means of mitigating the impacts of increased demand. The operating analysis presented above identified those roadway facilities forecast to operate at deficient service levels in 2015 (see Table 4.2-2). This analysis also resulted in the identification of roadway improvements needed to achieve or maintain acceptable service levels. A listing of these improvements was provided with varying levels of relationship to the reuse of the former Fort Ord. In some instances, these improvements address existing system deficiencies or future deficiencies to which the former Fort Ord has an insignificant contribution. A key step in the transportation analysis process was the identification of the former Fort Ord contribution to the volume increases on the regional roadways examined in this study. This analysis, termed a “nexus” test, was used to determine the former Fort Ord’s share for each of the proposed improvements. This information was in turn used to develop a funding mechanism by which Fort Ord development would pay for its share of the impact on the regional transportation system. Because funding for the non-Fort Ord share may not always be available, the option exists for the use of Fort Ord-generated funding to cover the entire cost of selected improvements to facilitate their implementation. In this situation, the total Fort Ord contribution to all improvements would remain the same as that determined by the nexus test.

(Underlining added.)

Why this FORA claim is wrong: The Reuse Plan objective A addresses offsite regional transportation. The Eastside Parkway would not be a regional offsite road. The Reuse Plan stated no onsite (on-base) traffic mitigations were required.

Here is the second support claimed by FORA staff for the “objective”, “BRP Vol.2 . . . Recreation Policy A-1, pg. 327”:

Recreation Policy A-1: Monterey County shall provide for adequate access to BLM recreation area.

Chair Rubio and FORA Directors
Re: Eastside Parkway
January 9, 2018
Page 4

Why this FORA claim is wrong: The Reuse Plan Recreation Policy A-1 implements Recreation Objective A, which is this: *Objective A: Integrate the former Fort Ord's open spaces into the larger regional open space system, making them accessible as a regional resource for the entire Monterey Peninsula.* In other words, the Policy A-1 is to increase access to the larger regional open space system. Such access already exists, with trail heads at Highway 68, 8th and Gigling, Jerry Smith Trailhead at Intergarrison Road, and the Creekside Terrace trailhead off Reservation Road. Thus, the Monument is already accessible to "the entire Monterey Peninsula" as the Objective A requires. A new Eastside Road would harm the regional open space resources, including Parker Flats and oak woodlands. The Reuse Plan Recreation Policy A-1 addresses all "Fort Ord's open spaces." FORA should not prioritize one open space over another, as this FORA staff report has done here.

Beware of proposals that Board prematurely reject feasible alternative and Reuse Plan.

There is a new effort to abandon the Intergarrison Road alternative to the Eastside Parkway. This alternative alignment is feasible as stated by FORA documents. The alignment should be included as an alternative in the EIR. Rejecting it at this premature stage would not be consistent with CEQA and regional governance.

The Reuse Plan proposed that the Eastside Road go through CSUMB. However, there is a new effort by staff not to follow the Reuse Plan. The staff report Attachment A proposes that the Eastside Parkway "avoid" going through the CSUMB campus. The Board should not approve Attachment A for this and many other reasons.

Conclusion.

The FORA staff report and the FORA process to date is riddled with holes and flaws in every way: from a public policy standpoint, from a public process standpoint, and from a CEQA standpoint. FORA is headed down a path of legal violations similar to FORA's past actions regarding the Eastside Parkway.

FORA should start over and FORA should do it right.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

From: [Andrew Passell](#)
To: [FORA Board](#)
Subject: East side parkway is wrong
Date: Wednesday, January 10, 2018 8:29:21 PM

Please halt all planning for the Eastside Parkway. It will destroy a natural area and promote the wrong kind of development. It will not aid in the redevelopment of areas already developed by the army. It will not address traffic problems.

Andrew Passell

From: [Gary Courtright](#)
To: [FORA Board](#)
Cc: "gacourtright@sbcglobal.net"; [Supervisor Parker](#); [Supervisor Adams](#); [Mayor Gunter](#)
Subject: East Side Parkway
Date: Wednesday, January 10, 2018 4:39:49 PM

To whom it may concern,

I am a constituent of Jane Parker's that lives in South Salinas with my business located in Mary Adams district. Being a businessman and a local advocate for open space and recreation areas, I have attended many FORA meetings including the most recent regarding the East Side Parkway as it directly impact my commute, access to trails and open space. I have been commuting from Salinas to Carmel since 2001. While I am not a civil engineer nor an expert on traffic control, I have traveled through and around former Fort Ord well over 10,000 trips over the years and feel my opinion and experience is worth sharing with you regarding the East Side Parkway. My opinion is that it is not needed in the current design nor if the future design infringes upon the access to open space. I feel that my tax dollars would be better applied to improving traffic flow with existing roads. Specifically, widening of Highway 68 and improving Highway 1. The East Side Parkway will only create another bottleneck where it drops onto 218 or Highway 1, it will do so without improving the overall traffic concerns that it is meant to address.

