



FORT ORD REUSE AUTHORITY

REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS Thursday, June 11, 2020 at 2:00 p.m.

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON JUNE 10, 2020.

THIS MEETING MAY BE ACCESSED REMOTELY USING THE FOLLOWING ZOOM LINK:
<HTTPS://ZOOM.US/J/956115894>

PLEASE REVIEW FORA'S UPDATED REMOTE MEETINGS PROTOCOL AND BEST PRACTICES HERE:
HTTPS://FORA.ORG/REMOTE_MEETINGS_PROTOCOLS

1. CALL TO ORDER

2. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case.
- b. Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code § 54956.9 (d)(2) based on receipt of a notice of intent to sue from: California Native Plant Society.
- c. Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code § 54956.9 (d)(2) based on receipt of a notice of intent to sue from: Keep Fort Ord Wild.
- d. Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code § 54956.9 (d)(2) based on receipt of a claim pursuant to the Government Claims Act by: Resource Environmental, Inc.

3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

5. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

6. CONSENT

- a. April 30, 2020 Board Meeting Minutes **(p. 3)**
Recommendation: Approve April 30, 2020 Minutes.
- b. May 6, 2020 Executive Committee Meeting Minutes **(p. 7)**
Recommendation: Approve May 6, 2020 Minutes.
- c. Transition Status Report **(p. 9)**
Recommendation: Receive Transition Status Report
- d. Federal Wildlife Agency Notification **(p. 12)**
Recommendation: Authorize Executive Officer to transmit letter to United States Fish & Wildlife Service (“USFWS”) regarding current habitat conservation directions.

- e. Memorandum of Agreement and Assignment of Contract for General Fund Project Transfer (Oak Woodlands Conservation Planning) (p. 15)

Recommendation:

Approve Resolution 20-xx: Authorizing Executive Officer to execute:

- i. A Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning (the “MOA”); and
- ii. An Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition (the “Assignment”), each to support the transfer of one General Fund Project, in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate to carry out the purposes of the MOA and Assignment.

7. BUSINESS ITEMS

INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Consider Certification of Final Environmental Impact Report for Fort Ord Multi-Species Habitat Conservation Plan Project (p. 36)

Recommendation(s):

- i. Adopt the Resolution of Findings (Attachment A hereto) which certifies the Final Environmental Impact Report including the Responses to Comments to the Draft Environmental Report for the Fort Ord Multi-Species Habitat Conservation Plan Project (the “Project”).
- ii. Take no action approving or disapproving the Project itself.

- b. 2018 Transition Plan Update (p. 46)

Recommendation(s):

- i. Receive 2018 Transition Plan Update Report
- ii. Adopt Resolution 20-xx: Approving 2018 Transition Plan Update

- c. Unallocated Funds Distribution (p. 62)

Recommendation(s):

- i. Receive Unallocated Funds Distribution Report
- ii. Provide Staff Direction

8. PUBLIC COMMENT PERIOD

INFORMATION

Members of the public wishing to address the Board on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Board action. Due to the [Governors Stay at Home Order](#) and recent [Executive Order related to Public Meetings Protocols](#), all FORA Meetings will now be conducted via Zoom. Public comments should be emailed to board@fora.org. Thank for your patience and understanding during these unprecedented times.

9. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

10. ADJOURNMENT

NEXT MEETING: Friday, June 19, 2020 AT 1:00 P.M.

The video and meeting materials are available online at www.fora.org
Contact Deputy Clerk Harry Tregenza with questions or concerns: harry@fora.org



**FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS SPECIAL MEETING MINUTES
2:00 p.m., Thursday, April 30, 2020 | This meeting was held at the following Zoom
link: <https://zoom.us/j/956115894>**

1. CALL TO ORDER

Chair Jane Parker called the meeting to order at 2:01 p.m.

2. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, two potential cases

Time Entered: 2:03

Time Exited: 2:42 p.m

3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

FORA Authority Counsel Jon Giffen announced that the FORA Board met in closed session on Item 2a and that there is nothing to report out.

4. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Chair Jane Parker announced that FORA Staff has prepared a proclamation to honor Edith Johnsen and requested that the FORA Board approve it addition to the meeting's agenda.

MOTION: On motion by Board member Phillips, seconded by Board member Carbone and carried by the following vote, the Board moved to add an item to the agenda to approve a resolution acknowledging Edith Johnsen.

MOTION PASSED UNANIMOUSLY

Executive Officer Joshua Metz announced the following:

- The Fort Ord Redevelopment Process was recognized by the EPA as a National Federal Facility Excellence Site Reuse Award. The award recognized innovative thinking and cooperation among federal agencies that has led to noteworthy restoration and reuse of federal facility superfund sites.
- The cooperation between Joby Aviation, the City of Marina, and Monterey County has led to setup of a tent to be used as an alternative site for COVID-19 patient care as needed at the Marina Airport.

- Progress is being made on completion of the Habitat Conservation Plan (“HCP”) Environmental Impact Report (“EIR”).
- If any Board members have input on the letter that FORA will be sending to the U.S. Fish and Wildlife Service (“USFWS”), please send those comments to FORA staff.

Chair Jane Parker welcomed former FORA Executive Officer Michael Houlemard to the meeting.

5. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Mayor Pro-Tem Gail Morton (City of Marina), Supervisor Mary Adams (County of Monterey), Councilmember Alan Haffa (City of Monterey), Mayor Ian Oglesby (City of Seaside), Councilmember Jon Wizard (City of Seaside), Mayor Joe Gunter (City of Salinas), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Cynthia Garfield (City of Pacific Grove), Mayor Mary Ann Carbone (City of Sand City), Councilmember John Gaglioti (City of Del Rey Oaks), Councilmember Alan Haffa (City of Monterey)

Ex-officio (Non-Voting) Board Members Present:

Col. Gregory Ford (United States Army), David Martin (Monterey Peninsula College), Dr. Eduardo Ochoa (CSUMB), Debbie Hale (TAMC), Toby Uptain-Villa (17th State Senate District), Bill Collins (BRAC)

6. CONSENT

- a. Amended December 13, 2019 Board Meeting Minutes
- b. March 12, 2020 Board Meeting Minutes

MOTION: On motion by Board member Phillips, seconded by Board member Oglesby and carried by the following vote, the Board moved to approve the consent agenda, with one correction to the March 12, 2020 Board Meeting Minutes.

MOTION PASSED UNANIMOUSLY

7. BUSINESS ITEMS

- a. Building Removal Bond Funding Agreements

Mr. Metz introduced the item and noted that Mr. Mark Northcross will be presenting on this item. Mr. Metz noted that the main subject of today’s presentation is the six different funding agreements between FORA and the jurisdictions that will be receiving bond proceeds. Mr. Northcross then expanded on this and discussed the details of the agreement. Mr. Northcross then answered questions from the members.

MOTION: On motion by Board member Oglesby, seconded by Board member Carbone and carried by the following vote, the Board moved to approve

Resolution 20-xx: Approving, and Authorizing the Execution and Delivery of, Building Removal Funding Agreements in Connection with Tax Allocation Bonds to Fund Building Removal Costs, and Approving Related Actions.

MOTION PASSED UNANIMOUSLY

b. CalPERS Liability Funding Strategy

Mr. Metz introduced the item, noting that FORA's CalPERS liability has increased and that this increase needs to be addressed before FORA sunsets in June. Mr. Metz noted that Mr. Northcross, Mr. Thimmig, and Ms. Catherine MacLeod are on the call discuss the item and answer any questions. Mr. Northcross started the discussion, giving a history of how FORA got to where it is with this item and explaining what FORA can do with regards to its increased CalPERS liability. Ms. MacLeod then presented on the details of the CalPERS liability and discussed how and why FORA's liability has increased. Mr. Northcross, Ms. MacLeod, Ms. Rodriguez, and Ms. Flint answered questions from the members. Public comment was then heard on this item.

c. Capital Improvement Program ("CIP") Project Transfers Status

Mr. Metz introduced the item and noted that Kristie Reimer will be presenting on the item. She gave a background on the different projects, and discussed the status of each.

d. Consultant Services Contract Amendments

Mr. Metz introduced the item, noting that the consultants talents are needed to help FORA staff finish all projects by the end of June. He went through each of the contract amendments, discussing work that each consultants have completed, the work still needed to be done, and the amount of contract amendment. Mr. Metz, Mr. Giffen, and Ms. Reimer answered questions from members. A discussion took place among the members regarding the consultant services needed to review the consistency determination for City of Seaside's Campus Town project.

MOTION: On motion by Board member Haffa, seconded by Board member Carbone and carried by the following vote, the Board moved to authorize the Executive Officer to approve \$112,250 of contract amendment for NHA Advisors, The Don Chapin Company, and Regional Government Services ("RGS").

MOTION PASSED UNANIMOUSLY

e. Monterey County Local Agency Formation Commission ("LAFCO") Processing Fees

Mr. Metz introduced the item and gave a background on the processing fees and why this fee has come up.

MOTION: On motion by Board member Oglesby, seconded by Board member Garfield and carried by the following vote, the Board moved to authorize payment of LAFCO processing fees.

MOTION PASSED UNANIMOUSLY

- f. Proclamation Honoring Edith Johnsen
Chair Parker introduced the item and Mr. Metz displayed the proclamation on the screen for members to see. Mr. Metz noted that former FORA Executive Officer Michael Houlemard and members of the Monterey Bay Veterans community provided input on this proclamation.

MOTION: On motion by Board member Phillips, seconded by Board member Carbone and carried by the following vote, the Board moved to approve Resolution 20-xx: Memorial Proclamation for Edith Johnsen.

MOTION PASSED UNANIMOUSLY

Mr. Phillips read the proclamation aloud to the FORA Board and public. FORA Board members and members of the public shared personal anecdotes and stories regarding their experiences with Edith Johnsen.

8. PUBLIC COMMENT

No public comment was received.

9. ITEMS FROM MEMBERS

None

10. ADJOURNMENT at 4:42 p.m.

Minutes Prepared by:
Harrison Tregenza
Deputy Clerk

Approved by:

Joshua Metz Executive Officer



**FORT ORD REUSE AUTHORITY (“FORA”)
EXECUTIVE COMMITTEE MEETING MINUTES**

Wednesday, May 6, 2020 at 2:30 p.m. | This meeting was held at the following Zoom link:
<https://zoom.us/j/956115894>

1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

The meeting was called to order at 2:31 p.m.

The following members were present:

Supervisor Jane Parker (County of Monterey)
Frank O’Connell (City of Marina)
John Gaglioti (City of Del Rey Oaks)
Ian Oglesby (City of Seaside)
Alan Haffa (City of Monterey)
Dr. Eduardo Ochoa (CSUMB)

2. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Mr. Metz noted that FORA has received correspondence from the following parties:
 - Stamp Erickson Law Firm
 - LAFCO
 - MCWD regarding reimbursement funds to the RUWAP pipeline
- Mr. Metz took a moment to appreciate the work of the FORA staff
- Mr. Metz answered questions from the members regarding the May 6, 2020 Administrative Committee Meeting.

3. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Executive Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

There were no public comments received.

4. APPROVAL OF MEETING MINUTES

- a. April 1, 2020 Meeting Minutes

MOTION: On motion by Committee member O’Connell and seconded by Committee member Gaglioti and carried by the following vote, the Executive Committee moved to approve the meeting minutes of April 1, 2020.

MOTION PASSED UNANIMOUSLY

5. May 14, 2020 DRAFT BOARD MEETING AGENDA REVIEW

Mr. Metz started off the review by going over closed session items. Mr. Giffen answered questions from members regarding closed session. Mr. Metz then reviewed the consent agenda with Ms. Rodriguez discussing Items 6c and 6d. Mr. Metz discussed the business items and answered questions from the members, along with Ms. Rodriguez. A discussion

took place among the members on agenda items and what they would like added and removed. In addition, a discussion took place regarding the timing of the Memorandum of Agreements (MOAs) and how and when they will be voted on. Ms. Flint then answered questions from members regarding the 2020 Transition Plan.

MOTION: On motion by Committee member Oglesby and seconded by Committee member Gaglioti and carried by the following vote, the Executive Committee moved to adopt the May 14, 2020 Draft Board meeting agenda with the following changes:

- Remove Item 7a
- Add legal strategy in Closed Session
- Add finance options in Open Session
- Add item on Community Facility Agreements (CFD) for the Conveyance of CFD dollars or further discussion on how to get there.

MOTION PASSED UNANIMOUSLY

6. ITEMS FROM MEMBERS

None

7. ADJOURNMENT at 3:28 p.m.

Minutes Prepared by:
Harrison Tregenza
Deputy Clerk

| FORT ORD REUSE AUTHORITY BOARD REPORT | | |
|--|--------------------------|---------------------------|
| CONSENT ITEM | | |
| Subject: | Transition Status Report | |
| Meeting Date: | June 11, 2020 | INFORMATION/ACTION |
| Agenda Number: | Item 6c | |

RECOMMENDATION(S):

Receive Transition Status Report.

BACKGROUND/DISCUSSION:

FORA staff and its consultant teams continue to work collaboratively to ensure a smooth transition to sunset on June 30, 2020. The team has held multiple meetings with the Local Agency Formation Commission (LAFCO) staff and numerous internal planning sessions for the past several months. We also continue to have coordination and transition meetings with Monterey County and other agency staff regarding post-FORA administration, finance and human resources functions. A summary of completed actions is provided below:

1. Successfully managed the transition of Local Redevelopment Authority and Economic Development Conveyance successor to the City of Seaside.
2. Complete facilitation of the Habitat Working Group.
3. Finalized distribution of Community Facilities District Funds (CFD) for Habitat.
4. Transferred lead agency status and responsibility for Capital Improvement Program (CIP) projects to the cities of Marina, Seaside, and Del Rey Oaks.
5. Completed Mid-Year Budget.
6. Recorded Master Resolution.
7. Finalized CalPERS liability funding strategy through 115 Trust balance and Bond proceeds.
8. Completed Campus Town Consistency Determination.
9. Successfully managed the issuance of bonds for building removal in the cities of Marina and Seaside.

Ongoing/Pending activities include:

1. Resolving pending legal issues:
 - a. REI (June 12, 2020 Mediation).
 - b. East Garrison Partners (pending)
 - c. California Native Plants Society (pending).
2. Completing transfer of records, files, and exhibits to the County of Monterey.
3. Arranging for transfer of website(s) and electronic media to the County of Monterey.
4. Finalizing distribution of remaining funds prior to FORA Sunset.
5. Completed Final Environmental Impact Report for the Fort Ord Habitat Conservation Plan, pending acceptance by the FORA Board.

6. Addressing Carpenters Union Local 605 concerns by including Prevailing Wage language in the 2018 Transition Plan Update, subject to Board acceptance.
7. Updating the 2018 Transition Plan, pending Board acceptance.

FISCAL IMPACT:

None.

COORDINATION:

Authority Counsel, Executive Officer, Finance

Prepared by Kendall Flint, RGS. and Approved by:


Joshua Metz

ATTACHMENTS:

- A. Planned Board Meeting Dates and Agenda Items

Proposed FORA Board Calendar

Friday, June 19, 2020 (Special Meeting)

1:00 PM to 3:00 PM

1. Consider Certification of EIR 2nd Vote (If needed) ACTION
2. Allocation of Remaining FORA Funds 2nd INFORMATION/ACTION
3. 2018 Transition Plan Update ACTION 2nd Vote (if Needed) ACTION
4. Post-FORA Admin/Fiscal Contract ACTION
5. Post-FORA Legal Contract ACTION

Friday, June 26, 2020 (Special Meeting)

1:00 PM

1. Possible Closed Session
2. Remaining Items TBD

June 30, 2020 SUNSET

| FORT ORD REUSE AUTHORITY BOARD REPORT | |
|--|--------------------------------------|
| CONSENT ITEM | |
| Subject: | Federal Wildlife Agency Notification |
| Meeting Date: | June 11, 2020 |
| Agenda Number: | 6d |
| | ACTION |

RECOMMENDATION:

Authorize Executive Officer to transmit letter to United States Fish & Wildlife Service (“USFWS”) regarding current habitat conservation directions.

BACKGROUND/DISCUSSION:

On March 31, the USFWS contacted the FORA Executive Officer with a request for formal notification about the new habitat conservation directions being pursued by FORA and its member agencies. FORA Staff and consultants drafted the attached letter describing:


- a) Drivers of Habitat Conservation Plan (“HCP”) related policy changes.
- b) Deliberations/considerations of the Habitat Working Group (“HWG”).
- c) HWG recommendations to FORA Board regarding distribution of Community Facilities District (“CFD”) Habitat Set-aside funds to individual land use jurisdictions according to projected habitat management needs (based on total acres to be managed under the Habitat Management Plan (“HMP”).
- d) Board actions to continue pursuing Environmental Impact Report (“EIR”) Certification.

The letter includes a request for USFWS input on potential paths forward under Federal Endangered Species Act and National Environmental Policy Act (“NEPA”) regulations, with focus on the implications of:

- 1. Officially withdrawing its ITP application and whether it could be amended by a different applicant at a later date;
- 2. Not completing the Environmental Impact Statement (“EIS”) at this time and whether NEPA compliance could be continued by a different applicant at a later date; and
- 3. Whether there are other options available that could support potential future permitting efforts.

COORDINATION:

Authority Counsel. Denise Duffy & Associates. ICF International.

Prepared & Approved by  _____
 Joshua Metz, Executive Officer

ATTACHMENTS:

- A. DRAFT USFWS Notification Letter, June X, 2020.

June X, 2020

Leilani Takano
Assistant Field Supervisor, North Coast Division
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Subject: Status of the Draft Fort Ord Multi-Species Habitat Conservation Plan

Dear Ms. Takano,

The purpose of this letter is to inform you of the status of the Draft Fort Ord Multi-Species Habitat Conservation Plan (Draft HCP), which was prepared by the Fort Ord Reuse Authority (FORA) in support of its Incidental Take Permit (ITP) application submitted to the U.S. Fish and Wildlife Service (USFWS), and request input from the USFWS on the path forward under Federal Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) regulations.

As you are aware, a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared for the Draft HCP in accordance with NEPA and California Environmental Quality Act (CEQA) and circulated for public review from November 1, 2019 to December 16, 2019. Several critical issues were identified prior to, during, and after the public review period that are affecting the successful completion of this important regional habitat conservation project. Specifically, concerns have been raised regarding:

- the high cost and feasibility of funding the habitat management requirements as identified in the Draft HCP;
- the feasibility of being able to complete the NEPA/CEQA process in the allotted timeframe given FORA's sunset date of June 30, 2020;
- California Department of Fish and Wildlife's uncertainty as to the Bureau of Land Management's future role in providing mitigation lands (without the use of Federal lands as mitigation, impacts to state listed species may not be fully mitigated under the California Endangered Species Act (CESA), leaving the Permittees uncertain of potential additional mitigation requirements); and
- ITP implementation and requirements related to the formation and structure of a Joint Powers Authority (JPA) and stay-ahead provision.

As a result, the FORA Board of Directors (Board) formed the Habitat Working Group (HWG), an ad-hoc committee to meet beginning January 10, 2020 to: identify possible options for jurisdictions and local entities to revise the HCP to address the concerns listed above or to comply with habitat management requirements under the Habitat Management Plan (HMP) in lieu of adopting an HCP.

To address these concerns and support discussions, FORA and its consultants prepared and provided materials to the HWG, including but not limited to: questions for the regulatory agencies; potential

reduced and/or phased take approaches to address Permittee concerns while meeting regulatory agency requirements; a draft JPA agreement and overview of potential JPA structuring options; funding models under various development scenarios; a draft cost model for implementation of the HMP; a legal opinion on options related to the completion of the CEQA process; and an alternatives analysis of the allocation of the Community Facilities District (CFD) funds collected by FORA for the purpose of funding habitat management activities.

The HWG held 11 meetings from January 10 to March 27 before sending recommendations to the Board. Specifically, the jurisdictions supported a recommendation for the CFD fees to be individually allocated to the jurisdictions to carry out habitat management requirements under the HMP. At the Board meeting on April 17, 2020, the Board discussed and approved an allocation formula for the CFD funds.