I strongly urge the FORA Board not to move forward with development of the proposed East Side Parkway.

Respectfully,



Gary Courtright, AKBD

Owner

gary@carmelkitchens.com

p: 831.624.4667 | carmelkitchens.com

26386 Carmel Rancho Lane, Suite 104
Carmel, CA 93923

From: [Linda Bookin Jenkins](#)
To: [FORA Board](#)
Subject: Eastside Parkway Action for meeting January 12
Date: Wednesday, January 10, 2018 3:59:10 PM

Good Afternoon,

As a resident of East Garrison, I am against any impact on the preserved Oak Woodlands Conservation and the trails as well as the wildlife. Not to mention changing the entire scope of the development we all pay and PAY for the infrastructure via mellow roos taxes. We selected this area knowing we were paying for this but for the development and plans, not for this additional unnecessary parkway.

I feel that the current funded improvements of widening Imjin, adding the roundabouts to both Imjin and General Jim will easily abate any traffic concerns. Focus should be on connecting MST services to reduce traffic on the roads rather than make room for more. The route seems cumbersome as well and is indefinite need to further review and alignment into unpopulated areas-there are plenty. Davis Road could be easily widened to connect out to Reservation and Imjin, where the improvements are already planned.

I strongly urge the Board to do further research and study before continuing forward, including public engagement opportunities.

Thank you for the opportunity,
Linda Jenkins

From: [Shirl](#)
To: [FORA Board](#)
Subject: EASTSIDE PARKWAY ACTION
Date: Wednesday, January 10, 2018 3:10:27 PM

STOP !! STOP!!

no need to over build... stop

I'm convinced you all just want to over build STOP NO

- “provide a primary southwest-northeast corridor through former Fort Ord”,
- “serve the area immediately south of CSUMB campus”,
- "avoid bisecting CSUMB Campus”,
- “accommodate and maintain existing and proposed trail networks”, and
- “minimize environmental impacts on existing communities”.

I'm a voter in Monterey County..

Shirley A. Graham-Travel Coordinator

labonitashirl@aol.com

1 831 238 1316

From: [Paola Berthoin](#)
To: [FORA Board](#)
Cc: landwatch@mclw.org
Subject: Eastside parkway proposal
Date: Wednesday, January 10, 2018 9:38:53 PM

I am submitting this letter again in response to the FORA board's decision to move forward on next steps for the Eastside "Parkway" proposal.

What message and legacy do you as individuals want to leave to the children of this area and beyond? One of destroyer of earth's support systems or one who creatively designs solutions that preserve the ecological integrity of the land we all depend on for physical and mental well-being? An approach of using Ecological Design Principles would provide a useful framework for all involved.

Paola Berthoin
25440 Telarana Way
Carmel, CA 93923
www.paolafiorelleberthoin.com
www.passion4place.net
831.624.9467

Begin forwarded message:

From: Paola Berthoin <valentine1661@yahoo.com>
Subject: Eastside parkway proposal
Date: December 6, 2017 at 11:17:28 AM PST
To: board@fora.org
Cc: "landwatch@mclw.org" <landwatch@mclw.org>

Dear Fora Board,

All other options other than the proposed Eastside Parkway (or any other environmentally destructive option) must be considered to the fullest extent as required by CEQA and other applicable laws. This proposal would destroy 10,000 oak trees and associated habitat that is home to much wildlife. It is also land that is used for recreation by many people. Now, more than ever, prime lands such as this maritime chapparal should be preserved. Monterey County is known for its environmental values. Destroying this habitat would be devastating and a real scar on the reputation of Monterey County. We know the far-reaching detrimental effects of the car culture, most significantly, climate change.

As an artist, I have spent many hours painting onsite of the proposed "parkway".

All FORA members and others involved in the decision making process would benefit from spend time out on the land. As Aldo Leopold said many years ago;

"A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." ... [A] land ethic changes the role of Homo sapiens from conqueror of the land-community to plain member and citizen of it."