Concurrent with the HWG meetings, the Board, as CEQA Lead Agency, considered options to complete the EIR process. On March 12, 2020, the Board voted to complete the EIR. The Final EIR was completed and is available online at: <https://fora.org/habitat.html>. The Final EIR and Draft HCP will be considered by the Board in June 2020.

In light of the changed circumstances, FORA is requesting input from the USFWS to determine options for the path forward under ESA and NEPA regulations. FORA, as a regional agency and the ITP applicant, would appreciate a comprehensive understanding of the implications of:

1. officially withdrawing its ITP application and whether it could be amended by a different applicant at a later date;
2. not completing the EIS at this time and whether NEPA compliance could be continued by a different applicant at a later date; and
3. whether there are other options available that could support potential future permitting efforts.

For over 22 years, FORA, as a regional agency, has invested significant time and funding to support a base-wide, holistic approach to habitat management on the former Fort Ord. FORA appreciates the time and effort the USFWS has also put into this regional habitat planning effort. FORA and the USFWS have a vested interest in providing the greatest outcome from this effort that could benefit the jurisdictions upon FORA's sunset.

I look forward to discussing the path forward with you. Please do not hesitate to contact me at (831) 883-3672 or josh@fora.org to set up a meeting.

Sincerely,

Joshua Metz
Executive Officer
Fort Ord Reuse Authority

cc:

| FORT ORD REUSE AUTHORITY BOARD REPORT | | |
|--|--|---------------|
| CONSENT ITEM | | |
| Subject: | Memorandum of Agreement and Assignment of Contract for General Fund Project Transfer (Oak Woodlands Conservation Planning) | |
| Meeting Date: | June 11, 2020 | ACTION |
| Agenda Number: | 6e | |

RECOMMENDATION:

- Approve Resolution 20-xx: Authorizing Executive Officer to execute:
- i. A Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning (the “MOA”); and
 - ii. An Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition (the “Assignment”), each to support the transfer of one General Fund Project, in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate to carry out the purposes of the MOA and Assignment.

BACKGROUND/DISCUSSION:

Due to FORA’s pending sunset on June 30, 2020, coupled with FORA staff reductions, several projects were unable to be completed. Meetings were held between FORA and the jurisdictions to discuss transfer of project responsibility and remaining funds in February and March 2020. FORA has worked with consultants to identify project close-out requirements.

At the April 30, 2020 FORA Board Meeting, the Board received a report on the status of FORA’s efforts to transition three on-going Capital Improvement Program projects and one General Fund project to the underlying jurisdictions of the Cities of Del Rey Oaks, Marina and Seaside and the County of Monterey. During that meeting the funds approved in the 2019/2020 Mid-Year General and CIP Budget update were authorized for transfer. The approval and establishment of the 2019/2020 Mid-Year Budget was a critical step to facilitate the transfer of funds to support these projects.

As identified in the April 30, 2020 Board Report, a MOA between FORA and each recipient of funds is required to be executed prior to fund transfer. FORA has been working with County staff to identify the appropriate terms and conditions to enable the transition of studies and possible preparation of a draft Oak Woodland Management and Monitoring Plan and draft Oak Woodland Conservation Map from FORA to the County. The most significant deal points are summarized below.

- a) The existing contract, as amended to date (the “Contract”) with Denise Duffy & Associates, Inc. (“DDA”) will be assigned to and assumed by the County, with the consent of DDA.

- b) Within seven (7) calendar days after signing the MOA, FORA will transfer and pay to the order of Monterey County, the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) to fund the completion of the tasks and reporting outlined in the Contract.
- *Status: the forms of the draft MOA and draft Assignment has been reviewed and approved by County Counsel's office; execution pending Board of Supervisors and FORA Board approvals; Board of Supervisor's action is anticipated on June 16.*

FISCAL IMPACT:

Staff time and expenditures are included in the approved FY 19-20 Mid-Year Budget.

Reviewed by FORA Controller  _____

COORDINATION:

Authority Counsel, Administrative Committee, Consultants.

Prepared by Kristie Reimer, RAC. Approved by  _____
Joshua Metz

ATTACHMENTS:

- A. Resolution 20-xx: Approving and Authorizing the Execution and Delivery of (i) a Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning and (ii) an Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition, each in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate.
- B. Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning.
- C. Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition.

FORT ORD REUSE AUTHORITY
Resolution No. 20-_____

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY

Approving and Authorizing the Execution and Delivery of (i) a Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning and (ii) an Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition, and Approving Related Actions

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

- A. On May 13, 2016, the Board of Directors of the Fort Ord Reuse Authority (“FORA”) approved a contract (the “Contract”) with Denise Duffy & Associates, Inc. (“DDA”) to study and prepare a draft Oak Woodland Management and Monitoring Plan and draft Oak Woodland Conservation Map covering certain lands in the City of Seaside and the unincorporated portion of the County of Monterey on the former Fort Ord, among other specified services (collectively, the “Services”). The Services were intended to assist the County and City of Seaside in planning for oak woodland conservation in their respective jurisdictions in the former Fort Ord
- B. On or about July 27, 2017, FORA and DDA entered into that certain limited purpose “Agreement for Professional Services - Amendment #2” (believed to be the only amendment to the Contract notwithstanding its title) which restated the term of the Contract to be from May 31, 2016 to June 30, 2018 or until the maximum amount of compensation is reached. The Contract, as amended, remains in force because the maximum amount of compensation has not been reached.
- C. FORA’s existence will terminate in accordance with state law on June 30, 2020 (“FORA’s Termination Date”). FORA does not have sufficient time or management resources to manage completion of the Services by FORA’s Termination Date.
- D. The County and FORA desire for DDA to complete the Services under the Contract, as DDA has done a considerable amount of work under the Contract and allowing DDA to complete the Services will continue to advance oak woodland conservation planning on the former Fort Ord.
- E. FORA is willing to make certain funding available to the County on all the terms and conditions set forth in the form of the Memorandum of Agreement Regarding Funding from FORA to County of Monterey for Oak Woodlands Conservation Planning (the “Memorandum of Agreement”) on file with the Secretary.
- F. FORA, DDA, and the County contemplate entering into an Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition (the “Agreement for Assignment, Assumption, Consent, and Suspension”) to authorize FORA to assign the Contract to the County concurrently with FORA’s and the County’s execution of the Memorandum of Agreement.

NOW THEREFORE the Board hereby resolves that:

1. The foregoing recitals are true and correct.
2. The Board hereby approves the Memorandum of Agreement in the form on file with the Secretary. The Executive Officer, acting alone, is hereby authorized and directed to execute and deliver the Memorandum of Agreement for and in the name and on behalf of FORA in such form, or in a substantially similar form containing such modifications as the Executive Officer may approve as necessary or appropriate to carry out the purposes of the Memorandum of Agreement, such approval to be conclusively evidenced by the execution and delivery by the Executive Officer of the Memorandum of Agreement. Notwithstanding the foregoing, the dollar amount to be transferred as set forth in the form on file with the Secretary shall not be altered without the specific approval of the Board.
3. The Board hereby approves the Agreement for Assignment, Assumption, Consent, and Suspension in the form on file with the Secretary. The Executive Officer, acting alone, is hereby authorized and directed to execute and deliver the Agreement for Assignment, Assumption, Consent, and Suspension for and in the name and on behalf of FORA in such form, or in a substantially similar form containing such modifications as the Executive Officer may approve as necessary or appropriate to carry out the purposes of the Agreement for Assignment, Assumption, Consent, and Suspension, such approval to be conclusively evidenced by the execution and delivery by the Executive Officer of the Agreement for Assignment, Assumption, Consent, and Suspension.
4. The Executive Officer is hereby authorized and directed, for and in the name and on behalf of FORA, to do any and all things and take any and all actions, which he may deem necessary or advisable as contemplated by the Memorandum of Agreement or otherwise in order to effectuate the transfer of the funds and the assignment of the Contract as contemplated by the Agreement for Assignment, Assumption, Consent, and Suspension.
5. This Resolution shall take effect from and after the date of its passage and adoption.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 11th day of June 2020, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Jane Parker, Chair

ATTEST:

Joshua Metz, Secretary

**MEMORANDUM OF AGREEMENT
REGARDING FUNDING FROM FORA TO COUNTY OF MONTEREY
FOR OAK WOODLANDS CONSERVATION PLANNING**

This Memorandum of Agreement (“MOA”) is made and entered into effective as of _____, 2020, by and between the Fort Ord Reuse Authority (“FORA”), a California public agency, and the County of Monterey (the “County”), a political subdivision of the state of California. FORA and the County are sometimes referred to herein in the singular as a “Party” and collectively as the “Parties.”

Recitals

A. On May 13, 2016, the Board of Directors of the Fort Ord Reuse Authority (FORA) approved a contract (“Contract”) with Denise Duffy & Associates, Inc. (“DDA”) to study and prepare a draft Oak Woodland Management and Monitoring Plan (OW MMP) and draft Oak Woodland Conservation Map covering certain lands in the City of Seaside and the unincorporated portion of the County of Monterey on the former Fort Ord, among other specified services (the “Services”). These Services were intended to assist the County and City of Seaside in planning for oak woodland conservation in their respective jurisdictions in the former Fort Ord.

B. On or about July 27, 2017, FORA and DDA entered into that certain limited purpose “Agreement for Professional Services - Amendment #2” (believed to be the only amendment to the Contract notwithstanding its title) which restated the term of the Contract to be from May 31, 2016 to June 30, 2018 or until the maximum amount of compensation is reached. The Contract, as amended, remains in force because the maximum amount of compensation has not been reached.

C. DDA has done a significant amount of the work under the Contract, but DDA’s work under the Contract has not yet been completed. The tasks that remain to be completed are set forth in Exhibit A, attached hereto and incorporated herein by reference.

D. FORA’s general funds budget for fiscal year 2019/2020 includes the Services under the Contract. The Board has recently approved and committed to reserving the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) to cover payment for completion of the tasks and reporting outlined in the Contract.

E. FORA is scheduled to terminate in accordance with state law on June 30, 2020 (FORA’s Termination Date”).

F. FORA does not have sufficient time or management resources to manage completion of the Services by FORA’s Termination Date.

G. The County and FORA desire for DDA to complete the Services under the Contract, as DDA has done a considerable amount of work under the Contract, and allowing DDA to complete its Services will continue to advance oak woodland conservation planning on the former Fort Ord.

H. Concurrently herewith, FORA, DDA, and the County are considering entering an *Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition* (the “Agreement for Assignment, Assumption, Consent, and Suspension”) to authorize FORA to assign the Contract to the County. Pursuant to the terms of the Agreement for Assignment, Assumption, Consent, and Suspension, it is intended that the Agreement for Assignment, Assumption, Consent, and Suspension will not take effect unless this MOA is approved and executed prior to FORA’s Termination Date.

I. Accordingly, the Parties now wish to enter into this MOA to provide for the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) (“Funds”) to be transferred to the County so that DDA may complete the Services under the Contract, with the remaining tasks described in Exhibit A attached hereto and incorporated herein by reference. The term “Services” as used in this MOA includes the tasks as set forth in Exhibit A.

J. The tasks as set forth in Exhibit A include minor updates to the scope of Services under the Contract to reflect the currently intended deliverables and County assumption of Contract management. Although County will assume the role of managing the Contract, the tasks anticipate continued coordination among DDA, County, and the City of Seaside. As described in Exhibit A, DDA’s performance of the remaining tasks will provide deliverables to the City of Seaside as well as to the County and provide information for the region.

K. Upon the full execution of this MOA and transfer of the Funds, it is the intent of the Parties that the County will utilize the Funds to pay DDA for due completion of the tasks set forth in Exhibit A.

Agreement

In consideration of the mutual terms, covenants and conditions contained herein the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this MOA by this reference.
2. **Effective Date.** The Effective Date of this MOA shall be the date this MOA is fully executed by both Parties.

3. **FORA's Obligations.** Within seven (7) calendar days of the Effective Date, FORA will transfer and pay to the order of the County, and the County agrees to accept from FORA, the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) in full satisfaction of any obligation of FORA to provide funding for completion of Services under the Contract.
4. **County's Obligations.** The County will use the Funds received from FORA to pay DDA for due completion of the tasks set forth in Exhibit A.
5. **Environmental Review.** The Services, as set forth in Exhibit A, precede and do not include environmental review under the California Environmental Quality Act, and the Services do not commit the County to adoption of the draft plans and regulations prepared under the Contract. The County will determine and conduct environmental review as appropriate if and when the County were to consider adoption of the final draft plans and regulations prepared under the Contract.
6. **Obligations.** FORA shall have no obligation to transfer the Funds under this MOA and the County shall have no obligation to pay DDA for Services under the Contract unless DDA, FORA, and the County approve and execute the Agreement for Assignment, Assumption, Consent, and Suspension and unless FORA transfers the Funds to the County.
7. **Term.** The term of this MOA shall begin on the Effective Date and continue until FORA's Termination Date, unless terminated earlier as provided herein; provided, however, that the County's obligations under this MOA shall remain in full force and effect until the Funds have been expended in accordance with the terms of this MOA.
8. **Accounting and Records.** FORA (until FORA's Termination Date) and the County shall each maintain and account for the funds related to the Contract. Promptly following the execution of this MOA, FORA will exercise good faith and commercially reasonable efforts to provide the County with copies of available and appropriate documents and records pertaining to the Contract.
9. **Parties' Representatives.** This MOA shall be coordinated between the Parties through the County's Resource Management Agency Director or his designee and FORA's Executive Officer.
10. **Indemnification.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees.
11. **Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this MOA, or violates any of the terms or conditions of this MOA or applicable Federal or State laws and regulations, the non-breaching Party may terminate this MOA upon seven (7) calendar days written notice to the breaching Party. In the event that

County has not expended all of the Funds for Services under the Contract within ten (10) years after the Effective Date of this MOA, then any Funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the County and twenty percent (20%) shall be distributed to each of the Cities of Del Rey Oaks, Marina, Monterey, and Seaside.

12. **Applicable Law.** This MOA shall be construed and interpreted under the laws of the State of California.

13. **Severability.** In the event any part of this MOA is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the MOA and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

14. **Assignment.** Neither Party may assign this MOA or any part hereof, without written consent and prior approval of the other Party and any assignment without said consent shall be void and unenforceable.

15. **Amendment.** No amendment, modification, alteration, or variation of the terms of this MOA shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties thereto.

16. **Time of the Essence.** Time is of the essence for each and every provision of this MOA.

17. **Notices.** Any notice required or permitted under this MOA, shall be in writing and shall be deemed served on the date personally delivered or three (3) business days after being sent by certified mail, return receipt requested, or other delivery service which provides for receipt of confirmation, addressed as follows, unless otherwise notified in writing of a change of address:

To the County: Director, Resource Management Agency
 County of Monterey
 1441 Schilling Place, 2d Floor
 Salinas, CA 93901

To FORA: Executive Officer
 Fort Ord Reuse Authority
 920 2nd Avenue, Suite A
 Marina, CA 93933

18. **Authority.** Each Party represents and warrants to the other Party that it is authorized to execute, deliver and perform this MOA, and the terms and conditions hereof are valid and binding obligations of the Party making this representation.

19. **Compliance with Laws.** The Parties agree to comply with all applicable local, state and federal laws and regulations.

20. **Venue.** Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.

21. **Survival.** All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this MOA shall survive any such expiration or termination.

22. **Relationship of the Parties.** It is understood that this MOA is entered into by and between two public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

23. **Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the County's obligations under this MOA after FORA's Termination Date (including without limitation the obligation to distribute unexpended funds in the event that the Project is not timely completed), the Cities of Del Rey Oaks, Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this MOA.

24. **Interpretation.** This MOA, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

25. **Counterparts.** This MOA may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of this MOA or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this MOA or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOA or any Amendment.

26. **Entire Agreement.** This MOA contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this MOA. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this MOA which are not fully expressed herein.

[signatures appear on following page(s)]

The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

COUNTY OF MONTEREY

Joshua Metz
Executive Officer

Chris Lopez, Chair
Monterey County Board of Supervisors

Date: _____

Date: _____

APPROVED AS TO FORM:

Authority Counsel

County Counsel

EXHIBIT A

**Fort Ord Oak Woodland Conservation Plan Project
Remaining Tasks and Budget as of June 30, 2020**

| Task # | Task Description | Budget Remaining |
|----------------------|---|-------------------------|
| 2c | Public Workshop Meeting | \$1,340.70 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by County and, as applicable, Seaside) public workshop to present the Final Review Draft Oak Woodland Management and Monitoring Program (“OW MMP”), Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a). This scope of work assumes that DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, PowerPoint presentation, and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent public workshop shall be held via teleconference.</i> | |
| 2d | Open-House Meeting | \$2,234.50 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by Seaside and County) open house to present the Final Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (the deliverables from Task 10a). This scope of work assumes DD&A will organize and facilitate the meeting, including preparing necessary meeting materials and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. This meeting will be held in an open house format so it is anticipated that a fact sheet, comment cards, poster boards, and documents will be prepared/available for participants, but no presentation will be provided. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent “open house” shall be held via teleconference.</i> | |
| 4 (a & b) | City of Marina Participation Process | \$4,424.63 |
| | <i>a) This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a) with representatives of the City of Marina, as determined by the City of Marina. It</i> | |

| Task # | Task Description | Budget Remaining |
|-----------|--|-------------------|
| | <p><i>is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. This scope of work assumes one round of comments on the meeting materials. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent meeting shall be held via teleconference.</i></p> <p><i>b) This task includes attendance at one Marina City Council meeting to present Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (deliverables from Task 10a). This task is intended to occur after the County Board of Supervisors and Seaside City Council provide final recommendations on the deliverables from Task 9a. It is assumed that these documents would be presented and discussed for the purpose of soliciting feedback. This scope of work assumes the City of Marina will be responsible for facilitating the Council meeting. DD&A will prepare a PowerPoint presentation and submit to Seaside, County, and Marina, for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 7b | CRMP Presentation | \$1,220.54 |
| | <p><i>This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a) with representatives of CRMP. It is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes BLM will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. DD&A will prepare a PowerPoint presentation and submit to Seaside and County for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 9a | Revised Draft Oak Woodland MMP | \$1,049.98 |
| | <p><i>This task includes revising the Draft OW MMP, Draft Tree Ordinances, and Draft Tree Protection Program upon receipt of comments from the County and Seaside, and produce the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program. These documents will be presented and discussed during the meetings identified in Tasks 2c, 4a, and 7b. Feedback received during</i></p> | |

| Task # | Task Description | Budget Remaining |
|-------------------------------|--|-------------------------|
| | <p><i>these meetings will be documented and considered by DD&A, Seaside, and the County for inclusion in the final deliverables.</i></p> <p><i>After completion of the meetings in Tasks 2c, 4a, and 7b, it is the intent that DD&A, with Seaside, and County staff as appropriate, will present the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program to the Seaside City Council and County Board of Supervisors along with the feedback received from the public, City of Marina, and CRMP, and request consideration and recommendations for revising the documents.</i></p> | |
| 10a | Final - Draft Oak Woodland Area MMP | \$7,904.50 |
| | <p><i>Based on all of the recommendations, DD&A will prepare the Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program. DD&A will submit these documents to Seaside and County staff for review and comment and make any necessary revisions. This scope assumes one round of comments. DD&A will submit the documents to Seaside and County electronically for their records. The documents shall be in final form, such that they are ready to be presented to the Board of Supervisors and Seaside City Council for their governing bodies to consider adoption (County will determine and conduct environmental review as appropriate prior to presenting the documents to the Board of Supervisors for adoption. Environmental review is not part of the scope of DDA services set forth herein, and if County were to request DDA to conduct environmental review, such request would require an augmentation to the scope of services and contract dollar amount.)</i></p> | |
| 10b | Production Expenses | \$537.50 |
| | <p><i>Expenses to produce meeting materials, including but not limited to, poster boards, handouts, etc.</i></p> | |
| TOTAL BUDGET REMAINING | | \$18,712.34 |

**AGREEMENT FOR ASSIGNMENT AND ASSUMPTION OF RIGHTS AND
OBLIGATIONS UNDER CONTRACT, CONSENT THERETO, AND SUSPENSION OF
APPLICATION OF ASSIGNMENT PROHIBITION**

This Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition (the “Agreement for Assignment, Assumption, Consent, and Suspension”) is entered into by and between the Fort Ord Reuse Authority, a California public agency (“FORA”), the County of Monterey, a political subdivision of the state of California (the “County”), and Denise Duffy & Associates, Inc., a California corporation (“DDA”).

RECITALS

A. On or about May 13, 2016, FORA’s Board of Directors awarded a professional services contract for environmental consulting to DDA, which contract was subsequently memorialized on or about May 23, 2016 by that certain “Agreement for Professional Services” entered into by FORA and DDA (the “Contract”).

B. On or about July 27, 2017, FORA and DDA entered into that certain limited purpose “Agreement for Professional Services - Amendment #2” (believed to be the only amendment to the Contract notwithstanding its title) which restated the term of the Contract to be from May 31, 2016 to June 30, 2018 or until the maximum amount of compensation is reached.

C. The Contract, as amended, remains in force because the maximum amount of compensation has not been reached. Specifically, there remains payable to DDA the estimated sum of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) to cover payment for the tasks and reporting outlined in the Contract. A description of the scope of work remaining to be performed is attached hereto as Exhibit A.

D. Under paragraph 5 of Exhibit B to the Contract, neither FORA nor DDA may assign any right or obligation under the Contract and any attempted or purported assignment of any right or obligation shall be void and no effect.

E. Notwithstanding the foregoing, in anticipation of FORA’s termination on June 30, 2020 (“FORA’s Termination Date”), FORA and the County have negotiated that certain “Memorandum of Agreement Regarding Funding From FORA to County of Monterey for Oak Woodlands Conservation Planning” (the “MOA”) under which FORA would assign the Contract to the County and transfer funds to the County for completion of services under the Contract, with tasks remaining as set forth in Exhibit A. It is intended that the MOA and this Agreement for Assignment, Assumption, Consent, and Suspension will be presented to the governing bodies of FORA and the County for approval. It is further intended that this Agreement for Assignment, Assumption, Consent, and Suspension will not take effect unless the MOA is approved and executed prior to FORA’s Termination Date.

F. In accordance with the MOA, FORA desires to assign the Contract to the County, the County desires to accept assignment of the Contract and assume all obligations of FORA under the Contract, with tasks remaining as set forth in Exhibit A of the MOA, from the Effective Date (as defined in the MOA) forward, and DDA desires to consent to the foregoing assignment and assumption. In addition, FORA and DDA desire to suspend, for purposes of the foregoing assignment and assumption, the application of the assignment prohibition set forth in paragraph 5. of Exhibit B to the Contract (the “Assignment Prohibition”).

AGREEMENT

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged and confirmed, it is hereby agreed as follows:

- 1. Effective Date.** This Agreement for Assignment, Assumption, Consent, and Suspension shall take effect as of the Effective Date, as defined in the MOA (the “Effective Date”).
- 2. Assignment by FORA.** FORA assigns, conveys, transfers and sets over unto the County, as of the Effective Date, all of FORA’s right, title, and interest as a party in and to the Contract, and the County accepts such assignment.
- 3. Assumption by County.** The County assumes all of FORA’s obligations under the Contract, with remaining tasks as set forth in Exhibit A of the MOA, and agrees to pay all sums and perform, fulfill, and comply with all covenants and obligations which are to be paid, performed, and complied with under the Contract from and after the Effective Date in compliance with and subject to the terms of the MOA.
- 4. Consent by DDA.** DDA consents to the foregoing assignment and assumption. This consent does not constitute a consent to any subsequent assignment.
- 5. Suspension of Application of Assignment Prohibition.** FORA and DDA suspend, for purposes of the foregoing assignment and assumption, the application of the Assignment Prohibition. This suspension does not constitute a suspension of the application of the Assignment Prohibition to any subsequent assignment and does not relieve the County or DDA or any person claiming under or through the County or DDA of any obligation to suspend the application of the Assignment Prohibition to any future assignment.
- 6. Effectiveness Condition.** The effectiveness of this Agreement for Assignment, Assumption, Consent, and Suspension is subject to and expressly conditioned upon the execution of the MOA by FORA and the County. In the event the MOA is not executed prior to FORA’s Termination Date, this Agreement for Assignment, Assumption, Consent, and Suspension shall be null and void and of no force or effect.

7. Binding Effect. This Agreement for Assignment, Assumption, Consent, and Suspension shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Counterparts. This Agreement for Assignment, Assumption, Consent, and Suspension may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The signature pages of each counterpart may be detached and attached to a single copy of this Assignment, Assumption, Consent, and Suspension which shall for all purposes be treated as a single, original document.

IN WITNESS WHEREOF, the parties have executed this Agreement for Assignment, Assumption, Consent, and Suspension as of the date set forth above.

FORT ORD REUSE AUTHORITY

COUNTY OF MONTEREY

By: _____
Josh Metz,
Executive Officer

By: _____
Chris Lopez, Chair
Monterey County Board of Supervisors

Dated: _____, 2020

Dated: _____, 2020

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Jon Giffen,
Authority Counsel

Wendy Strimling,
Assistant County Counsel

DENISE DUFFY & ASSOCIATES, INC.

By: _____
Denise Duffy,
President

Dated: _____, 2020

EXHIBIT A

Scope of Work Remaining to be Performed

**Fort Ord Oak Woodland Conservation Plan Project
Remaining Tasks and Budget as of June 30, 2020**

| Task # | Task Description | Budget Remaining |
|----------------------|---|-------------------------|
| 2c | Public Workshop Meeting | \$1,340.70 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by County and, as applicable, Seaside) public workshop to present the Final Review Draft Oak Woodland Management and Monitoring Program (“OW MMP”), Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a). This scope of work assumes that DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, PowerPoint presentation, and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent public workshop shall be held via teleconference.</i> | |
| 2d | Open-House Meeting | \$2,234.50 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by Seaside and County) open house to present the Final Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (the deliverables from Task 10a). This scope of work assumes DD&A will organize and facilitate the meeting, including preparing necessary meeting materials and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. This meeting will be held in an open house format so it is anticipated that a fact sheet, comment cards, poster boards, and documents will be prepared/available for participants, but no presentation will be provided. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent “open house” shall be held via teleconference.</i> | |
| 4 (a & b) | City of Marina Participation Process | \$4,424.63 |
| | <i>a) This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection</i> | |

| Task # | Task Description | Budget Remaining |
|-----------|--|-------------------|
| | <p><i>Program (the deliverables from Task 9a) with representatives of the City of Marina, as determined by the City of Marina. It is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. This scope of work assumes one round of comments on the meeting materials. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent meeting shall be held via teleconference.</i></p> <p><i>b) This task includes attendance at one Marina City Council meeting to present Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (deliverables from Task 10a). This task is intended to occur after the County Board of Supervisors and Seaside City Council provide final recommendations on the deliverables from Task 9a. It is assumed that these documents would be presented and discussed for the purpose of soliciting feedback. This scope of work assumes the City of Marina will be responsible for facilitating the Council meeting. DD&A will prepare a PowerPoint presentation and submit to Seaside, County, and Marina, for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 7b | CRMP Presentation | \$1,220.54 |
| | <p><i>This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a) with representatives of CRMP. It is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes BLM will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. DD&A will prepare a PowerPoint presentation and submit to Seaside and County for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 9a | Revised Draft Oak Woodland MMP | \$1,049.98 |
| | <p><i>This task includes revising the Draft OW MMP, Draft Tree Ordinances, and Draft Tree Protection Program upon receipt of comments from the County and Seaside, and produce the Final</i></p> | |

| Task # | Task Description | Budget Remaining |
|-------------------------------|--|--------------------|
| | <p><i>Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program. These documents will be presented and discussed during the meetings identified in Tasks 2c, 4a, and 7b. Feedback received during these meetings will be documented and considered by DD&A, Seaside, and the County for inclusion in the final deliverables.</i></p> <p><i>After completion of the meetings in Tasks 2c, 4a, and 7b, it is the intent that DD&A, with Seaside, and County staff as appropriate, will present the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program to the Seaside City Council and County Board of Supervisors along with the feedback received from the public, City of Marina, and CRMP, and request consideration and recommendations for revising the documents.</i></p> | |
| 10a | Final - Draft Oak Woodland Area MMP | \$7,904.50 |
| | <p><i>Based on all of the recommendations, DD&A will prepare the Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program. DD&A will submit these documents to Seaside and County staff for review and comment and make any necessary revisions. This scope assumes one round of comments. DD&A will submit the documents to Seaside and County electronically for their records. The documents shall be in final form, such that they are ready to be presented to the Board of Supervisors and Seaside City Council for their governing bodies to consider adoption (County will determine and conduct environmental review as appropriate prior to presenting the documents to the Board of Supervisors for adoption. Environmental review is not part of the scope of DDA services set forth herein, and if County were to request DDA to conduct environmental review, such request would require an augmentation to the scope of services and contract dollar amount.)</i></p> | |
| 10b | Production Expenses | \$537.50 |
| | <p><i>Expenses to produce meeting materials, including but not limited to, poster boards, handouts, etc.</i></p> | |
| TOTAL BUDGET REMAINING | | \$18,712.34 |

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

| | | |
|-----------------------|--|---------------|
| Subject: | Consider Certification of Final Environmental Impact Report for Fort Ord Multi-Species Habitat Conservation Plan Project | |
| Meeting Date: | June 11, 2020 | ACTION |
| Agenda Number: | 7a | |

RECOMMENDATION(s):

- i. Adopt the Resolution of Findings (Attachment A hereto) which certifies the Final Environmental Impact Report ("FEIR") including the Responses to Comments to the Draft Environmental Report ("DEIR") for the Fort Ord Multi-Species Habitat Conservation Plan Project (the "Project").
- ii. Take no action approving or disapproving the Project itself.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA") is lead agency under the California Environmental Quality Act for the Project. The Project contemplates making applications for the issuance of Federal and State incidental take permits ("ITPs") to authorize take during the course of the redevelopment of the former Fort Ord military base of the State and Federally listed species identified in the Fort Ord Multi-Species Habitat Conservation Plan (the "HCP"). The HCP has been prepared by FORA as a required component of the contemplated applications for the ITPs. By operation of California Government Code section 67700, FORA will cease to exist on June 30, 2020 before the Project, if approved, could be implemented or the ITPs could be obtained.

In order to preserve a record of the substantial environmental analysis conducted by FORA in connection with the Project, the FEIR (Attachment B hereto) has been prepared. The FEIR includes responses to comments received on the DEIR (Chapters 3 and 4), revisions to the HCP (Chapter 6), and clarifications and corrections to the DEIR (Chapter 7). The comments received on the DEIR touched on a number of issues unrelated to the environmental analysis. These unrelated issues would be more appropriately considered by the applicable decision-makers as matters of policy and should be addressed in the context of implementing the HCP Project, if carried forward and approved subsequent to FORA's dissolution.

FISCAL IMPACT:

Reviewed by FORA Controller  _____

COORDINATION:

Authority Counsel, Administrative and Executive Committees

ATTACHMENTS:

- A. Resolution 20-xx: Certifying a Final Environmental Impact Report on the Fort Ord Multi-Species Habitat Conservation Plan.
- B. Final Environmental Impact Report (accessed online: <https://fora.org/habitat.html>).

Prepared by Erin Harwayne (DDA) and Approved by



Joshua Metz

FORT ORD REUSE AUTHORITY
Resolution No. 20-_____

**A RESOLUTION OF THE GOVERNING BOARD OF THE FORT ORD REUSE
AUTHORITY**

*Certifying a Final Environmental Impact Report on the Fort Ord Multi-Species Habitat
Conservation Plan*

Having considered all the written and documentary evidence, the administrative record, the staff report, and other evidence presented, the Fort Ord Reuse Authority (FORA) Board of Directors hereby certifies the Final Environmental Impact Report on the Fort Ord Multi-Species Habitat Conservation Plan (FEIR) based on the following findings:

FINDINGS

1. **FINDING:** **CEQA** – The FEIR has been completed in compliance with the California Environmental Quality Act (CEQA), Public Resources Code § 21000 *et seq.* The FEIR was presented to the Board of Directors, which has reviewed and considered the information contained in the FEIR and the FEIR reflects the FORA’s independent judgment and analysis.

- EVIDENCE** a) The proposed project, which is the subject of the FEIR, is the Fort Ord Multi-Species Habitat Conservation Plan, commonly known as the Draft HCP (hereafter “Project”). The Project addressed in the Draft HCP is the reuse and development of the former Fort Ord military base, with an emphasis on the base-wide preservation and management of habitat. Incidental take of Federal and State listed species is anticipated to occur as the former base is redeveloped consistent with the approved Fort Ord Reuse Plan (Reuse Plan) and Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord Habitat Management Plan (HMP). Under the Draft HCP, base reuse would result in the rehabilitation and construction of roads, utilities, and other infrastructure to support new research/educational, residential, commercial, light industrial, recreational, and other development. As a result, approximately 4,241 acres of existing developed areas on the former base would be redeveloped and about 5,051 acres of existing vegetation and wildlife habitat would be removed for new development. Impacts to the Federal and State listed species identified in the Draft HCP (the HCP species) and natural communities resulting from base redevelopment would be minimized and mitigated through the

preservation and management of habitat on approximately 67% of the former base (approximately 18,540 acres). In addition to development activities, habitat management activities such as invasive species control, restoration, and prescribed burning would also be included as proposed covered activities in the Draft HCP. FORA prepared the Draft HCP to support the issuance of Federal and State Incidental Take Permits (ITPs) from the U.S. Fish and Wildlife Service (USFWS) in accordance with Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973 (ESA), and from the California Department of Fish and Wildlife (CDFW) in accordance with Section 2081 of the California Fish and Game Code (CFG Code) of the California Endangered Species Act of 1984 (CESA).

- b) CEQA requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the Project may have a significant effect on the environment. FORA is the lead agency under CEQA. A Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) was prepared in accordance with CEQA (SCH# 2005061119). The Draft EIS/EIR circulated for public review for a 45-day public review period, between November 1, 2019 and December 16, 2019.
- c) FORA received 35 written comment letters in response to the Draft EIS/EIR and prepared responses to those letters. The comments and responses to significant environmental issues raised in the comments are set forth in Chapters 3 and 4 of the FEIR. Revisions to the Draft HCP and Draft EIS/EIR text to clarify and amplify the content of the Draft EIS/EIR are incorporated into Chapters 6 and 7, respectively, of the FEIR.
- d) Issues that were analyzed in the Draft EIS/EIR include aesthetics, air quality, biological resources, climate change, cultural resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, public services, socioeconomics and environmental justice, transportation and circulation, and utilities. Project alternatives, cumulative impacts, and long-term impacts were also studied. The Draft EIS/EIR considered alternatives to the proposed project (No Action and Reduced Take Alternatives) in compliance with CEQA Guidelines section 15126.6. Per CEQA Guidelines §15126.6(f), the range of alternatives identified satisfies the "rule of reason" and Draft

EIS/EIR analysis contains sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. In addition, the FEIR described and analyzed a modified/reduce alternative to the Draft HCP in Chapter 5.

- e) The Draft EIS/EIR identified potentially significant impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, land use and planning, noise, public services, socioeconomics and environmental justice, and transportation and circulation. Potentially significant impacts would be mitigated to a less than significant level by mitigation measures identified in the Draft EIS/EIR, as revised in the FEIR, which are described further in the finding below.
- f) CDFW reviewed the Draft EIS/EIR to comment and recommend necessary conditions to protect biological resources in this area. Therefore, the Project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD) if and when the Project is approved.
- g) FORA prepared a FEIR for the Draft HCP. The FEIR responds to all significant environmental points raised by persons and organizations that commented on the Draft EIS/EIR. The Board of Directors has considered the Draft EIS/EIR, the comments received during the public review period for the Draft EIS/EIR, and in the FEIR FORA has provided responses to the comments received. Together, the Draft EIS/EIR, Responses to Comments, and revisions to the Draft HCP and Draft EIS/EIR constitute the FEIR on the Project. The FEIR was made available to the public on or about May 29, 2020. The FEIR was distributed to public agencies that commented on the Draft EIS/EIR at least ten days before the Board of Directors considered certification of the FEIR.
- h) The FEIR was provided to the Board of Directors, and the Board of Directors considered the FEIR at a noticed public meeting on the Project on June 11, 2020.
- i) The FORA Office, located at 920 2nd Avenue, Suite A, Marina, California, 93933, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to certify the FEIR is based.

2. FINDING: ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT - The Draft EIS/EIR identified potentially significant

impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, land use and planning, noise, public services, socioeconomics and environmental justice, and transportation and circulation. Potentially significant impacts would be mitigated to a less than significant level by mitigation measures from the Draft EIS/EIR as revised in the FEIR.

- EVIDENCE:**
- a) Potential impacts to Air Quality were identified; however, implementation of Mitigation Measures AQ-1 through AQ-4 will reduce potentially significant impacts to air quality to a less-than-significant level. Specifically, Mitigation Measure AQ-1 would require preparation and implementation of a Construction Dust Mitigation Plan prior to the initiation of ground-disturbing activities. Mitigation Measure AQ-2 would require minimizing the extent of temporary construction-related diesel particulate matter and NOx emissions for all future habitat management activities requiring the operation of heavy-duty, construction-related equipment. Mitigation Measures AQ-3 and AQ-4 would require development of a Prescribed Burn Management Program and restrict prescribed burns in the East Garrison South Reserve to 105 acres or less in size. (*Per Draft EIS/EIR pages 4.3-8 through 4.3-16*)
 - b) Potential impacts to Biological Resources were identified; however, implementation of Mitigation Measures BIO-1 through BIO-9 will reduce potentially significant impacts to sensitive or special-status species and sensitive habitats to a less-than-significant level. Specifically, Mitigation Measure BIO-1 calls for conducting an Environmental Employee Education Program prior to the initiation of ground-disturbing activities. Mitigation Measure BIO-2 requires qualified biological monitor during initial ground-disturbing activities. Mitigation Measures BIO-3 through BIO-8 require pre-construction surveys for special-status bat species, Monterey dusky-footed woodrat, American badger, protected avian species, burrowing owl, and non-HCP special-status plant species. Mitigation Measure BIO-9 requires surveys for Monterey Ornate Shrew within Habitat Corridor and Travel Camp HMAs. (*Per Draft EIS/EIR pages 4.4-19 through 4.4-23*)
 - c) Potential impacts to Cultural Resources were identified; however, implementation of Mitigation Measure CR-1 will reduce potential impacts to archaeological cultural resources to a less-than-significant level. Specifically, Mitigation Measure CR-1 would require halting work and notifying a qualified archeologist and/or the Native American Heritage Commission if cultural resources,

unique paleontological resources, unique geologic features, human remains, and/or tribal cultural resources are encountered. *(Per Draft EIS/EIR pages 4.6-3 through 4.6-4)*

- d) Potential impacts related to Hazardous Materials were identified; however, implementation of Mitigation Measures HAZ-1 through HAZ-5, as well as Mitigation Measures AQ-1 through AQ-4 and PS-1, will reduce these impacts to a less-than-significant level. Mitigation Measure HAZ-1 requires preparation of a Hazardous Materials Spill Response Plan and Mitigation Measure HAZ-2 calls for evaluation of areas where fire retardants or other chemicals are used for fire suppression purposes and appropriately remediate if contamination is detected. Mitigation Measures AQ-1 through AQ-4 would avoid emission of hazardous air pollutant emissions. Mitigation Measure HAZ-3 requires preparation of a Fuel Management Plan, and Mitigation Measure PS-1 calls for notifying all fire protection service providers in the vicinity of the former Fort Ord before each scheduled prescribed burn. These mitigation measures would reduce the potential for wildfires. Mitigation Measure HAZ-4 to develop a safety program and Mitigation Measure HAZ-5 requiring all land management personnel to attend an Army-sponsored military munitions safety debriefing prior to the commencement of any ground-disturbing habitat management activity would avoid impacts from military munitions. *(Per Draft EIS/EIR pages 4.9-4 through 4.9-7 and 4.4-9 through 4.9-11)*
- e) Potential impacts to Land Use & Planning were identified; however, implementation of Mitigation Measures AQ-1 through AQ-4 and PS-1 will avoid the potentially significant impacts related to conflicts with plans, policies, and regulations to a less-than-significant level. Specifically, Mitigation Measures AQ-1 through AQ-4 would avoid emission of hazardous air pollutant emissions and Mitigation Measure PS-1 would require notification of all fire protection service providers in the vicinity of the former Fort Ord before each scheduled prescribed burn. *(Per Draft EIS/EIR pages 4.11-2 through 4.11-4)*
- f) Potential impacts were identified related to Noise; however, implementation of Mitigation Measure NOISE-1 will avoid this potentially significant impact. Specifically, NOISE-1 requires implementation of noise-reducing practices for all habitat management activities that have the potential to exceed ambient

noise levels within 300 feet of a sensitive receptor to avoid noise impacts. (Per Draft EIS/EIR pages 4.12-2 through 4.12-4)

- g) Potential impacts were identified related to Public Services from increased demand for police and fire protection services; however, implementation of Mitigation Measure PS-1 will avoid this potentially significant impact. Specifically, Mitigation Measure PS-1 requires notification of all fire protection service providers in the vicinity of the former Fort Ord before each scheduled prescribed burn. (Per Draft EIS/EIR pages 4.13-2 through 4.13-4)
- h) Potential impacts were identified related to Socioeconomics and Environmental Justice; however, implementation of Mitigation Measures AQ-3, AQ-4, and PS-1 will avoid these potentially significant impacts on minority, low-income, elderly, disabled, transit-dependent, and/or other specific interest group. Specifically, Mitigation Measures AQ-3 and AQ-4 would avoid emission of hazardous air pollution emissions. Mitigation Measure PS-1 requires notification of all fire protection service providers in the vicinity of the former Fort Ord before each scheduled prescribed burn. (Per Draft EIS/EIR pages 4.14-4 through 4.14-6)
- i) Potential impacts were identified related to Transportation; however, implementation of Mitigation Measure TRC-1 will avoid construction traffic impacts. Specifically, Mitigation Measure TRC-1 requires preparation of a Traffic Control Plan per the standards of the appropriate jurisdiction. (Per Draft EIS/EIR pages 4.15-3 through 4.15-5)

3. FINDING: **REVISED MITIGATION MEASURE.** Subsequent to the public review period of the Draft EIS/EIR, changes have been made to a Mitigation Measure. The changes made to the Mitigation Measure are as effective as or more effective than the Mitigation Measure presented in the Draft EIS/EIR. The revised Mitigation Measure itself will not cause any potentially significant effect on the environment.