What message and legacy do you want to leave to the children of this area and beyond? One of destroyer of earth's support systems or one who creatively designs solutions that preserve the ecological integrity of the land we all depend on for physical and mental well-being? An approach of using Ecological Design Principles would provide a useful framework for all involved.

The painting and photograph included with this email depicts part of the area that would be destroyed if the already-deemed illegal parkway moves forward.

Sincerely,

Paola Berthoin

Paola Berthoin
25440 Telarana Way
Carmel, CA 93923
www.paolafiorelleberthoin.com
www.passion4place.net
831.624.9467



From: [William Silva](#)
To: [FORA Board](#)
Cc: [Supervisor Parker](#)
Subject: Eastside Parkway
Date: Wednesday, January 10, 2018 2:33:46 PM

To Whom it May Concern:

I am a Seaside resident homeowner. At the request of Supervisor Jane Parker, I want to express my opinion about the Eastside Parkway concept to the FORA board. I live just down the street from the intersection of General Jim Moore Blvd. and Coe/Eucalyptus Avenue and I think the Eastside Parkway is a GREAT idea. Much of Eucalyptus is already constructed, but closed off and unused. This is a waste of an existing community asset. Highways 1 and 68 are increasingly impacted with commute traffic, but General Jim Moore has much remaining vehicle capacity. Offering another parallel route between the Peninsula and Salinas will have a great positive impact on the community as a whole, even if it increases traffic on General Jim Moore, which would be less convenient for my family. I do hope that such a plan would include a signal or roundabout at the intersection of General Jim Moore and Coe/Eucalyptus. I appreciate the long term vision of FORA and the proposed solution which is simply good public policy, forward thinking, and good stewardship of community resources.

Sincerely,

WILLIAM A. SILVA
President

Legacy Real Estate Group
(831) 647-2447

Woodman Development Co. &
Century Construction Group
(831) 647-2440
(831) 647-2450 fax

24571 Silver Cloud Ct., Suite 102
Monterey, CA 93940

Sent from my iPhone

From: [Jeffrey Weekley](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Wednesday, January 10, 2018 2:51:22 PM

Dear FORA Board,

I encourage you to reconsider the impact of the Eastside Parkway on the irreplaceable oak woodlands that would be destroyed if this "road to nowhere" is built.

In 2016, about 7,400 animals were killed or injured on California roads. I have myself seen deer, coyotes, raccoons, skunks, possums, and all manner of bird carcasses on Monterey County Roads. Bisecting sensitive habitat with more roads will only increase the carnage.

Monterey County is prized for its natural beauty and open spaces. We should not be building roads through these places.

Respectfully submitted,

Jeffrey D. Weekley
124 Belle Drive
Marina, CA 93933
831-236-8432

From: [Dawn Poston](#)
To: [FORA Board](#)
Subject: East Side Parkway
Date: Thursday, January 11, 2018 8:06:15 AM

Dear FORA members,

Please hold your ground and vote FOR the building of the East Side Parkway. It will bring much needed relief to Highway 68 and Highway 1. Remember that it was called for in the award winning Base Reuse Plan agreed to by all parties almost 20 years ago. Dawn Poston, 11575 McCarthy Road, Carmel Valley, 831 659 3331

From: [Michael McGirr](#) on behalf of mike.mcgirr@icloud.com
To: [FORA Board](#)
Subject: Not so fast on Eastside Parkway.
Date: Thursday, January 11, 2018 8:31:19 AM
Attachments: [image001.png](#)
Importance: High

FORA Board,

It is mind boggling to me that FOR A is still pushing such a flawed project as the Eastside Parkway. Please take the funds allocated to this boondoggle and reallocate them to preserving the natural lands in Fort Ord.

Please see my message from December 6th below. My opinion and my vote does not support construction of a road that is not needed through a natural lands that are so greatly needed.

Kind Regards,

Mike and Lisa McGirr

1081 San Vincente Ave.

Salinas, CA 93901

321.432.5322

From: Michael McGirr [mailto:icl501m@me.com]
Sent: Wednesday, December 6, 2017 12:59
To: 'Board@FORA.org' <Board@FORA.org>
Cc: Lisa McGirr (LisaMcGirr@comcast.net) <LisaMcGirr@comcast.net>; 'markeyka@co.monterey.ca.us' <markeyka@co.monterey.ca.us>; 'district4@co.monterey.ca.us' <district4@co.monterey.ca.us>
Subject: Not so fast on Eastside Parkway.