EVIDENCE: a) The following Mitigation Measure has been revised in the FEIR: **HAZ-4:** Text was added to clarify the implementation of the safety programs on the former Fort Ord.

4. FINDING: **RECIRCULATION OF THE DRAFT EIS/EIR IS NOT REQUIRED**
The revisions to the Mitigation Measure and revisions to the text of the Draft EIS/EIR and Draft HCP made in the FEIR do not require recirculation of the EIR because these revisions clarify

and amplify the information in the EIR but do not add significant new information. The revisions do not identify a new significant environmental impact not previously disclosed or substantial increase in the severity of an already identified environmental impact; no feasible project alternative or mitigation measures considerably different from those analyzed in the Draft EIS/EIR have been identified, and meaningful public review was not precluded.

- EVIDENCE:**
- a) CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification. New information added to an EIR is not “significant” unless the EIR changes in a way that deprives the public of a meaningful opportunity to comment on a substantial adverse effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The Guidelines provide examples of significant new information under this standard. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.
 - b) Some text and a mitigation measure were revised since circulation of the Draft EIS/EIR as a result of comments received, which changes do not result in or cause new significant impacts or substantial increase in already identified environmental impacts. (See Findings 2 and 3 above.)
 - c) Minor edits were made to the Draft EIS/EIR and Draft HCP, which are identified in Chapters 6 and 7, respectively of the FEIR. As shown in Chapters 6 and 7, these edits and corrections do not result in the identification of any new impacts and do not add significant new information as defined in CEQA Guideline Section 15088.5.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Directors does hereby:

1. Certify that the above findings are true and correct; and
2. Certify that the Final Environmental Impact Report (FEIR) for the Fort Ord Multi-Species Habitat Conservation Plan (SCH# 2005061119) has been completed in compliance with CEQA, that the FEIR was presented to the Board of Directors, that the Board of Directors considered the information contained in the FEIR, and

that the FEIR reflects the independent judgement and analysis of the Fort Ord Reuse Authority.

3. This resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ___th day of June 2020, upon motion of _____
_____seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jane Parker, Chair

ATTEST:

Joshua Metz, Secretary

| FORT ORD REUSE AUTHORITY BOARD REPORT | |
|--|-----------------------------|
| BUSINESS ITEMS | |
| Subject: | 2018 Transition Plan Update |
| Meeting Date: | June 11, 2020 |
| Agenda Number: | 7b |
| | ACTION |

RECOMMENDATION(S):

- i. Receive 2018 Transition Plan Update Report.
- ii. Approve Resolution 20-xx: Approving Updates to and Restating Resolution No. 18-11 setting forth the Transition Plan Submitted to the Monterey County Local Agency Formation Commission.

BACKGROUND/DISCUSSION:

The Board approved its 2018 Transition Plan at its December 19, 2018 Special Meeting. The document reflected the results of a collaborative effort involving all the member agencies. Upon review however, staff identified a number of sections in the Plan that should be reconsidered and/or modified to more closely reflect Board actions and directions as it moves towards the June 30, 2020 sunset.

Proposed updates to the Transition Plan were reviewed at the Board’s April 17, April 30, and May 22, 2020 meetings, and are summarized below:

1. Removes reference to Joint Powers Authority or other agency to replace FORA.
2. Memorializes recording of the 1997 Master Resolution (completed April 14, 2020).
3. Updates CalPERS liability funding alternatives.
4. Memorializes litigation reserve funds transferred to LAFCO in December of 2019.
5. Memorializes distribution of Habitat Funds based on Board direction.
6. Memorializes transfer of Capital Improvement Project funds and responsibility as lead agency to the cities of Del Rey Oaks, Marina and Seaside.
7. Memorializes nomination of the City of Seaside as the Local Redevelopment Authority and Economic Development Conveyance successor to FORA.
8. Allocates \$100,000 in funds for the City of Seaside as the LRA/EDC successor.
9. Re-affirms prevailing wage for all first-generation construction as described in the Master Resolution.
10. Removes items not completed or implemented by FORA and/or its member agencies by June 30, 2020.

FISCAL IMPACT:

None.

COORDINATION:

Authority Counsel, Executive Officer, LAFCO

Prepared by Kendall Flint, RGS and Approved by:


Joshua Metz

ATTACHMENTS:

- A. Resolution 20-xx: Approving Updates to and Restating Resolution No. 18-11 setting forth the Transition Plan Submitted to the Monterey County Local Agency Formation Commission.

FORT ORD REUSE AUTHORITY RESOLUTION NO. 20-xx

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY
*Approving Updates to and Restating Resolution No. 18-11 setting forth the Transition Plan
Submitted to the Monterey County Local Agency Formation Commission*

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

- A.** In 1991, the Secretary of Defense announced the proposed downsizing of the United States Army Fort Ord Military Reservation (“Fort Ord”) under the Base Realignment and Closure Act. The relocation by the United States Army (the “Army”) of the 7th Infantry Division - Light resulted in the loss to the communities and populace of the Monterey Peninsula and adjoining greater Monterey Bay region of the significant economic, social, and cultural contributions that had been associated with the military presence.
- B.** Over the years in which Fort Ord was an active military base, the Army entered into contracts with regional entities to address water and wastewater needs of the reservation. On or about 1981, the Army and Monterey Regional Water Pollution Control Agency (“MRWPCA”) entered into Contract No. DACA 05-81-C-0021 wherein the Army participated in the construction of the Monterey Regional Wastewater Treatment Plant and such agreement was amended several times, ultimately resulting in Contract No. DAKF 03-83-C0527 wherein MRWPCA agreed to provide sanitary sewage service to the Army. A subsequent agreement was entered into between the Army, Marina Coast Water District (“MCWD”), the Fort Ord Reuse Authority (“FORA”) and MRWPCA regarding wastewater treatment.
- C.** On or about September 21, 1993, the Army entered into Contract No. A-6404 with the Monterey County Water Resources Agency (“MCWRA”) for annexation of the former Fort Ord lands into MCWRA Zone 2 and 2A. That Agreement is the basis for the Army’s pumping limitation of 6,600 acre-feet per year (“AFY”) of water from the Salinas Valley Groundwater Basin and of that, no more than 5,200 AFY from the 180 and 400-foot aquifers therein. On or about October 23, 2001, the Army quit claimed its water and wastewater infrastructure to the Fort Ord Reuse Authority and issued two easements to FORA in DACA 05-0-00-57 and DACA 05-9-00-58. The easements to FORA required, among other obligations, assumption of the obligation to provide water required by the Installation-Wide Habitat Management Plan, the Army’s obligation to cooperate and coordinate with parcel recipients, MCWRA, FORA and others to ensure all owners of property at the former Fort Ord will continue to be provided an equitable supply of water at equitable rates and to cooperate and coordinate with MCWRA, MRWPCA, FORA, property recipients and others to ensure Non-Army Responsibility Mitigations required by the records of decision dated December 23, 1993 and June 8, 1997 are met and that it will meet all requirements of the Army Agreement with MCWRA approved on September 21, 1993. On October 26, 2001, FORA in turn quitclaimed water and wastewater infrastructure and assigned said easements to MCWD requiring compliance with all underlying requirements.

- D.** After the announcement but prior to the implementation of the base downsizing/closure, political leaders within the affected region formed the Fort Ord Community Task Force (the “Task Force”) in order to develop recommendations for moving forward with a recovery effort. These recommendations were embodied in a 760-page June 1992 Strategy Report prepared by the Task Force (the “Strategy Report”).
- E.** Predicated upon the Strategy Report, in October 1992 the Fort Ord Reuse Group (“FORG”) was organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of Fort Ord. After preparing an initial plan and subsequently refining it, the revised plan was considered and adopted by FORG in 1993. Those early planning efforts recognized the significant costs associated with the implementation of any plan to convert Fort Ord into civilian use and reinforced the validity of the regional and base-wide approaches that were inherent in the conclusions reached by the Task Force in its Strategy Report.
- F.** FORA was established in 1994 by state legislation (Government Code sections 67650 and following, the “FORA Act”) and when the member jurisdictions adopted resolutions favoring the establishment of the authority in accordance with Government Code section 67656. The FORA Act was amended in 2012. The Legislature found that the reuse of Fort Ord is a matter of statewide importance and declared in Government Code section 67657(c) that FORA’s powers and duties prevail over those of any other local entity, including any city, county, or joint powers authority. Government Code section 67658 identifies FORA’s purpose as planning for, financing, and managing the transition of the property known as Fort Ord from military to civilian use. In Government Code section 67651, the Legislature declared the following goals to be the policy of the State of California: (1) To facilitate the transfer and reuse of the real and other property of the former Fort Ord with all practical speed; (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and development of the base in ways that enhance the economy and quality of life of the Monterey Bay community, and (4) maintain and protect the unique environmental resources of the area.
- G.** In order to carry out the directives of the FORA Act, FORA hired staff and entered into a contract with the California Public Employees’ Retirement System (“CalPERS”) to provide for retirement benefits for FORA employees.
- H.** Pursuant to the requirements of Government Code section 67675, FORA certified a Final Environmental Impact Report and adopted a Fort Ord Reuse Plan (the “Reuse Plan”) on June 13, 1997 in Resolution 97-06.
- I.** As part of that approval, FORA’s Board of Directors (the “Board”) certified the Environmental Impact Report and adopted a Statement of Overriding Considerations after making the following findings:
- The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;
 - The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside and Marina, thereby creating a housing

stock with higher income families in these communities with larger disposable incomes;

- The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
 - The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
 - The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
 - The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
 - The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks, Monterey, Seaside, Marina, and the unincorporated areas of the County of Monterey in the vicinity of Fort Ord;
 - The Reuse Plan will provide for additional and needed senior housing opportunities;
 - The Reuse Plan will assist the communities of Seaside and Marina in the transition of their respective community images from dependent, military base extensions with transient military personnel to vital, independent, and self-actuated communities populated with permanent residents with long-term interests in the well-being of their respective communities; and
 - The Reuse Plan will encourage development that will enhance the continued viability of California State University at Monterey Bay and the open space areas retained by the federal government through the Bureau of Land Management and conveyed to the California Department of Parks and Recreation.
- J.** FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act (“CEQA”) to implement a program addressing policies, programs and mitigation measures of the Reuse Plan, including a capital improvement program and finance program addressing basewide facilities.
- K.** In the Reuse Plan, FORA identified revenues generated from sales and leases of real property within the former Fort Ord, FORA’s share of taxes on real property located within the former Fort Ord, and base-wide assessments or development fees, as the primary property-related sources of funding with which to implement the basewide facilities outlined in the Capital Improvement Program (“CIP”).
- L.** As is more fully described below, in connection with funding implementation of the Reuse Plan, FORA entered into multiple agreements with local, state, and federal entities, established a public financing mechanism, and prepared a CIP.

- M.** As part of funding implementation of the Reuse Plan, FORA established in 2001 a Community Facilities District (“CFD”), through which special taxes on properties to be developed are collected. These special taxes (the “CFD Special Taxes”) are due and payable with respect to each parcel on issuance of a building permit relating to the property. The CFD Special Taxes are subject to annual adjustment, but when FORA ceases to exist the CFD Special Taxes may no longer be collected. A variety of replacement funding mechanisms are available, including but not limited to the potential for each of the underlying land use jurisdictions to create its own Community Facilities District through which special taxes on future development may be collected. Collecting taxes or fees on developments that have already been entitled will require each jurisdiction to obtain agreements from each developer of an entitled project to pay development fees that the developer would not otherwise be obligated to pay. Those fees are estimated to be \$72 million for entitled projects, if all entitled developments are fully completed.
- N.** FORA entered into a Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands (the “EDC MOA”), which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder. The EDC MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. The land transfer was conditioned on a requirement that any proceeds from the subsequent sale or leasing of the transferred real property must be applied to the economic development of the former Fort Ord. The real property transferred pursuant to the EDC MOA may be referred to herein as the “EDC Property.” Sections 5.03 and 5.04 of the EDC MOA require a fair process to ensure an equitable supply of water is provided to grantees of former Fort Ord property and that all grantees enjoy an equitable utilization of the existing sewage treatment capacity.
- O.** In 2001, agreements were entered into between FORA on the one hand and the County of Monterey and each city receiving or anticipated to receive a portion of the EDC Property on the other hand. These agreements, as they may have been amended to date and irrespective of whether they may be so captioned, may collectively be referred to herein as the “Implementation Agreements.”
- P.** The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) applies to the closure of Fort Ord. The Army is obligated under CERCLA and other applicable federal and state law to remediate certain conditions at the former Fort Ord, including but not limited to by the removal of munitions and explosives. It was anticipated that an extensive amount of time would be needed for the Army to complete its cleanup of the former Fort Ord, based in part upon the contingent nature of Department of Defense funding and due to competing priorities for the use of available funds. Accordingly, in order for FORA to be able to receive the EDC Property early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement. Through a series of subsequent agreements between the Army, FORA, the U.S. Environmental Protection Agency, and the California Department of Toxic Substance Control remediation of munitions and explosives on the former Fort Ord proceeded. Although substantial progress has been made in the base cleanup, the remediation obligations will not be completed and all property transfers will not have occurred before the currently anticipated dissolution of FORA.

- Q. Government Code section 67700(a) requires that FORA dissolve when eighty percent (80%) of the base has been developed or reused in a manner consistent with the Reuse Plan or on June 30, 2020, whichever first occurs. Government Code section 67700(b)(2) mandates as follows:

The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. **The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.** The transition plan shall be approved only by a majority vote of the board. (Emphasis added)

The Transition Plan approved by the Board on December 19, 2018 and submitted to the Monterey County Local Agency Formation Commission (“LAFCO”) on December 30, 2018 assigned assets and liabilities, designated responsible successor agencies, and provided a schedule of remaining obligations, as required by the FORA Act. This document updates and restates the approved Transition Plan based on current conditions and financial records.

- R. Government Code section 67700(b)(1) provides as follows:

The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred. (Emphasis added)

BASED ON THE FOREGOING RECITALS AND THE FINDINGS AND DETERMINATIONS MADE HEREIN, the Board hereby approves the following updated and restated Transition Plan for transmittal to LAFCO:

Section 1 Findings and Determinations:

1.1 Base-wide Facilities:

The Board hereby finds and determines that this Transition Plan assigns all assets and liabilities relating to FORA’s policies, programs and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA.

1.2 California Environmental Quality Act:

The Board hereby finds and determines that in adopting this Transition Plan as required by Government Code section 67700 FORA is addressing the allocation of FORA's assets, liabilities and obligations in advance of FORA's ultimate dissolution without (a) amending any contemplated or approved land uses within the former Fort Ord, (b) abandoning or altering any mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, or (d) avoiding the satisfaction and fulfillment of any of FORA's other commitments, pledges, or promises (all of which may be collectively referred to herein as the "FORA Program"). CEQA only applies to government activities that may cause a direct or a reasonably foreseeable indirect physical change in the environment. Public Resources Code section 21065. CEQA Guidelines, Section 15378(b) also provide that certain activities are not CEQA "Projects" including (4) The creation of government funding mechanism or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; and (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

This Transition Plan does not authorize any particular development, and does not itself change any of the land use requirements applicable to projects within the geographic area of the former Fort Ord. It is not a "project" and no environmental impact report or other CEQA document is required.

To the contrary and to the extent not already so contained in their general plans, this Transition Plan calls for the Cities of Marina, Seaside, Monterey and Del Rey Oaks and the County of Monterey to follow the Reuse Plan policies and programs. After FORA's ultimate dissolution, any changes to the policies and programs of the Reuse Plan or any part thereof will be made by the respective land use jurisdiction(s) only after full compliance with all applicable laws, including but not limited to CEQA.

1.3 Reuse Plan and Master Resolution:

To the extent the policies and programs of the Reuse Plan and Master Resolution survive the dissolution of FORA, all assets and liabilities relating to those policies and programs are assigned to the underlying land use jurisdiction. FORA recorded the Master Resolution on April 14, 2020.

1.4 Environmental Services Cooperative Agreement:

The Board hereby finds and determines that the long-term stewardship obligations and related monitoring identified by the Army for its munitions removal activities are crucial to the future success of the recovery program. The Board further finds that following the dissolution of FORA the current full time staffing of the Environmental Services Cooperative Agreement ("ESCA") should be considered for retention through the anticipated termination of the ESCA in 2028 by the agreed upon successor to FORA. The City of Seaside is identified in the ESCA contract documents as the successor for purposes of the ESCA.

1.5 Water and Wastewater:

The Board hereby finds and determines that it has made water allocations in accordance with its obligation under the EDC MOA to ensure a fair and equitable water supply to all property recipients and imposed those requirements in the Implementation Agreements. In light of the possibility of a water supply shortage that reduces the overall amount of water available for the Ord Community, MCWD staff has committed by letter dated October 29, 2018 to work with the jurisdictions to develop a plan to reduce each entity's water allocation in an equitable manner, consistent with the 1993 Army-MCWRA Agreement and the Economic Development Conveyance Agreement obligation to provide a fair and equitable water supply to all property recipients of former Fort Ord lands.

Section 2 Assignment of Assets, Liabilities, and Obligations:

2.1 Assets and Disposition Thereof:

FORA's principal assets are comprised of the following:

2.1.1 Section 115 Trust: In April 2018, the Board authorized the establishment of a Section 115 trust and funded the trust with \$5,700,000 (which is currently earning returns at an average annualized rate in excess of 2%). The current balance in the trust is approximately \$7,000,000. Funds held in the trust may be used only for retirement purposes. At or before FORA's dissolution, all funds held in the trust will be applied to the satisfaction or reduction of the unfunded pension liability under the CalPERS contract. To the extent that funds held in the trust are insufficient to fully satisfy the unfunded pension liability under the CalPERS contract, FORA's reserve funds, proceeds from bonds, and/or other funds available to FORA shall be applied so as to fully satisfy the unfunded pension liability under the CalPERS contract (and thereby assure that FORA's member jurisdictions are not exposed to liability for any unfunded pension liability relating to the CalPERS contract following FORA's dissolution).

2.1.2 Retirement Reserve Funds: Although not irrevocably committed to use for retirement purposes and available to meet FORA's other needs, FORA holds funds identified for retirement reserves in the current approximate aggregate amount of \$1,500,000.

2.1.3 Litigation Reserve Funds: Although not irrevocably committed to use for litigation or indemnification purposes, FORA has transmitted funds identified for indemnification of LAFCO in the aggregate amount of \$500,000. Terms and conditions for the use of these funds are provided for in the FORA-LAFCO Indemnification Agreement executed December 18, 2019.

2.1.4 Habitat Funds: It is estimated based on the current rate of collections and earnings that by June 30, 2020 FORA will hold approximately \$17,000,000 in funds dedicated to base-wide habitat management. FORA will transfer the remaining funds to local agencies to use specifically for habitat management as follows:

- 79.9% to Monterey County
- 7.4% to the City of Seaside
- 7.9% to the City of Marina
- 0.3% to the City of Monterey
- 4.5% to the City of Del Rey Oaks

2.1.5 Capital Improvement Funds: Except for those CFD Special Taxes specifically identified for habitat management, all CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall first be directed to completing in progress construction projects as identified in FORA's final year CIP. Any CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall next be directed to completing other projects as identified in FORA's final year CIP. These capital improvement funds shall be transferred to the jurisdiction assigned responsibility for completing construction of the respective project, which shall be the jurisdiction in which the majority of the project is located if a fully executed Memorandum of Agreement between FORA and the agency regarding the project has been entered into. These projects include Removal of the City of Marina Stockade and Ancillary Buildings, Repair of Stormwater Infiltration Units on Eucalyptus Road, and South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements. In each case, the underlying jurisdiction assumes lead agency status and responsibility for the project.

2.1.6 Other Funds: Except as otherwise specifically identified in this Transition Plan, all funds in FORA's other accounts, petty cash, un-deposited checks, and other cash equivalents held by FORA immediately prior to FORA's dissolution shall be applied and distributed according to Section 2.1.5 for funds generated by the CFD Special Taxes. Except as otherwise specifically provided herein, funds related to the general administration of FORA, such as insurance refunds or other general fund revenues remaining unexpended or unallocated immediately prior to FORA's dissolution, shall be used first to address any unfunded administrative liabilities and only after the full satisfaction of such administrative liabilities shall any remaining balance of such funds be applied and distributed according to Section 2.1.5.

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. All rights under the ESCA are assigned to the City of Seaside effective as of FORA's dissolution, provided, however, that the assignment shall be subject to approval by the Army and the state and federal regulators (collectively "the regulators"). In the event that the assignment is not approved by the Army or the regulators, then whichever jurisdiction(s) is/are acceptable to the Army and the regulators and acceptable to the Army-approved jurisdiction shall become the successor(s) to FORA for the purposes of the ESCA and all rights under the ESCA shall be deemed assigned to such jurisdiction(s).

2.1.8 Miscellaneous Personal Property: Any of FORA's office furniture and equipment, supplies, and other personal property remaining as of FORA's dissolution shall be transferred to the County of Monterey in trust for prompt sale or disposition in accordance with any applicable rules or requirements for the transfer of surplus property by a California public entity. Any proceeds from such transfer remaining after reimbursement to the

County for its administrative costs, shall first be directed to any shortfall in funds available to satisfy liabilities or obligations unrelated to projects described in FORA's final year CIP. After the full satisfaction of all such liabilities and obligations any remaining proceeds shall next be directed toward projects described in FORA's final year CIP as outlined in Section 2.1.5 hereinabove.

2.1.9 Real Property: FORA is obligated to cause certain former Fort Ord property to be transferred to the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act. FORA has nominated the City of Seaside as its Successor to the Local Redevelopment Authority and as such, once recognized by the Army, will assume this role. The City of Seaside shall receive funds in the amount of \$100,000 to cover costs of property transfers as the designated LRA successor agency.

2.1.10 Insurance Policies: Except to the extent specifically provided to the contrary in this Transition Plan or by the terms of the insurance policy itself, FORA shall not keep any policies of insurance in force beyond the date of their expiration.

With respect to the Pollution Legal Liability ("PLL") policy, FORA currently holds approximately \$267,000 in a separately identified account for the PLL insurance self-insured retention (SIR). These funds shall be transferred and utilized to defray the administrative costs for the City of Seaside as the First Named Insured and to defray the costs in the event of a claim requiring application of a self-insured retention amount. In the event, the SIR is not utilized for any claims made, the amount in the fund shall be returned, after any administrative deduction for contract management by the successor, to the named insureds in proportion to the amounts of their insurance coverages.

2.2 Liabilities and Obligations and Assignment Thereof:

FORA's principal liabilities and obligations include the following:

2.2.1 Unfunded Pension Liability under CalPERS Contract: Based on the latest available communication from CalPERS, FORA's unfunded terminated agency liability is anticipated to range from \$7,793,230 to \$9,333,172. By this Transition Plan FORA commits that if there is a shortfall between the amount of the anticipated terminated agency liability and the amounts in the Section 115 Trust to retire all the liability, FORA shall expend and encumber such additional funds as are necessary to fully discharge this liability, including without limitation by applying monies on hand in the FORA accounts, by applying bond proceeds, and/or encumbering future property tax revenues, to the extent legally permissible, pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired. The County shall be entitled to recover its reasonable costs of administering and distributing said property tax revenues.

2.2.2 Habitat Funds: See Section 2.1.4 hereinabove.

2.2.3 Capital Improvement Funds: See discussion in Section 2.1.5 hereinabove.

2.2.4 ESCA Reimbursement: See Section 2.1.7 hereinabove.

2.2.5 Building Removal: In the absence of a consolidated building removal program and/or legislative solution to the issue of blight, any building removal not required under the CIP shall be addressed, after FORA's dissolution, if at all, by the jurisdictions in which the remaining abandoned buildings are located after compliance with all applicable laws.

2.2.6 Water/Wastewater: This Transition Plan hereby assigns to MCWD, effective as of the dissolution of FORA, FORA's rights of enforcement under the Implementation Agreements, to the extent they survive post-dissolution, regarding water allocations. In the event that any jurisdiction's approved developments exceed the jurisdiction's approved water allocation, MCWD may decline to issue any further water connection permits until the offending jurisdiction brings its water allocation into compliance or MCWD develops or obtains access to an augmented water supply sufficient to cover any excess. In the event of a ground water shortage, any resulting reductions in the amount of water supplies shall be applied fairly and equitably across all jurisdictions. MCWD and the jurisdictions shall work together as to how to apply a fair and equitable reduction of water supply amongst the underlying land holding jurisdictions.

2.2.7 Prevailing Wages: Notwithstanding any other provision herein, the general prevailing rate of wages for work of a similar character in Monterey County, as determined by the Director of the Department of Industrial Relations under Division 2, Part 7, Chapter 1 of the California Labor Code, shall be paid to all workers employed on First Generation Construction (as defined in the Master Resolution) after FORA's dissolution. This term may not be invalidated or superseded by any Transition Plan Implementing Agreement(s) or other document(s), or by action of any city, successor jurisdiction, or other entity.

2.2.8 Late Discovered Items: To the extent that any contractual obligation is discovered during the LAFCO review and/or implementation of this Transition Plan, those contractual obligations shall be assigned as follows: If the obligation is related to the use of real property, it shall be assigned to the underlying land use jurisdiction. If the liability or obligation is unrelated to the use of real property, either FORA or LAFCO shall notify the appropriate insuring entity or the County, and/or shall expend and encumber such additional funds as are necessary to fully discharge any liability, including without limitation by applying monies on hand in the FORA accounts and/or encumbering future property tax revenues pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired.

Section 3 Transition Plan Implementation:

3.1 Escrow:

In the event that as of immediately prior to FORA's dissolution, there are litigation or indemnity obligations pending, the unexpended balance of the litigation reserves set forth in Section 2.1.3 shall fund an escrow account for the LAFCO Indemnification Agreement for the purpose of paying outstanding legal costs, court judgments, settlements, or other litigation costs that are not covered by insurance and are unable to be paid by FORA due to its dissolution. The initial escrow account

holder shall be the County of Monterey, who shall be entitled to reimbursement for reasonable administrative costs of such administration. The escrow account shall be managed by a panel of not less than five (5) representatives, one from each land holding jurisdiction, and all approved by a majority of the member jurisdictions. The escrow account shall be maintained for three (3) years, after which any remaining money in the account shall be used to pay for a CIP project expense, including but not limited to habitat management, as determined by the panel.

3.2 Litigation Management:

In the absence of an agreement entered into by all of the land holding jurisdictions that post FORA litigation may be managed by any one or more, but less than all, of the land holding jurisdictions, any post FORA litigation shall be managed by any land use jurisdiction that is an identified real party(ies) in interest for such pending litigation.

3.3 LAFCO Review:

If LAFCO finds that this Transition Plan does not provide adequate guidance to LAFCO regarding assignment of FORA's assets and liabilities, designation of responsible successor agencies, or identification of remaining obligations in keeping with the requirements of Government Code section 67700, the Board requests that LAFCO return the Transition Plan with LAFCO's identified deficiencies at the earliest possible time (to enable possible further consideration and action by the Board).

3.4 Reserved Right of Modification:

The Board hereby reserves its right to augment, clarify or modify this Transition Plan as law, facts, circumstances, or agreements may require.

NOW THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:

1. As outlined above, this Resolution and its provisions constitute the Transition Plan required by Government Code section 67700(b); and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b);
3. The Board hereby finds that as adopted herein, this updated and restated Transition Plan is not a project subject to CEQA; and
4. The Board directs the Executive Officer to transmit this updated and restated Transition Plan to LAFCO.

Upon motion by Board member ---- seconded by Board member ---- the foregoing Resolution was passed on this _____ day of June 2020, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Jane Parker, Chair FORA Board

ATTEST:

Joshua Metz, Clerk

DRAFT

GLOSSARY

“Army” means the United States Army.

“Board” means the governing board of the Fort Ord Reuse Authority, as specified in Government Code section 67660.

“CalPERS” means the California Public Employees’ Retirement System.

“CEQA” means the California Environmental Quality Act, as amended to date (Public Resources Code section 21000 and following).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly known as Superfund, as amended to date (42 U.S. Code Chapter 103 and following).

“CFD” means a Community Facilities District within the former Fort Ord formed pursuant to the Mello-Roos Community Facilities Act of 1982, as amended to date (Government Code section 53321 and following).

“CFD Special Taxes” means the special taxes collected through the Community Facilities District on properties to be developed within the former Fort Ord.

“CIP” means a Capital Improvement Program adopted by the Fort Ord Reuse Authority.

“EDC MOA” means the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

“EDC Property” means the real property transferred pursuant to the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

“ESCA” means the Environmental Services Cooperative Agreement entered into between the United States Army and the Fort Ord Reuse Authority, as amended to date.

“FORA Act” means, collectively, SB 899 and AB 1600 adopted in 1994 and amended in 2012, 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.*

“FORA” means the Fort Ord Reuse Authority.

“FORA Program” has the meaning given in Section 1.2.

“FORG” means the Fort Ord Reuse Group organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of the former Fort Ord.

“Fort Ord,” including references to the territory or area of Fort Ord or the former Fort Ord, means the geographical area described in the document entitled “Description of the Fort Ord Military Reservation Including Portion of the Monterey City Lands Tract No. 1, the Saucito, Laguna Seca, El Chamisal, El Toro and Noche Buena Ranchos, the James Bardin Partition of 1880 and Townships 14 South, Ranges 1 and 2 East and Townships 15 South, Ranges 2 and 3 East, M.D.B. and M. Monterey County, California,” prepared by Bestor Engineers, Inc., and delivered to the Sacramento District Corps of Engineers on April 11, 1994 or the military base formerly located on such land, as the context requires.

“Implementation Agreements” means agreements entered into beginning in 2001 between the Fort Ord Reuse Authority on the one hand and the County of Monterey and each city receiving or anticipated to receive a portion of the EDC Property on the other hand, as such agreements may have been amended to date.

“LAFCO” means the Monterey County Local Agency Formation Commission.

“Local Redevelopment Authority” means any authority or instrumentality established by State or local government and recognized by the Secretary of Defense through its Office of Economic Adjustment (OEA) to facilitate the transfer of properties from the former Fort Ord to the underlying jurisdictions.

“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended.

“MCWD” means the Marina Coast Water District.

“MCWRA” means the Monterey County Water Resources Agency.

“MRWPCA” means the Monterey Regional Water Pollution Control Agency.

“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.

“Strategy Report” means the June 1992 report prepared by the Fort Ord Community Task Force in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

“Task Force” means the Fort Ord Community Task Force formed in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

| FORT ORD REUSE AUTHORITY BOARD REPORT | |
|--|--------------------------------|
| BUSINESS ITEM | |
| Subject: | Unallocated Funds Distribution |
| Meeting Date: | June 11, 2020 |
| Agenda Number: | 7c |
| ACTION | |

RECOMMENDATION(S):

- i. Receive a report on the funding requests made to FORA by numerous member jurisdictions and stakeholder agencies.
- ii. Provide staff direction.

BACKGROUND/DISCUSSION:

As FORA’s sunset is eminent there are more funding requests from member jurisdictions and stakeholder agencies than funds available. None of these requests were included in the 2019/20 Mid-Year Budget estimates. These requests are grouped into the following categories with background summaries provided below and attached table (Attachment A): Administrative Expenses, Reimbursement Agreements, and Miscellaneous Agency Requests:

Administrative Expenses

- City of Seaside, Local Redevelopment Authority (“LRA”): **\$100,000**
Expenses related to assuming LRA functions including document processing and related actions (**Attachment B**).
- Kutak-Rock, Legal Services: **\$100,000**
Special Counsel legal service costs associated with final Army-FORA land transfers.
- Kennedy, Archer, & Giffen, Legal Services: **\$200,000**
Authority Counsel legal services associated with FORA dissolution.
- Monterey County, Post-FORA Administration: **\$175,000**
Post-FORA Administrative Costs (**Attachment C**).
- Monterey County, Veterans Affairs Office: **\$351,000**
Post-FORA Veterans Affairs Coordination, 3-yrs.
- Regional Government Services (“RGS”): **\$150,000**
Post-FORA Fiscal & Administrative Services Contract (**Attachment D**).
- Local Area Formation Commission (“LAFCO”): \$100,000
Post-FORA Administrative Costs (**Attachment E**).

Reimbursement Agreements

- Marina Coast Water District, RUWAP Pipeline: **\$274,000**
On May 15th MCWD Submitted 2019/20 hardcopies of the invoices and supporting backup information to FORA totaling \$1,894,723.17 for reimbursement of expenses incurred by MCWD in the construction of the Regional Urban Water Augmentation Project (RUWAP). Based on their interpretation of the Reimbursement Agreement between MCWD and FOR A, MCWD contends that FORA has a firm commitment to reimburse MCWD \$4.3M for RUWAP expenses and up to \$6.0M (if funding is available). The FORA Board approved the 2019/20 Capital Improvement Program (CIP) funding for RUWAP of \$1,620,869.00 on May 10, 2019. This 2019/20 funding was also verified in the 2020 Mid-Year Budget as approved by the FORA Board. According to MCWD, they are still owed the difference between the CIP approved budget and their submitted invoice which amounts to \$273,854.17. FORA's Legal Counsel does not share the same interpretation of the terms of the Reimbursement Agreement and does not believe that the firm commitment was stipulated in the agreement between FORA and the MCWD.
- City of Marina, Del Monte Extension: **\$106,299**
The City of Marina submitted a reimbursement invoice in the amount of \$106,298.17 dated November 25, 2019 for expenditures for three CIP projects including:
 - Salinas Avenue Widening (CIP FO11)
 - 8th Street Improvement (CIP FO5), and
 - 2nd Avenue/Del Monte Extension (CIP FO2).

This invoice was not processed by FORA in 2019, and the reimbursement request was resubmitted by the City of Marina on May 26, 2020. The City of Marina contends that these charges were in accordance with the Reimbursement Agreement between FORA and the City of Marina signed May 3, 2007. FORA Legal Counsel has not yet reviewed nor provided their opinion of this agreement and the request for funding. The FORA Board-approved 2019/20 CIP funding in support of the City of Marina for Del Monte Boulevard Extension (CIP FO10) of \$560,000 will be paid to the City of Marina.

Miscellaneous Agency Requests

- City of Seaside: **\$1,441,000**
Roadway Maintenance and Repairs (**Attachment B**).
- Local Area Formation Commission ("LAFCO"): **\$1,500,000**
Legal defense fund (**Attachment E**).

Litigation

Litigation costs are substantial and on-going. There may be need to amend budgets.

FISCAL IMPACT:

Reviewed by FORA Controller  _____

COORDINATION:

Authority Counsel, Administrative and Executive Committees, land use jurisdictions, Consultants.

Prepared by & Approved by _____


Joshua Metz

ATTACHMENTS:

- A. Closing Funding Requests Summary Table
- B. City of Seaside Post-FORA Funding Request Letter, March 6, 2020.
- C. Monterey County, Supplemental Board Packet, June 9, 2020.
- D. RGS Proposal, June 5, 2020.
- E. LAFCO Letter to FORA Board, May 6, 2020.

| Description | Amount | Organization |
|---|-----------------------|-----------------|
| Administrative | | |
| LRA Administration | \$ 100,000 | City of Seaside |
| LRA Closing Legal Services | \$ 100,000 | Kutak-Rock |
| Additional Legal Services | \$ 200,000 | KAGLAW |
| Post-FORA Administration | \$ 1,000,000 | Monterey County |
| Veterans Affairs Coordination (3-years) | \$ 350,000 | Monterey County |
| Post-FORA Fiscal & Administrative Services Contract | \$ 150,000 | RGS |
| Post-FORA Administration | \$ 100,000 | LAFCO |
| Sub-Total | \$ 2,000,000 | |
| Reimbursement Agreements | | |
| RUWAP Pipeline | \$ 274,000 | MCWD |
| Del Monte Extension | \$ 106,000 | City of Marina |
| Sub-Total | \$ 380,000 | |
| Misc Agency Requests | | |
| Roadway Repairs | \$ 1,200,000 | City of Seaside |
| Legal Defense | \$ 1,500,000 | LAFCO |
| Sub-Total | \$ 2,700,000 | |
| Total Requests | \$ 5,080,000 | |
| Litigation Liabilities | | |
| Sub-Total | \$ 2,000,000 | |
| Total Requests + Liabilities | \$ 7,080,000 | |
| Total Unassigned Funds FY 19/20 Budget | \$ 1,300,000 | |
| CalPERS Reserved Funds (EG Settlement) | \$ 1,500,000 | |
| Total Funds Available | \$ 2,800,000 | |
| Gap | \$ (4,280,000) | |



March 26, 2020

Josh Metz, Executive Officer
FORA
920 2nd. Avenue
Marina, CA. 93933

Dear Josh:

As was presented at the February 24 Finance Committee Meeting, please find below a list of expected Seaside expenses related to FORA projects and tasks. The City respectfully requests consideration of paying for such expenses as FORA works through matters related to its dissolution.

| | |
|---|--------------------------------|
| LRA Expenses | \$ 100,000 |
| Eucalyptus Infiltrator Repairs | \$1,235,000 |
| Eucalyptus Slurry Seal | \$ 160,000 |
| Gen Jim Blvd Road Repairs | \$ 300,000 |
| Gen Jim Blvd Slurry Seal | \$ 400,000 |
| Gen Jim Blvd Sidewalk Repairs / Landscape Replacement | \$ 80,000 |
| Gen Jim Blvd Traffic Signal Repairs | \$ 75,000 |
| Gen Jim Blvd Streetlight Repairs | \$ 15,000 |
| Gen Jim Blvd Storm Drain Repair Prelim Design | \$ 60,000 |
| Lightfighter Sidewalk Repairs / Landscape Replacement | \$ 75,000 |
| | Subtotal \$2,400,000 |
| | Project Admin @ 10% \$ 240,000 |
| Surplus II Building Fencing | \$ 36,000 |
| | Total \$2,776,000 |

Thank you, in advance, for your consideration.