Dear FORA Board,

As a concerned citizen of Monterey County and an avid outdoorsman I believe Supervisor Jane Parker has given a clear and concise summary of why alternatives to the Eastside Parkway are a desirable course of action rather than pursuing a plan with the obvious disruptions and shortcomings of the Eastside Parkway.

I support the suspension of further planning or consideration of the Eastside Parkway. Supervisor Parker gives an excellent summary in her recent Face Book post and I support her efforts for conservation and better planning for use of constrained public funds.

It would be nice to see the County, Seaside and Marina come together to determine a Gateway to

the Fort Ord Monument somewhere in the 8th and Giggling area. It could be both a recreational and economic boost to the community.

 **Jane Parker** 3 hrs · 🌐

I'm not convinced that there is a need for a new road (Eastside Parkway) that carves through the middle of a popular recreation area. We need to be clear about the goals we are trying to achieve. I have expressed my opinion that FORA should instead be allocating its share towards improvements on existing regional roads including Highway 1, Highway 68, and Davis Road, before pursuing Eastside Parkway.

I encourage you to learn more and participate in the public process by attending one of the meetings today or sending an email to the FORA Board (board@fora.org).

Some of my concerns I have shared about this project include:

- Is Eastside Parkway needed? There are already existing roads that connect General Jim Moore Boulevard to Reservation Road, and much of the planned development in the upper end of Seaside has not occurred.
- Would Eastside Parkway create third route between Salinas and Monterey? One would have to cut through a series of roads that are currently heavily impacted at rushhour - Fremont Street and Canyon Del Rey. With additional development planned in Del Rey Oaks, this route will become even more difficult.
- There are much more cost effective alternatives to relieving traffic, such as improving existing roads as necessary.
- FORA hasn't yet paid for regional road improvements. FORA committed to helping pay for improvements on Highway 1, Highway 68 and Highway 156. To date, FORA owes \$35 million to TAMC.
- FORA's preferred alignment for Eastside Parkway will destroy a popular recreation area along with 10,000 oak trees.
- The approval of Eastside Parkway would open the door for a project similar to Monterey Downs to be built in the same location at Parker Flats.



DEC 6 **Eastside Parkway Environmental Review...**
Today - 2 Times - Carpenters Union Hall, 910 2nd...
5 people interested

 Like  Share

Thank you.

Kind Regards,

Mike and Lisa McGirr
1081 San Vincente Ave.
Salinas, CA 93901
321.432.5322

From: [Ken Fittro](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Thursday, January 11, 2018 9:06:26 AM

Board Members:

Can someone please explain to me why Marina has 5 currently approved and in progress major developments, Monterey has 15 approved projects, Salinas has 4 major projects and Sand City has 2 major Ocean Front Projects that have been approved for development. While the City of Seaside has not been approved for a development on Fort Ord since it closed. While Carmel, Pebble Beach, and Carmel Valley are allowed to develop thousands of acres of pristine wilderness one McMansion at a time?

Please build the Eastside Parkway, and prove that there is not an ongoing active campaign to keep Seaside small.

Thank you,

Ken Fittro, M.Ed., M.S.
An actual resident of the City of Seaside
Sent from my iPhone

From: [Virgil Piper](#)
To: [FORA Board](#)
Subject: Eastside Parkway
Date: Thursday, January 11, 2018 11:48:26 AM

Chairman of the Board and Board Members,

I am in favor of a freeway pathway through the Fort Ord development area because any decent future planning **requires** thoughtful consideration of future traffic needs which will result from Fort Ord Development.

I feel FORA might achieve more universal support if their proposal included an actual **diagram or drawing** of the route and **cost** of the “Eastside Parkway.”

The fact that TAMC and Monterey County have approved roundabout plans for the only two Salinas-to-Monterey arterial routes would seem to favor a “freeway” design for a new Fort Ord Parkway which features on-and-off ramps and overpasses where other roads intersect. Additionally, it might be advisable to offer an alternative to assist the over-flow traffic resulting from the poor planning involved with the two afore-mentioned Salinas/Monterey roadways.

It would seem sensible that any Parkway design should also include a back door access to the Laguna Seca raceway.

ss: *Virgil M. Piper*

Marina, CA.

From: [Laura Ferree](#)
To: [FORA Board](#)
Subject: FORA Plans - Jan. 12 Meeting, public input
Date: Thursday, January 11, 2018 12:17:55 PM

Dear Supervisors,

I am writing about the stated objectives - and my objections to omissions, as well as my belief that the need for the East Parkway has not been sufficiently established in this location.

There appears to be no stated formal plans to protect the oak woodlands.
There appears to be no stated formal plans to mitigate / eliminate the impact of 18,000 cars per day on the East Garrison neighborhood.

For both of these reasons, I do NOT support plans for this parkway at this time.

Laura Ferree

Laura and Gerry Ferree
lauragerry@mac.com

11/17/17
Item 8c

I, Michael Salerno, declare as follows:

This Declaration is submitted to Fort Ord Reuse Authority regarding the South Boundary Road expansion project. I am a member of Keep Fort Ord Wild (KFOR).

I am familiar with South Boundary Road. Since approximately 2007, I have road biked the full length of South Boundary – out to Laguna Seca – at least once a month. Much of the road between General Jim Moore and Rancho Saucito is lined with barbed-wire fencing. Oak trees line much of the south side of the road.

I am familiar with the issues of oak trees and oak tree mitigation through the forestry reports for Eastside Parkway, Monterey Downs, Veterans Cemetery, East Garrison, and other projects in Fort Ord. For example, Staub Forestry reports counted the oak trees to be affected by the Eastside Parkway, Veterans' Cemetery and Monterey Downs projects. Staub estimated oak trees at a density of approximately 148 trees per acre for the Eastside Parkway project (Staub report, 2011, p. 4). Staub estimated oak trees at a density of approximately 162 trees per acre for the Eastside Parkway project (Staub report, 2010, p. 5) which Staub said is "certainly within the normal ranges of variability for coast live oak woodland." Staub estimated oak trees at a density of approximately 121 trees per acre for the Monterey Downs project (Staub report, 2012, appendix 10-03 to Monterey Downs DEIR, p. 7)

The EA/MND for the South Boundary road project oddly did not count the oak trees that would be affected by the project. I estimate that the oak trees that would be affected by the South Boundary road project easily would be more than 500, and probably well over 1,000. The EA/MND states that 5.1 acres of coast live oak woodland, as shown in the EA/MND figures, would be impacted by the project. Multiplying 5.1 by 121 trees/acre, the lowest density used by Staub in the three reports cited above, results in 617 oak trees, and the total oaks impacted would be significantly more than that because that estimate does not include the many single and clusters of oak trees that line South Boundary Road in areas that are outside of and not included in the EA/MND figures as "woodland". These single oaks and clusters of oaks would be harmed – most likely removed entirely – by the proposed road project because they line the road – on one side places and on both sides in places. The EA/MND also does not adequately

①

address the changed impacts to the drainage that currently supports the remaining oak trees that would remain, because the new road proposes curbs and gutters that would remove much of the current irrigation for the oaks.

The issue of mitigation of oak trees is a significant problem at Fort Ord. First, the Reuse Plan's oak woodland conservation protections have not been adopted. The County and cities have not adopted the protections of oaks that the Reuse Plan requires. Second, there have not been reasonable efforts to identify with certainty the areas, if any, on Fort Ord that are appropriate for oak tree mitigation planting as mitigation. For example, recently there was a requirement for mitigation of 400 oak trees cut down for Phase One of Veterans Cemetery. The question was where the replacement trees should be planted. The biological consultants explained at a public meeting in 2017 how very few locations at Fort Ord are suitable for replanting oak trees within the County land and Seaside, based on research, where oaks grow now, and where newly planted oaks reasonably would be expected to thrive. The consultants were saying, essentially, that oaks grow in certain places for a reason, because those areas are conducive to their growth. Earlier this year, the Fort Ord Committee of the Board of Supervisors (two County supervisors) was presented with options to choose to plant replacement oaks as mitigation for the cemetery. The cemetery document had not identified locations for replacement oak tree planting as mitigation. The issue of location of mitigation was being done after-the-fact, long after the environmental documents were certified and long after the cemetery was constructed and operational. The mitigation issues were addressed inconclusively and unsatisfactorily by the Committee.

This issue is important because the issue of where to plant replacement oak trees as mitigation is critical to numerous projects at Fort Ord. It is not sufficient for an environmental document to simply require replacement of oak trees as mitigation unless a specific location is designated as suitable and that location is available for actual long-term mitigation. Otherwise, the mitigation would not be effective and not be enforceable. The location of mitigation sites is not a political decision, to be decided on the fly, after the fact. It is a scientific decision that should be included in the environmental analysis, under the circumstances. It was not addressed in the EA/MND for South Boundary Road/Gigling Road.