Sincerely,

Craig Malin
City Manager

Cc: Mayor and City Council



Board Report

Board of Supervisors Chambers
168 W. Alisal St., 1st Floor Salinas,
CA 93901

Legistar File Number: 20-498

June 09, 2020

Introduced: 6/4/2020

Version: 1

Current Status: Agenda Ready

Matter Type: General Agenda Item

Receive an update regarding Fort Ord Reuse Authority's (FORA) dissolution, consider submitting a modified funding request to FORA, and provide direction to staff.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive an update regarding Fort Ord Reuse Authority's (FORA) dissolution;
- b. Consider submitting a modified funding request to FORA; and
- c. Provide direction to staff.

SUMMARY/DISCUSSION:

In March 2020, the Resource Management Agency (RMA), on behalf of the County, submitted a funding request for \$1,594,749 to the Fort Ord Reuse Authority (FORA) for costs associated with additional staffing, records services, and consultant costs anticipated for the County to perform certain administrative management functions that it will assume as of July 1, 2020 (Attachment A). Staff understands that FORA has received over \$4.5 million requests from FORA members for funding post-FORA, yet it still has approximately \$1.3 million in unassigned funds remaining.

Since March, the County's post-FORA proposed responsibilities and funding needs have changed, and various matters associated with FORA dissolution have evolved. Two significant changes with monetary implications are that the County's East Garrison tax increment will not be pledged for FORA's bond debt service and that the County will no longer receive bond proceeds. FORA has voted to go ahead with the bond, with the proceeds to be used for FORA's unfunded CalPERS obligation as well as for building removal. The FORA Board has also voted to allocate to the County approximately 80% of CFD Special Tax set aside for habitat management funds commensurate with the County's share of habitat management responsibilities on the former Army base. To implement that decision, concurrently today, on the Board of Supervisors' agenda is a Joint Community Facilities Agreement by and between FORA and the County to transfer an estimated \$13.58 million to the County for habitat management on the former Fort Ord.

FORA has requested that the County assume certain responsibilities related to its administrative wind down after dissolution (e.g., administering FORA's bank accounts, signing checks, audit sign-off, issuing W-2 forms). No other entity is charged to assume this role (such as the Local Area Formation Commission), so staff suggested FORA hire a third-party to manage the agency's wind-down activities. If the FORA Board approves this approach, a public entity (presumably the County) would need to be signatory to FORA bank accounts and oversee and manage the contract for these services,

and likely, FORA would seek to assign the contract to the County prior to FORA dissolution. Staff would return to the Board for consideration of any such contract.

In light of all these circumstances and the number and magnitude of the demands on FORA's last remaining unallocated funds, FORA staff has requested the County reduce its request for funding for the County's assumption of administrative responsibilities. Staff recommends removing \$1,011,299 in costs from its request to FORA and has identified or recommends alternative revenue sources to fund these costs (see Finance Section below). For the Board's consideration, staff has prepared a reduced funding request of \$526,030, plus 10% of a to-be-determined third-party contract with FORA for County costs associated with post-FORA responsibilities. Staff also requests the Board consider and provide direction to staff for a recommendation to the FORA Board regarding the proposal that: 1) FORA enter into agreement with a third-party contractor to provide FORA administrative wind-down services; 2) County assume signatory responsibility for FORA bank accounts and oversight of the third-party contract.

OTHER AGENCY INVOLVEMENT:

FORA is legislatively scheduled to dissolve on June 30, 2020. Supervisors Parker and Phillips serve on the County Board of Supervisors' Fort Ord Committee; Supervisors Adams, Parker, and Phillips serve on the FORA Board; and Supervisor Phillips serves as Chair of the FORA Legislative Committee. RMA represents the County on the FORA Administrative Committee, which is considering the FORA transition issues. The County Administrative Office, the Office of the County Counsel, and Resource Management Agency (RMA) are part of the County's FORA transition team.

FINANCING:

RMA staff time to evaluate FORA transition issues and to prepare this report is funded as part of the Fiscal Year (FY) 2019-20 Adopted Budget for the RMA, Fund 001, Appropriation Unit RMA013.

Upon FORA's dissolution, FORA's share (35%) of the East Garrison Project Area tax increment will distribute according to the post-FORA formula: 54% to the Successor Agencies; 38% to the County (of which 65.5% per agreement goes to the Monterey County Regional Fire District (MCRFD)); and 8% to other taxing entities. For FY 2019-20, FORA's fiscal consultant shows the FORA share of East Garrison tax increment is \$1,023,951, and a projected amount of \$1,146,435 in FY 2020-21 and \$1,208,332 in FY 2021-22. Per the post-FORA distribution schedule, the County would receive, after distribution to MCRFD, an estimated \$150,297 in FY 2020-21 and \$158,412 in FY 2021-22.

The approximately \$13.58 million the County anticipates receiving for habitat management will be held in an interest-earning account (or other funding mechanism). Staff recommends sizing the County's habitat management program based on the projected interest income. For example, if the account earns three percent (3%) annually, interest will generate approximately \$407,400 per year for habitat management.

The March funding request submitted to FORA totaled \$1,537,329. Considering the changes discussed above, staff is preparing a revised funding request to FORA of \$526,030, plus ten percent (10%) of a suggested third-party contract, to pay for the County's costs associated with post-FORA

responsibilities. In order of funding priority, these cost items are:

1. *Records Retention*:

- a) 3 Temporary Office Assistants for FY 2020-21 = \$50,000;
- b) ¼ Full Time Equivalent (FTE) Office Assistant II for FYs 2020-21, 2021-22 and 2022- 23 = \$60,325; and
- c) Records retention moving and storage costs for FYs 2019-20, 2020-21, 2021-22 and 2022-23 = \$64,651.

2. *FORA Administrative Wind Down* (if supported by Board): Administrative fee of 10% of the total third-party contracted amount.

3. *Veterans Information and Advisory Committee (VIAC)*:

- a) 1 FTE Management Analyst I for FYs 2020-21, 2021-22 and 2022-23 = \$346,053; and
- b) Onboarding Cost = \$5,000.

Of the March request, staff identified potential alternative funding sources for the following items, and therefore recommends removing these from its request to FORA:

- 1. Denise Duffy & Associates Contract (Oak Woodlands Conservation Planning) -Agreements to enable FORA to assign the DDA contract to the County and provide remaining funds to the County for the completion of the DDA contract are in process and will be presented to the Board of Supervisors and FORA Board in June.
- 2. 1 FTE Associate Planner (Biological/Environmental) - Habitat management funds
- 3. Consultant to complete Fort Ord Recreational and Habitat Area (FORHA) Trail Plan and Open Space Management Strategy - Habitat management funds or post-FORA tax increment funds
- 4. Consultant to replace the FORA Community Facilities District Fee - County existing tax increment for redevelopment wind down administration.
- 5. 1 FTE Management Analyst II for former Fort Ord RMA property administration/management and land use control implementation - Post-FORA tax increment funds


BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Ensuring a smooth transition after FORA’s dissolution supports the Board’s Strategic Initiative for Economic Development by continuing to support and facilitate the redevelopment of the former Fort Ord area and economic recovery to the region from the base closure. It is essential that the County is adequately funded and prepared to assume its expected responsibilities following FORA dissolution.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Melanie Beretti, Property Administration/Special Programs Manager (831) 755-5285

Approved by: Shawne Ellerbee, RMA Deputy Director of Administrative Services

Approved by: Carl P. Holm, AICP, RMA Director 

Attachments:

- Attachment A-03/24/2020 FORA Funding Request Letter
- Attachment B-County Funding Request to FOR A Detail June 2020
- (Attachments are on file with the Clerk of the Board)

Attachment A

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March 24, 2020

Fort Ord Reuse Authority
Attn: Josh Metz, Executive Officer
920 2nd Avenue, Suite A
Marina, CA 93933

Dear Mr. Metz:

With the mandated dissolution of the Fort Ord Reuse Authority (FORA) as of June 30, 2020, Monterey County Resource Management Agency (RMA) and the Military and Veteran's Affairs Office (MVAO) will be assuming administrative management support for a number of functions formerly supported by the FORA. As the property tax revenue stream to the County beginning July 1, 2020 is uncertain given FORA's intention to issue bonds to fund building removal, the County is submitting this request for funding from FORA to support the County to assume certain administrative roles as well as to get the County's Fort Ord programs off the ground. The County has played a major role in the transformation of the former Fort Ord Military Reservation, working with FORA and the surrounding agencies by facilitating transition activities. The County is preparing to assume additional duties as a result of FORA's dissolution and remaining transfer of Environmental Services Cooperative Agreement (ESCA) properties. Monterey County is requesting funding from FORA to assist with new anticipated duties being assumed by the County, including, but not limited to: records retention, including website archive; facilitate and manage Veterans Issues Advisory Committee (VIAC); FORA debt management; regional tracking and reporting for land use controls implementation; administration and management of about 2,700 acres former Fort Ord lands; habitat management responsibilities; and unknown administrative and management responsibilities.

The funding request prepared by the County of \$1,537,329 includes cost estimates for four years, starting with the current FY19-20 and continuing through FY 22-23. The estimate will cover additional staffing, records services and consultant costs. RMA is requesting an Associate Planner with background and experience to assist with Biological/Environmental compliance for habitat and open space management. A Management Analyst II is needed to provide administrative and management functions and an Office Assistant to provide administrative support functions. Along with the future staffing needs, RMA will assume the role of facilitating records transfers and have added three (3) Temporary Office Assistants to assist with the organization of existing FORA documents in a manner that is consistent with the County's format. Ongoing records retention cost are included to maintain and make available FORA records as an archive. Along with RMA staff request, the Military & Veterans Affairs office is requesting funding for a new Management Analyst I position that would be responsible for facilitating the Veterans Issues Advisory Committee (VIAC). This position will act in the capacities of Facilitator, Project Manager and

Analyst. The additional staff will provide the administrative management support in all aspects of the former Fort Ord area.

Funding assistance from FORA is needed so the County's new Fort Ord Program will be able to get underway without budget constraints, and we can afford a successful transition. RMA looks forward to leading this new program and venture between the County and successor agencies.

Respectfully,



Carl P. Holm, AICP
RMA Director

Enclosure /
Funding Request Summary

County Funding Request to FORA

Attachment B

With the legally mandated dissolution of the Fort Ord Reuse Authority (FORA) occurring as of June 30, 2020, RMA has further identified certain responsibilities currently happening now and resource needs anticipated as of July 1, 2020. With the County assuming administrative management support of the former Fort Ord Properties effective in FY 20-21 and to ensure a successful transition, the County is requesting 3 years of initial funding assistance from FORA in getting the County's Ford Ord Program off the ground.

The County is requesting funding for additional staffing required in assuming administrative managerial support and records retention. Staffing for three and a quarter full time employees (FTE's) is being requested, (1) Associate Planner, (1) Management Analyst II and (.25) Office Assistant position. The Associate Planner will assist in providing Biological / Environmental compliance for habitat and open space management, the Management Analyst II for administrative and management functions and an Office Assistant for administrative support functions. Along with the staffing needs, RMA will assume the role of facilitating records transfers and have added Temporary Office Assistants (3) in the current fiscal year to assist with the organization of existing FORA documents. Moving forward the staff will be limited to maintaining and making available FORA records as an archive, therefore ongoing records retention cost are needed. The Military & Veterans Affairs office is requesting funding for a Management Analyst I position that would be responsible for facilitating the Veterans Issues Advisory Committee (VIAC). The position will act in the capacities of Facilitator, Project Manager and Analyst.

RMA is also requesting funding for ongoing contracts that are currently in place or will be necessary because of the dissolution. Currently Denise Duffy & Associates is assisting FORA with the Oak Woodland Conservation Planning and will continue thru project finish. Additionally, there is a pending analysis with a consultant assisting with identifying funding alternatives and analyzing the cost associated with the remaining infrastructure and habitat management options.

Monterey County RMA and Military & Veterans Affairs Office request consideration of funding costs the County will incur effective FY 20-21 as a result of the dissolution of FORA. The

Salaries (includes benefits cost):

| Title | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Salary Estimate |
|--|--------------|---------------|---------------|---------------|---------------------|
| Associate Planner (Biological/Environmental) - 1 FTE | \$ - | \$ 142,052.00 | \$ 144,402.00 | \$ 146,462.00 | \$ 432,916.00 |
| Management Analyst II - 1 FTE | \$ - | \$ 152,991.00 | \$ 155,551.00 | \$ 157,841.00 | \$ 466,383.00 |
| Office Assistant II .25 FTE | \$ - | \$ 19,682.75 | \$ 20,120.75 | \$ 20,521.75 | \$ 60,325.25 |
| Temporary Office Assistant 3 FTE | \$ 50,000.00 | \$ - | \$ - | \$ - | \$ 50,000.00 |
| Management Analyst I (MVAO) - 1 FTE | \$ - | \$ 110,748.00 | \$ 115,258.00 | \$ 120,047.00 | \$ 346,053.00 |
| Total: | \$ 50,000.00 | \$ 425,473.75 | \$ 435,331.75 | \$ 444,871.75 | \$ 1,355,677.25 |
| FTE Count | 6.25 | 3.25 | 3.25 | 3.25 | |

Consultant / Contract Costs:

| Title | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Estimate |
|---|--------------|--------------|---------|---------|---------------|
| Denise Duffy and Associates - Oak Woodland Conservation Plan Assignment | \$ - | \$ 37,000.00 | \$ - | \$ - | \$ 37,000.00 |
| Consultant - Complete FORHA, Trail Plan & Open Space Mgmt Strategy | \$ - | \$ 50,000.00 | \$ - | \$ - | \$ 50,000.00 |
| Consultant - FORA CFD Replacement | \$ 25,000.00 | \$ - | \$ - | \$ - | \$ 25,000.00 |
| Total: | \$ 25,000.00 | \$ 87,000.00 | \$ - | \$ - | \$ 112,000.00 |

Other:

| Title | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Estimate |
|---|--------------|--------------|--------------|--------------|--------------|
| Records Retention - Box, Move and Ongoing Storage | \$ 15,000.00 | \$ 15,750.00 | \$ 16,537.50 | \$ 17,364.38 | \$ 64,651.88 |
| Onboarding Cost (MVAO - MA I position) | \$ - | \$ 5,000.00 | \$ - | \$ - | \$ 5,000.00 |
| Total: | \$ 15,000.00 | \$ 20,750.00 | \$ 16,537.50 | \$ 17,364.38 | \$ 69,651.88 |

Total Funding Request:

| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Funding Estimate |
|--|--------------|---------------|---------------|---------------|----------------------|
| | \$ 90,000.00 | \$ 533,223.75 | \$ 451,869.25 | \$ 462,236.13 | \$ 1,537,329.13 |

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ATTACHMENT B

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County Funding Request to FORA Detail (JUNE 2020)

Salaries (includes benefits cost):

| Title | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Salary Estimate |
|-------------------------------------|---------|---------------|---------------|---------------|---------------------|
| Office Assistant II .25 FTE | \$ - | \$ 19,682.75 | \$ 20,120.75 | \$ 20,521.75 | \$ 60,325.25 |
| Temporary Office Assistant 3 FTE | | \$ 50,000.00 | \$ - | \$ - | \$ 50,000.00 |
| Management Analyst I (MVAO) - 1 FTE | \$ - | \$ 110,748.00 | \$ 115,258.00 | \$ 120,047.00 | \$ 346,053.00 |
| Total: | \$ - | \$ 180,430.75 | \$ 135,378.75 | \$ 140,568.75 | \$ 456,378.25 |

Other:

| Title | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Estimate |
|---|--------------|--------------|--------------|--------------|-----------------------------|
| Records Retention - Box, Move and Ongoing Storage | \$ 15,000.00 | \$ 15,750.00 | \$ 16,537.50 | \$ 17,364.38 | \$ 64,651.88 |
| Onboarding Cost (MVAO - MA I position) | \$ - | \$ 5,000.00 | \$ - | \$ - | \$ 5,000.00 |
| 10% Administrative Fee of FORA wind down contract | \$ - | TBD | TBD | TBD | <i>plus 10% of contract</i> |
| Total: | \$ 15,000.00 | \$ 20,750.00 | \$ 16,537.50 | \$ 17,364.38 | \$ 69,651.88 |

Total Funding Request:

| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | 3YR Funding Estimate |
|--|--------------|---------------|---------------|---------------|----------------------|
| | \$ 15,000.00 | \$ 201,180.75 | \$ 151,916.25 | \$ 157,933.13 | \$ 526,030.13 |

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June 8, 2020

Mr. Joshua Metz
Executive Officer
Fort Ord Reuse Authority
620 2nd Ave, Suite A
Marina, CA 93933

SUBJECT: FORA TRANSITION SERVICES

Dear Mr. Metz,

Thank you for giving Regional Government Services (RGS) the opportunity to provide this letter proposal for assistance related to the transition of Administrative and Financial Services for the Fort Ord Reuse Authority (FORA) to the County of Monterey (County).

SCOPE OF WORK

RGS' designated staff will provide transition services from June 15, 2020 through June 30, 2021 as needed and/or requested by FORA and/or the County. These may include but are not limited to:

- Assisting in efforts required as a result of the dissolution of the Fort Ord Reuse Authority including but not limited to disposition of physical assets, transfer of documents and/or other tasks as requested by the County.
- Coordination with CalPERS, the County and the City of Marina related to settlement of FORA's final liability payment.
- Providing finance services including management of accounts payable and contract payments post June 30, 2020. RGS staff will prepare warrants for review and signature by County staff.
- Management and oversight of FORA's Final Year Audit to be conducted by Moss, Levy & Hartzheim LLP which has been retained by FORA in advance of dissolution.
- Human Resources services as needed for employment verification, distribution of final year tax documents and filings.
- Assistance as needed for management of projects related to the County's role as a successor to FORA.
- Assistance if needed for Public Records Requests, records management and transfers.
- Other services as requested.

TERM

The term of the contract would be from June 15, 2020 through June 30, 2021.

BUDGET

RGS requests a not-to-exceed budget of \$150,000.

Please feel free to contact me with any questions or clarifications. Thank you!

Sincerely,

KBFlint

Kendall Flint
Director of Strategic Planning and
Communications
REGIONAL GOVERNMENT SERVICES

2020

May 6, 2020

Commissioners

Chair

Matt Gourley
Public Member

Vice Chair

Ian Oglesby
City Member

Luis Alejo
County Member

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City Member

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Special District Member

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Special District Member

Maria Orozco
City Member, Alternate

Jane Parker
County Member, Alternate

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Counsel

Kelly L. Donlon
General Counsel

Executive Officer

Kate McKenna, AICP
132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

Fort Ord Reuse Authority
Executive Officer Josh Metz and Executive Committee
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: May 6, 2020 FORA Executive Committee Agenda Packet and related FORA Dissolution Items

Dear Executive Officer Metz and Executive Committee,

On behalf of the Local Agency Formation Commission, I am writing to comment on agenda items for your May 6 Executive Committee meeting, including the draft agenda packet for the May 14 FORA Board meeting. LAFCO provided written comments to the FORA Administrative Committee prior to their meeting this morning. After participating in that meeting, we are sharing our updated comments for your consideration as you set agendas for the May 14 FORA Board Meeting Agenda and subsequent Board meetings through June. Our comments are in the spirit of fulfilling LAFCO's responsibilities under California Government Code section 67700.

We request that FORA's Transition Plan amendments, CalPERS liability funding strategy, and the allocation of FORA funds be scheduled for consideration on May 14 or soon thereafter. We also request that substantive requests and issues raised by LAFCO and FORA stakeholders be placed on the May 14 and subsequent agendas for discussion and official responses. FORA's dissolution schedule is now very compressed. In the short time available to address outstanding items, we remain engaged in working with FORA to accomplish our respective dissolution responsibilities to the fullest extent possible.

I have attached LAFCO's April 27 Executive Officer's report on the status of the FORA dissolution (**Attachment 1**) for background, as well as recent letters from stakeholders in our Monterey Bay communities. Following are specific comments and requests related to your Committee's agenda items and other matters in need of urgent attention by FORA and its member agencies.

I. Address unresolved CEQA-related issues.

LAFCO has requested that FORA address issues related to identification and assignment of FORA lead agency CEQA projects and their corresponding responsibilities for mitigation measures. Most recently, LAFCO transmitted a letter to the FORA Board on April 17, requesting that FORA address the successor agency assignments of FORA CEQA lead agency status projects and existing FORA contracts with the California Native Plant Society, by adding language in the 2020 Transition Plan and completing successor agreements.

The draft FORA Board Agenda packet for May 14 includes Item 7a Memoranda of Agreements for Capital Improvement Program and General Fund Project Transfers, which would appear to address successor agency assignments of FORA lead agency status Capital Improvement Program (CIP) projects to the Cities of Marina, Seaside, and Del Rey Oaks through agreements. Drafts of these agreements are not yet available for review. LAFCO seeks to coordinate with FORA on these items as they move forward.

2. Address unresolved issues identified by FORA stakeholders.

LAFCO is concerned by the range of unresolved issues that stakeholders have raised in correspondence related to aspects of FORA dissolution. These stakeholders include the California Native Plant Society (CNPS), Carpenters Union Local 605 (Carpenters Union), Monterey Peninsula College (MPC), and Keep Fort Ord Wild (KFOW). Each entity has identified substantial matters that must be addressed with the FORA Board. LAFCO requests a written summary of FORA's responses to issues raised by each FORA stakeholder. The issues are summarized below.

a. CNPS' Unresolved Issues:

In its May 1, 2020 letter (**Attachment 2**) and an earlier letter dated April 17, 2020, CNPS raised issues regarding FORA's requirement from its 2010 Environmental Assessment/Initial Study to successfully negotiate with CNPS to relocate a currently identified habitat preserve further south before FORA can proceed with its South Boundary Road project; CNPS not agreeing to relocate the habitat preserve area; FORA's 1998 and 1999 contracts with CNPS requiring protection of the habitat preserve from fragmentation and degradation in perpetuity; and FORA's inability to deliver an approved South Boundary Road project to the City of Del Rey Oaks.

b. Carpenters Union's Unresolved Issues:

In its April 8, 2020 letter (**Attachment 3**), Carpenters Union raised issues urging FORA to record its Master Resolution; significant concern over language stating that the draft Multi-Agency Transition Plan Implementing Agreement (TPIA) would supersede 2001 Implementation Agreements between FORA and its member agencies; and concern that the draft TPIA makes no mention of the obligations contained in the original Implementation Agreements. Subsequently, FORA recorded its Master Resolution, but has not addressed the Carpenters Union's remaining concerns.

c. KFOW's Unresolved Issues:

In its April 17, 2020 letter (**Attachment 4**), KFOW raised issues regarding FORA's need to clearly state in its Transition Plan the status of the Fort Ord Reuse Plan going forward after FORA sunsets; FORA's need to identify the agency or agencies that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations post-FORA dissolution; FORA requirements to make a CEQA determination before acting on the Transition Plan; FORA requirements to provide public notice prior to making a CEQA determination/decision; and FORA requirements to take a second vote on the proposed amendments if the first vote is not unanimous.

d. MPC's Unresolved Issues:

In its April 9, 2020 email (**Attachment 5**), MPC raised issues related to the April 9 FORA Board Meeting Agenda Item 8b Habitat Working Group Report & Set Aside Funds Distribution Recommendation. MPC expressed concerns that the purpose of FORA's habitat funds was to manage habitat land set aside to mitigate basewide development and that this purpose would be negated if FORA only allocated shares of this funding to FORA's five land use jurisdictions and excluded MPC and other educational institutions from receiving these funds. The FORA Board approved Alternative 1, which still excluded MPC and other educational institutions from receiving FORA's habitat funds.

3. Address the definitive status of FORA agreements, contracts and plans after June 30, 2020.

FORA's official positions on the definitive status of FORA agreements, contracts and plans after June 30, 2020 will serve as an important reference point. In this regard, LAFCO asks the FORA Board to provide its opinions and supporting analyses on the post-dissolution status of FORA documents, including but not limited to:

- FORA Transition Plan,
- Fort Ord Reuse Plan and related EIR mitigation measures,
- 2001 Implementation Agreements,
- 1998 FORA-Sierra Club Settlement Agreement, and
- 2002 FORA-MPC-County of Monterey Public Safety Officers Training Facilities Agreement.

4. Prioritize action on a 2020 Transition Plan and ensure that the Transition Plan meets specific requirements described in the FORA Act.

LAFCO is concerned about FORA's delayed consideration of a 2020 Transition Plan. In the event that draft Transition Plan Implementing Agreements are not completed, individual local agencies will need to rely on FORA's adopted Transition Plan for guidance on dissolution items. We understand that FORA intends to include post dissolution obligations related to FORA issuance of tax increment bonds for building removal funding and that this pending item is causing FORA to postpone 2020 Transition Plan action. Given these circumstances, LAFCO asks FORA to address issues related to tax increment bonds and prioritize action on a 2020 Transition Plan.

The FORA Act, California Government Code section 67700, states that FORA's Transition Plan "shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations." LAFCO requests that FORA ensure its Transition Plan meets each requirement described in the FORA Act. The adopted 2018 Transition Plan includes a reference to a schedule of remaining obligations. Though not stated in the Transition Plan, it appears that FORA intends Exhibit A to the Transition Plan to serve as a schedule of obligations. LAFCO asks FORA to confirm if Exhibit A is indeed a "schedule of remaining obligations."

In previous discussions with FORA staff and consultants, FORA mentioned that it was reviewing Exhibit A to determine which agreements identified in the exhibit required assignment to a successor, additional action before June 30, or survived beyond June 30. LAFCO notes that FORA's contracts with CNPS concerning Plant Reserve INorth and the recently signed Environmental Services Cooperative Agreement (ESCA) Implementing Agreement are not listed in Exhibit A, but should be included. As mentioned in the previous section, FORA is also planning to consider additional agreements transferring its lead agency status and funds to the Cities of Marina, Seaside, and Del Rey Oaks for certain FORA CIP projects. LAFCO asks that FORA share the results of its review and provide an updated version of Exhibit A as an attachment to its draft 2020 Transition Plan.

In addition, as included in FORA's April 30, 2020 Board Packet under Item 7a Building Removal Bond Funding Agreements, FORA expects to complete actions and agreements to issue tax increment bonds in the approximate amount of \$30 million and assign its responsibilities related to bond administration to the City of Marina before June 30. This item is an example of a FORA dissolution action that was not included in the Transition Plan or Exhibit A. LAFCO asks FORA to provide a complete final accounting of Transition Plan required actions, agreements and other documents that survive past June 30, and how each item is to be administered or assigned to a successor.

5. Prioritize action to address FORA's CalPERS liability funding strategy.

LAFCO is concerned about FORA's delayed discussion and action on a CalPERS liability funding strategy. The April 30 FORA Board Meeting Agenda included Item 7b CalPERS Liability Funding Strategy, which identified likely increased costs (estimated to be an additional \$5 million) for FORA's final payment to its CalPERS termination liability, identified a requirement that the CalPERS liability needed to be satisfied in order for FORA to issue tax increment bonds for building removal, and identified a plan to include funds from FORA's bond issuance to satisfy the CalPERS liability. LAFCO requests FORA to discuss and take appropriate action on this urgent matter.

6. Prioritize action to address issues related to FORA tax increment bond issuance for building removal.

FORA's efforts to obtain additional funds for building removal through issuance of tax increment bonds are close to being accomplished but face two recently identified issues. One issue is that FORA must satisfy its CalPERS termination liability (discussed in #5 above) and the second issue is that FORA must satisfy its debt to the East Garrison developer as required by a 2006 Basewide Funding Obligations Agreement among the County of Monterey, FORA, and East Garrison Partners. This item is particularly concerning to LAFCO because FORA's consultant reported that 2020 Transition Plan delays are due to efforts to include the bond issuance and its associated agreements and requirements in the draft 2020 Transition Plan. LAFCO requests that FORA take action to resolve this issue or move forward with alternative plans for its tax increment funds if resolution is not possible.

7. Provide supplemental litigation reserve funding to LAFCO for FORA defense, in an amount of up to \$1.5M.

LAFCO has estimated an additional litigation reserve funding need of up to \$1.5 million due to stakeholders' unresolved issues, newly identified CalPERS termination liability payment issues, and an existing unresolved

FORA litigation matter. Also, FORA is proceeding with preparation of its Habitat Conservation Plan Environmental Impact Report (HCP EIR) for future FORA Board consideration to certify the document in June 2020, which, in LAFCO's view, has high potential to generate litigation risk. In addition, FORA has not transferred its litigation role for pending litigation matters to a successor or successors. Also, it is uncertain if FORA will address all stakeholders' unresolved issues before June 30. Furthermore, LAFCO and FORA member Agencies could face unknown unresolved issues post June 30 that increase litigation risk.

LAFCO receives annual funding from its local government agencies, most of which are not FORA members. Consequently, LAFCO has a duty to shield its non-FORA agencies from FORA-related litigation matters and corresponding financial burdens by requesting additional litigation funding from FORA.

8. Provide \$100,000 in funding for LAFCO administrative oversight post-dissolution.

LAFCO is charged with ensuring that all of FORA's assets are properly transferred and ensuring that FORA's contracts, agreements, and pledges to pay or repay money are honored and properly administered. To accomplish its oversight tasks, LAFCO will need to complete a significant amount of work post dissolution. This work will entail:

- Oversight of FORA's fiscal year 2019-20 audit preparation process;
- Oversight of FORA's property transfers to Seaside and others, and
- Close coordination with FORA's assigned to successors or administrators on agreements that will not be completed until after June 30, 2020.

A partial list of other post-dissolution agreements includes: ESCA (Seaside); EDC Agreement (Seaside); Pollution Legal Liability Insurance CHUBB Policy (Seaside); Agreement with the California Department of Toxic Substances Control and FORA member agencies concerning Monitoring and Reporting on Environmental Restrictions (Monterey County); and the CalPERS pension contract. Unresolved issues post-dissolution may further increase LAFCO's administrative oversight workload.

Due to its post dissolution tasks, LAFCO will need \$100,000 in funding to implement its administrative oversight role. LAFCO expects that its role could last up to five years with most oversight costs occurring in the first fiscal year (FY 2020-21) after FORA dissolution. In order to avoid further impact to the Commission's regular workload priorities for local agencies, LAFCO may contract for administrative services required for FORA work.

9. Include language that provides for post-dissolution disbursement of FORA funds to LAFCO for litigation or administrative expenses, in the appropriate agreement or funding vehicle.

The May 6 FORA Administrative Committee Meeting included discussion of the final draft Multi-Agency Implementing Agreement. LAFCO staff requested FORA and its member agencies' assistance in identifying the appropriate agreement or vehicle for language assuring post dissolution funding for LAFCO from an agency holding future FORA funds, such as the County of Monterey. FORA's Transition Plan consultant stated that the draft 2020 Transition Plan would include language addressing post dissolution funds for LAFCO. This is an important issue for LAFCO due to the uncertainty of receiving any funds from FORA beyond the initial \$500,000 litigation reserve fund payment. This language would provide important assurances that LAFCO would have a mechanism in place to request and receive legal defense and administrative oversight funds post dissolution. Such a mechanism would provide protection to LAFCO's non-FORA members from FORA-related financial impacts.

10. Resolve existing litigation, avoid taking on new legal risk, coordinate on matters of legal risk, and assign a successor to litigation that may not be resolved by June 30.

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying its HCP EIR in June. This action increases the legal risk for LAFCO and FORA member agencies.

Also, existing litigation involving a building demolition contractor's dispute over damaged equipment from removal of high-density concrete is scheduled for mediation in June, but it is possible that resolution will not occur by June 30. FORA has not yet created a plan to assign FORA's litigation role and funding for these and other matters of legal risk.

Thank you for your attention to these urgent matters. We are working closely with your staff and counsel to address the items, and will appreciate your help in leaving a clear public record of official FORA intentions, responses and actions for each issue. Also, I would like to inform you that the Local Agency Formation Commission will conduct a public hearing on June 22 at 4:00 p.m. to consider a resolution making determinations about FORA's scheduled dissolution on June 30. Feel welcome to contact me directly by cell at (831)682-0157 or by email at mckennak@monterey.lafco.ca.gov at any time.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachments:

1. LAFCO April 27, 2020 Staff Report
2. Letter from the Law Offices of Stamp | Erickson dated May 1, 2020 on behalf of CNPS to FORA Board of Directors
3. Letter from the Carpenters Union Local 605 dated April 8, 2020 to FORA Board of Directors
4. Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of KFOR to FORA Board of Directors
5. Email from Vicki Nakamura dated April 9, 2020 on behalf of MPC to FORA Board of Directors

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369
Salinas, CA 93902
Telephone (831) 754-5838

132 W. Gabilan Street, Suite 102
Salinas, CA 93901
www.monterey.lafco.ca.gov

DATE: April 27, 2020
TO: Chair and Members of the Commission
FROM: Kate McKenna, AICP, Executive Officer
PREPARED BY: Jonathan Brinkmann, Senior Analyst and Darren McBain, Principal Analyst
SUBJECT: Consider Status Report on Fort Ord Reuse Authority (FORA) Dissolution Process (LAFCO File No. 18-06)

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Commission:

1. Receive the Executive Officer's report;
2. Receive any public comments; and
3. Provide for any questions or follow-up discussion by the Commission.

EXECUTIVE SUMMARY:

The FORA Act, California Government Code section 67700, mandates FORA dissolution on June 30, 2020 and describes a limited LAFCO role to provide for the orderly dissolution of FORA "including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred."

Many of the FORA Board's actions to date have been consistent with an orderly dissolution in the context of LAFCO's statutory role. For example, important work is in progress to transfer assets, liabilities, and related administrative responsibilities. However, LAFCO staff remains concerned about some aspects of remaining FORA dissolution-related tasks and processes. These concerns include: Transition Plan Implementing Agreements; status of LAFCO's previous requests for additional litigation defense funds and post-dissolution administrative task funds; Transition Plan amendments; designation of successor agencies for FORA's CEQA responsibilities on FORA-approved roadway projects; successor agency assignment for existing FORA contracts; and status of the Fort Ord Reuse Plan's programs, policies, and CEQA mitigation measures post-FORA dissolution.

Staff will schedule a public hearing on FORA dissolution at the June 22 regular LAFCO meeting rather than the May 18 meeting as previously planned. The extra month will allow FORA more time to review and address issues discussed in this report. In addition, FORA has postponed until May important actions such as consideration of amendments to the 2018 Transition Plan and distribution of unassigned funds. This timing essentially requires moving LAFCO's public hearing on FORA dissolution to June in order for LAFCO to be able to appropriately address FORA's dissolution actions.

DISCUSSION:

Following is an update on current dissolution matters.

1. Transfer of Assets, Liabilities, and Related Administrative Responsibilities is in Progress.

FORA has made significant progress in the planned transfer of assets, liabilities and administrative responsibilities. These include:

- The planned transfer of Community Facilities District funds and other fund balances;

- Assigning FORA's Environmental Services Cooperative Agreement, Local Redevelopment Authority role, and Economic Development Conveyance Agreement to the City of Seaside;
- Making payment provisions to terminate FORA's CalPERS liability and contract;
- Reviewing proposed amendments to the 2018 Transition Plan to reflect current FORA dissolution plans;
- Making plans to transfer records and office equipment to the County of Monterey; and
- Taking steps to ensure transfer of remaining FORA-held real estate to local agencies.

The FORA Board took specific actions needed to transfer certain fund balances when it adopted its mid-fiscal year General and Capital Improvement Program budget, and approved distribution of approximately \$17 million in habitat set-aside funds and an estimated \$30 million (depending on bond market conditions) in pending building removal bond proceeds among the five land use jurisdictions. On May 14, the FORA Board will consider distribution of remaining, unassigned funds in response to requests submitted by various agencies, including LAFCO. Please see item 4, below.

2. Implementing Agreements are Not Progressing and May Not be Completed by June 30.

The draft Multi-Agency Implementing Agreement, and individual water and wastewater services agreements with Marina Coast Water District, are not progressing as FORA had anticipated and may not be completed before dissolution. If these agreements are not finalized, the individual local agencies will need to rely on FORA's adopted Transition Plan for guidance. Section 1.1 of the adopted 2018 Transition Plan describes that Transition Plan Implementing Agreements, or, in their absence, the other provisions of the Transition Plan will establish a fair and equitable assignment of assets and liabilities, and provide a schedule of obligations. In summary, FORA dissolution will move forward with or without these agreements.

3. Existing Litigation is Not Resolved, Legal Risk is Increasing, and Coordination on Legal Risk is Not Resolved.

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying an Environmental Impact Report (EIR) for a proposed Habitat Conservation Plan (HCP) in June. This action increases the legal risk for LAFCO and FORA member agencies. Matters discussed in item #5, below, also have potential to involve LAFCO in future litigation.

Also, existing litigation involving a building demolition contractor's dispute over damaged equipment from removal of high-density concrete is scheduled for mediation in June, but it is possible that resolution will not occur by June 30. FORA has not yet created a plan to assign FORA's litigation role and funding for these and other matters of legal risk.

We expect that some FORA administrative and legal matters may carry over beyond June 30. LAFCO will continue to request that FORA assign its litigation role and funding to the appropriate likely successor agencies that have a logical connection to the subject of potential litigation. The FORA Act limits LAFCO's oversight role in FORA's dissolution. LAFCO may request that FORA take certain actions. However, LAFCO cannot compel FORA to take actions.

4. LAFCO's Requests for Additional Litigation Defense Funds and for Post-Dissolution Administrative Task Funds, Have Not Been Granted to Date.

To date, LAFCO has received \$500,000 for its litigation reserve fund from FORA. LAFCO staff continues to uphold the Commission's direction, as articulated in the March 3, 2020 letter to FORA. The letter requested an additional \$1.5 million for LAFCO's litigation reserve fund, \$100,000 for LAFCO administrative oversight post-June 30, and re-inclusion of funding assurance language in the Multi-Agency Implementing Agreement. FORA staff and counsel have indicated that they do not support these requests. However, LAFCO's requests remain, based on identified litigation risks and post-dissolution administrative oversight funding needs.

On May 14, 2020, the FORA Board may consider allocating \$100,000 to LAFCO (based on generally supportive statements by FORA Administrative Committee members at a prior meeting). FORA has not yet responded to LAFCO's recent invoice of \$10,000 for LAFCO Fee replenishment for administrative tasks through June 30. LAFCO's requests for supplemental litigation reserve funding, and language assuring

LAFCO's funding needs in the Multi-Agency Implementing Agreement have not been granted and do not appear likely to be granted. LAFCO staff and counsel have been discussing strategies to protect LAFCO in the event LAFCO's litigation reserve fund proves insufficient to address litigation matters after July 1. This matter remains under review and discussion.

5. LAFCO's Requests and Concerns related to Transition Plan Tasks, Designation of Successor Agencies for FORA CEQA Lead Agency Projects, Successor Agency Assignment for Existing FORA Contracts with the California Native Plant Society, and Other Stakeholders' Concerns are not Resolved.