(a)

The EA/MND claims that the Monterey Pine trees are not native and therefore do not need to be mitigated. But the assumption that the pine trees are not native is not supported and does not make sense. The dense pine woodlands south of South Boundary road do not appear to be planted. They appear to be naturally growing, and the impacts on them should be mitigated. These trees are the only Monterey Pine forest on Fort Ord, as far as I know. This forest is not far from the pine trees along Highway 68, where pines are naturally occurring.

There are many clumps of pampas grass along the South Boundary Road, both immediately adjacent to the road and within 30 feet of the existing paving. The vast majority of the clumps are to the north of the road. Pampas is invasive and removal often causes further spreading of the plants. According to scientific research, pampas grass displaces native plants and creates habitats that are lower in biodiversity. Furthermore, pampas grass has leaf blades that are highly undesirable as food or shelter to birds and other wildlife, and can actually cause physical harm to those animals, including humans, because the leaves are extremely sharp. In forests it competes with seedling trees and can slow their establishment and growth. Pampas grass creates a fire hazard with excessive build-up of dry leaves, leaf bases, and flowering stalks. In addition, heavy infestations can block access to plantations and pose a significant fire hazard. In conservation areas pampas grass competes with native vegetation, reduces the aesthetic and recreational value of these areas, and also increases the fire potential. Pampas grass has escaped to become an invasive weed in Fort Ord and along the California coast. The EA/MND acknowledges the presence of pampas grass but fails to disclose and mitigate the foreseeable impacts of spreading the invasive plant, including to the National Monument site.

The intersection with General Jim Moore is a difficult intersection for vehicles and bicyclists. It is awkward because it is on a slope and visibility is poor. Slow-moving recreational vehicles will significantly exacerbate the problems, because they move more slowly, have longer response times, need more space to maneuver and get up to speed, and block visibility of other vehicles, bicyclists and pedestrians.

The South Boundary Road project as shown on the CIP map extends all the way to York Road, by the EA/MND project description says that the road widening would go only 200 feet past Rancho Saucito. That is a big difference. Currently and for as long as I can remember, South Boundary Road has been blocked off approximately 200 feet east of Rancho Saucito. The roadway is blocked to vehicles by a permanent metal gate. So cars cannot as a usual practice drive on South Boundary to York Road. Extending access on South Boundary to York Road is a significant expansion of the project as described in the EA/MND. The expansion would change traffic flow in ways not evaluated or mitigated in the EA/MND, in my opinion. Extending access on South Boundary to York Road also would create conflict in vehicle traffic on York, where currently the road veers easterly but the extension to South Boundary Road is in a north-south direction. In other words, traffic wanting to go straight to South Boundary would conflict with traffic flowing westbound on York Road headed to Highway 68. That is currently an uncontrolled intersection and sightlines are poor because it is on a slope, there is a berm that blocks visibility, and York Road curves.

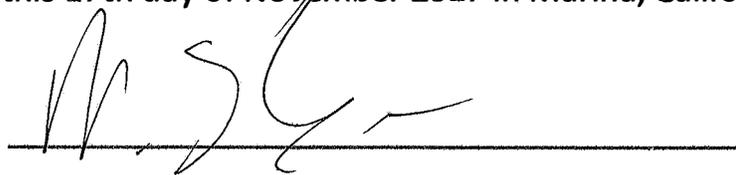
The EA/MND says there will not be streetlights added to South Boundary, but the recent documents presented to FORA indicate that there will be streetlights. That would be a significant project change that likely would have foreseeable adverse impacts that have not been adequately evaluated or mitigated in the EA/MND.

KFOW has communicated with FORA in the past about FORA's failure to enforce the Reuse Plan mitigation measures, including as to the cities of Monterey and Del Rey Oaks. FORA staff has repeatedly stated that the intent was and is that those cities would take over the policies and programs intended for the County of Monterey, because those cities took over land along South Boundary Road that at the time of the Draft EIR had been intended to go to the County and so the County was assigned those policies and programs. The EA/MND does not reflect that understanding. Nor does the EA/MND adequately disclose all the applicable Reuse Plan goals, policies and programs that apply to the project site, and discuss the lack of consistency of the project with those goals, policies and programs.

The EA/MND fails to address these issues adequately. I believe an EIR should be prepared for the South Boundary Road project.

I have personal knowledge of each of the facts stated above and each of the opinions stated in this declaration are based upon my knowledge, experience, skill, education and training.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration is executed under penalty of perjury under the laws of the State of California this 17th day of November 2017 in Marina, California.

A handwritten signature in black ink, appearing to read "M Salerno", is written over a solid horizontal line.

Michael Salerno