Over the last several months, LAFCO – in our statutory role of providing for an orderly dissolution – has submitted several requests to FORA pertaining to:

- Implementing Transition Plan tasks, or amending the adopted Transition Plan tasks to reflect current FORA dissolution plans;
- Identification of FORA lead agency CEQA projects;
- Identification of FORA responsibilities for mitigation measures; and
- Assignment or designation of successor agencies for FORA lead agency projects.

Most recently, LAFCO staff submitted a letter to FORA on April 17, 2020 (**Attachment 1**). Our April 17 letter also transmitted an April 14 letter from the California Native Plant Society (CNPS) to LAFCO (**Attachment 2**). CNPS requested LAFCO assistance in ensuring that FORA name and secure agreements with successor CEQA lead agencies for FORA-approved road development projects (South Boundary Road and General Jim Moore Boulevard), as well as successors for existing FORA contracts with CNPS to protect rare plant reserve areas. In consideration of LAFCO's communications with FORA over the past few months and CNPS's letter, LAFCO's April 17 letter to the FORA Board requested that FORA address successor agency assignments of FORA CEQA lead agency status projects and the existing FORA contracts with CNPS by adding language in the 2020 Transition Plan and completing successor agreements. From LAFCO staff's perspective, these are important dissolution actions to assure assignment of FORA's duties and contractual obligations.

The FORA Board received an additional letter from CNPS on April 17 (**Attachment 3**), expressing concerns about naming successors for FORA lead agency road projects and FORA's contracts with CNPS, as well as FORA's email statements about transfer of its lead agency status, and FORA's proposed 2020 Transition Plan language characterizing certain road projects as "in progress construction projects." CNPS's letters are pertinent to LAFCO's oversight role of ensuring that FORA's contracts and agreements are honored and properly administered.

Also, on April 17, Keep Fort Ord Wild submitted a letter to the FORA Board (**Attachment 4**), responding to FORA's April 17 agenda item for consideration of amendments to the adopted 2018 Transition Plan. The letter asserts that FORA should clearly state in its Transition Plan the status of the Fort Ord Reuse Plan going forward after FORA sunsets, and identify the agency or agencies that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations post-FORA dissolution. The letter also asserts that FORA must make a CEQA determination before acting on the Transition Plan, provide public notice prior to making a CEQA determination/decision, and take a second vote on the proposed amendments if the first vote is not unanimous. Staff notes that Section 1.1 of the 2018 Transition Plan includes ambiguous wording as to the status of the Fort Ord Reuse plan post-dissolution, stating that the "Transition Plan assigns all assets and liabilities relating to FORA's programs, policies, and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA." Staff views the requests in Keep Fort Ord Wild's letter as substantive policy matters that must be addressed with the FORA Board and requests a written summary of FORA's responses to the issues raised.

The Carpenters Union Local 605 transmitted a letter to the FORA Board on April 8 (**Attachment 5**) requesting that FORA: 1) retain Transition Plan language directing FORA to record the FORA Master Resolution; 2) record the FORA Master Resolution, which includes requirements for paying prevailing wages to workers on former Fort Ord construction projects; and 3) remove language stating the draft Multi-Agency Transition Plan Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. FORA counsel confirmed recordation of the FORA Master Resolution on April 14. However, the Carpenters Union remains concerned about proposed Transition Plan

language stating that the Multi-Agency Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. As mentioned under item #2, above, it is currently unclear if the Multi-Agency TPIA will be approved. If FORA and its member agencies enter into a new agreement that replaces a previous agreement, LAFCO would need to ensure that the new agreement is honored and properly administered, in accordance with LAFCO's statutory role. The extent to which doing so could present an ongoing administrative burden, or involve LAFCO in future litigation, is unknown and is under discussion with counsel.

It is currently unclear whether and how FORA plans to address the issues raised in these recent letters. FORA is in the process of amending its adopted 2018 Transition Plan to reflect FORA's current understandings of its dissolution-related needs and goals. The FORA Board deferred action on a proposed set of Transition Plan amendments on the April 17 FORA Board agenda, and directed staff to discuss the various comments with LAFCO and others prior to the FORA Board meeting on May 14. FORA staff has indicated that the FORA Board may also consider agreements assigning FORA CEQA lead agency successors on May 14.

NEXT STEPS:

Given the requests and concerns expressed in the letters above, and elsewhere in this report, along with FORA postponing consideration of Transition Plan amendments until next month, staff is postponing LAFCO's public hearing on the dissolution of FORA until the June 22 regular meeting. This timing will allow FORA more time to address the identified issues and finalize documents related to its dissolution, and will afford LAFCO time to include these additional FORA actions as part of the public hearing record.

At the Commission's public hearing, staff will bring forward FORA's adopted Transition Plan as amended, along with any finalized implementing agreements, and a draft resolution making determinations on the orderly dissolution of FORA. LAFCO's oversight role of the FORA dissolution will officially end on December 31, 2020, since the FORA Act, which established LAFCO's oversight role, will be repealed on that date.

Throughout the FORA dissolution process, staff is continuing to work closely with FORA and its member agencies. Our objective is to collaborate with FORA representatives to address LAFCO and Monterey Bay community concerns and to achieve an orderly and efficient dissolution.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Attachments:

- 1) Letter from LAFCO to FORA Board of Directors dated April 17, 2020
- 2) Letter from the Law Offices of Stamp | Erickson dated April 14, 2020 on behalf of CNPS
- 3) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of CNPS to FORA Board of Directors
- 4) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of Keep Fort Ord Wild to FORA Board of Directors
- 5) Letter from the Carpenters Union Local 605 dated April 8, 2020 to FORA Board of Directors

CC: Josh Metz, FORA Executive Officer
Molly Erickson, Esq., Stamp | Erickson, Attorneys at Law
Sean Hebard, Field Representative, Carpenters Local 605

May 1, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: Plant Reserve 1North, CNPS contracts, and proposed projects for South Boundary Road and General Jim Moore Boulevard

Dear Chair Parker and members of the FORA Board of Directors:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS) in this matter. CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation. CNPS writes this letter to emphasize certain facts regarding the South Boundary Road widening and realignment project, the General Jim Moore project, and the proposed intersection or roundabout project at South Boundary Road and General Jim Moore Boulevard. The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is “adjacent to the Del Rey Oaks Resort” which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area. FORA did not consult with CNPS prior to adopting the EA/IS.

This letter focuses on the requirement that before FORA can proceed with its South Boundary Road project FORA must successfully negotiate with CNPS to agree “to relocate a currently identified habitat preserve area further south.” (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA’s EA/IS. This letter reaffirms that CNPS has not agreed to relocate the habitat preserve area.

Executive Summary

CNPS reaffirms its comments regarding the map presented by FORA to CNPS in December 2019. The map showed the proposed South Boundary Road project and what FORA proposed as new boundaries of Plant Reserve 1North. CNPS expressed concerns and opposition to the new boundaries at the time, CNPS has expressed them since then, and CNPS does so again in this letter.

Historic overview: the habitat reserve parcel.

In 1998 and 1999, Plant Reserve 1North was protected by an agreement between FORA, Del Rey Oaks and CNPS. The agreement was executed in 1998 and

modified by negotiated written agreement in 1999. Terms of the contract include as follows:

- The contract requires “the permanent protection” of the habitat, and that “the area will be protected from fragmentation and degradation in perpetuity.”
- The contract expressly states that “the boundaries must avoid road widening that would affect the reserve” and that “any future widening which would affect the habitat would require renegotiation of this agreement.”
- “No development would be permitted in the plant reserve.”
- The agreement specified that a buffer must ensure no impacts on the plant reserve from the future development to the north of the dirt road that is at the northern boundary of what came to be called parcel E29a.1.

The FORA-DRO-CNPS contract is based on and reinforced in part by CEQA mitigation 3 of the final EA/IS for the General Jim Moore Boulevard project, then called the North-South Road/Highway 218 Improvements Project. Mitigation 3 was amended and strengthened in direct response to CEQA comments from the CNPS in a letter dated December 4, 1998. Mitigation 3 addressed preservation of “maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road, along with an adequate buffer to assure that golf course drainage will not impinge on the habitat, shall be preserved in perpetuity as a CNPS native plant area” and that “Requirements for this mitigation area are specified as follows. The habitat area shall be protected from fragmentation and degradation in perpetuity. No spraying or irrigation drainage shall be directed toward the habitat area. No development shall be permitted in the plant reserve . . .”

In 2003, as part of the process to transfer lands, the Army released a document called Finding of Suitability for Early Transfer, called a FOSET, in draft form. FOSET-003 was finalized in July 2004. FOSET-003 transferred some Army land to FORA, including land that was intended for Del Rey Oaks. What the Army had called “parcel E29a” was a large parcel located north of South Boundary Road. FOSET-003 transferred the bulk of parcel E29a to FORA. Knowing of the FORA-DRO-CNPS agreement and the mitigation, the Army carved out from parcel E29a the habitat reserve area at the northeast corner of South Boundary Road and General Jim Moore Boulevard corner. The small parcel was named parcel E29a.1, and it was not included in the FOSET-003 transfer. FOSET-003 specifically addresses the small parcel when it describes the “habitat reserve area” that was not part of the FOSET-003 transfer. FOSET-003 directly addresses the habitat reserve area at three different pages of the FOSET-003 document, as follows:

- “Included within Parcel E29a is a 5-acre habitat reserve area that is not included in this transfer.” (FOSET-003, p. 1.)
- The large parcel E29a “includes a habitat area that is not part of the transfer.” (FOSET-003, Table 1, row 1.)
- FOSET-003 site map Plate 1 shows the E29a parcel and the carved-out smaller parcel that later came to be called E29a.1. Plate 1 places the label “habitat area” on the entire parcel E29a.1. Plate 1 is attached to this letter as Exhibit A.

A U.S. Army Corps of Engineers report dated August 2004 documents a walkabout of the “5-acre parcel known as ‘DRO Habitat Area’.” The memo attached to the report refers to the “5 acre DRO Group Habitat area” and the attached map is labeled “Habitat site walk” and has a yellow outline around the “habitat area” that was parcel E29a.1. The map also labeled the parcel on the aerial photograph as “Habitat Area.” The 2004 report is attached to this letter as Exhibit B.

The document database for the Fort Ord cleanup parcel describes parcel E29a.1 as 4.66 acres and that the “Parcel Name” is “Habitat Reserve Area.” The database is accessible online at <https://fortordcleanup.com/documents/administrative-record/>.

In 2010, FORA certified an environmental document for the South Boundary Road widening project that expressly acknowledges the fully protected status of the reserve.

In 2010 FORA prepared and certified the above-referenced EA/IS for the FORA South Boundary Road realignment and widening project. The realigned road would go directly through the protected habitat area. The EA/IS requires that FORA must “renegotiate” the location of the habitat reserve area with CNPS before FORA can proceed with the South Boundary Road project, and if FORA cannot renegotiate the location then FORA cannot proceed with the project. The EA/IS language reflects the terms in the FORA-CNPS contract that require “the permanent protection” of the habitat, that the reserve “area will be protected from fragmentation and degradation in perpetuity,” that “the boundaries must avoid road widening that would affect the reserve,” that “any future widening which would affect the habitat would require renegotiation of this agreement,” and that “No development would be permitted in the plant reserve.” The EA/IS language also reflects the adopted CEQA mitigation 3 of the General Jim Moore Boulevard project. There is no dispute that a renegotiated agreement is required before FORA can proceed with the road widening project. FORA did not consult with CNPS before FORA prepared and adopted the EA/IS.

In 2018 and 2019, FORA again confirmed the terms and intent of the FORA-DRO-CNPS contract when FORA made specific written and oral statements to the Monterey County Superior Court.

In the brief dated November 2018 that FORA filed as part of the CEQA litigation involving South Boundary Road, FORA counsel Jon Giffen and Crystal Gaudette stated the FORA position as follows:

- “The EA/IS also addresses and provides for Project impacts upon the “reserve” created by agreement between FORA and the California Native Plant Society (CNPS), generally recognizing that the proposed project alignment can only proceed if a modification to the reserve can be negotiated with CNPS.”
- The modification to the reserve and the renegotiated contract was a “mitigation.”
- “[T]he CNPS preserve must remain untouched unless the agreement regarding that preserve is successfully renegotiated.”

On February 11, 2019, FORA counsel Crystal Gaudette represented to Superior Court Judge Marla O. Anderson in open court as follows:

- The FORA EA/IS “says squarely that FORA is going to have to reach an agreement with the California Native Plant Society or – and that’s the purpose of alternative two, that if it can’t, then it [FORA] would proceed with the second alternative project analyzed under the Initial Study.”

These statements and others show the position of and understanding by FORA that a modification to the agreement must be negotiated with CNPS in order for the proposed road realignment to proceed.

In December 2019 FORA made material misrepresentations when FORA proposed a new location of Plant Reserve 1North.

FORA did not attempt to contact CNPS regarding the South Boundary Road project for many years. When CNPS learned of the FORA approvals of the South Boundary Road, the CNPS president contacted the FORA Board of Directors in writing and in person at board meetings starting in 2017. FORA did not meaningfully respond until 2019.

In a letter from FORA to CNPS dated December 2, 2019, FORA made various inaccurate and self-serving claims, including that the reserve boundaries are shown in the EA/IS figure 2-3 and EA/IS sheet C8 for the South Boundary Road realignment. (Dec. 2, 2019 ltr., p. 5.) Not so. They show the proposed boundaries, as evidenced by context and other records. Figure 2-3 and sheet C8 do not show the current boundaries. The new FORA claim is not consistent with a proposal in the same December 2, 2019 letter that shows a proposed drawing of the relocated reserve labeled “HABITAT AREA NEW PARCEL,” which states that the area would be a new

location. The new claim also is inconsistent with representations made in the EA/IS and other records that the habitat reserve is located “adjacent to the Del Rey Oaks Resort,” which means that the reserve boundaries include the northerly portion of parcel E29a.1 which is the area that is adjacent to the Del Rey Oaks resort site. If the reserve were located where FORA newly claimed in December 2019, then there would have been no need to “relocate” the reserve to the south as the 2010 EA/IS mandates. The new FORA claim also is inconsistent with the FORA-DRO-CNPS agreements, the CEQA mitigations, the written and oral representations of FORA counsel, the public records of Del Rey Oaks, FORA and the Army, and other records. Let there be no mistake: The proposal in the EA/IS was for a proposed relocation of the plant reserve. FORA sought a relocation in order to allow FORA to construct the FORA-preferred road widening and realignment. The proposed relocated boundaries were not discussed with CNPS at the time of the EA/IS and were not presented and agreed to by CNPS then or at any point since then. To the contrary, CNPS has repeatedly expressed its opposition to the proposed “relocated” boundaries and has expressed its opposition in writing and in meetings with FORA and DRO officials.

To make matters worse, FORA recently has demonstrated that the South Boundary Road project construction would have significant biological impacts even if the reserve were to be “relocated” as FORA has proposed. The map at page 6 of the FORA letter dated December 2, 2019 shows a proposal for a relocated reserve labeled “HABITAT AREA NEW PARCEL” that FORA claims would be 2.25 acres. (The pages of the FORA letter are not numbered; the map is the penultimate page of the letter proper. The map is attached to this letter as Exhibit C.) The map shows a “HABITAT AREA NEW PARCEL” with red diagonal lines. The map shows two overlays on the red area: a construction work impact area of 11,588 square feet in blue overlay and a grading impact area of 12,224 square feet in green overlay. The construction impacts in blue and the grading impacts in green would directly affect at least 0.55 acres, according to the FORA information, including the habitat and the rare and protected species known to occur in the blue and green areas.

CNPS has not agreed to a “relocation” of Plant Reserve 1North.

CNPS has not and does not agree to a relocation of the reserve as proposed by the “new parcel” boundaries presented by FORA. In the spirit of cooperation, CNPS has explained its concerns on the matter, and again here CNPS states that its reasons include and are not limited to the following.

- Relocating the reserve would be inconsistent with the FORA-DRO-CNPS contract terms and the General Jim Moore Boulevard project mitigation 3 requirements for “permanent” protection, that “The habitat area shall be protected from fragmentation and degradation in perpetuity,” and that “No development shall be permitted in the plant reserve.”

- The proposed size of 2.25 acres is a materially smaller area than the historic maps and references by the Army, Del Rey Oaks and FORA to the habitat area/reserve. The historic records discussing the habitat area refer to an area that is larger than 2.25 acres. The actual size of the proposed reserve would be at most 1.7 acres, rather than 2.25 acres, as explained below.
- At least a quarter of what FORA has proposed as the “new parcel” would be irreparably harmed by the project. FORA has admitted there would be development in the reserve; construction and grading are development. FORA says there would be construction impacts and grading impacts in and on at least 0.55 acres of the proposed 2.25 acre reserve. That would reduce the habitat reserve to 1.7 acres at most, due to the unlikely assumption that the remaining area would be unharmed by the project grading, construction, and operation. A 1.7 acre reserve is not consistent with the specific language of the 1998 and 1999 agreements and of CEQA mitigation 3 for the General Jim Moore project. The agreement and mitigation specified that the reserve would be at least 2.0 acres that would be “permanently protected and “protected from fragmentation and degradation in perpetuity” and that “no development would be permitted in the plant reserve.”
- The proposed smaller size and proposed relocated boundaries would violate the contract term in which FORA committed to “No further fragmentation and degradation in perpetuity” of the reserve. The FORA proposal would cause further fragmentation of the reserve, including the reduction in the total area of the habitat and the decrease of the interior:edge ratio.
- CNPS officials in their expert opinions have stated that:
 - The habitat area is unique for many reasons including slope, soils, orientation, proximate habitat and plants, wildlife, wind direction, and other reasons that biologists do not fully understand. The habitat is found in that particular location for particular reasons. A habitat area cannot be “relocated” like a house or a road. Planting rare native plants never has results as successful as when the native plants grow naturally of their own accord.
 - The proposed construction impacts and grading impacts would have significant and permanent harmful impacts on the plant reserve, even if CNPS were to agree to the proposed relocated area, which CNPS does not. These and other project impacts would degrade and fragment the habitat.

- The proposed project construction and grading would cause significant and permanent impacts of removing an existing knoll at the center of the undeveloped habitat reserve parcel and thus changing the habitat integrity forever. The proposal would require a large amount of grading and cuts that would not be replaced with the same soil, slope and orientation as currently exists.
- The December 2, 2019 proposal shows materially different and potentially misleading topography from previous plans of the parcel which show two knolls and other topography relevant to the habitat. (E.g., EA/IS sheet C8.) This is a serious omission.
- The FORA development proposals have failed to understand the topography and the extent of the potential and likely impacts to the habitat as a result of the proposed grading and other construction impacts.
- The realignment project would destroy the known species of Monterey spineflower and California Endangered Seaside bird's beak at the site. The impacts to sandmat manzanita, coast live oak and other plants typical of uncommon Maritime Chaparral habitat also would be severe. In particular, Seaside bird's beak is a hemi-parasitic plant that taps other plants for nutrients in ways that are poorly understood. These inter-plant relationships are extremely difficult to recreate.
- The proposed relocation of the reserve would cause significant and harmful impacts and changes to the drainage, forestation, and undergrowth of the habitat area.
- The proposed large amount of grading would cause significant and harmful impacts. The removal of native soils damages the soil structure and soil biology, specifically the mycorrhizal relationships between soil fungi and native plant species, particularly manzanitas, which rely on mycorrhizae to augment water and nutrient uptake. Several species of manzanitas occur in the protected habitat in Plant Reserve 1North. Replacement of the soil is not adequate mitigation to restore soil biology.
- The FORA-DRO-CNPS contract requires a buffer zone to avoid impacts on the habitat of the adjacent development to the north, proposed in the past as a resort and golf course. No such buffer has been proposed for the South Boundary Road widening and realignment project, even though the road project would be adjacent to the reserve as proposed, and it is foreseeable that the construction, development, pesticides, herbicides, rodenticides,

vehicular traffic emissions and dust, and other impacts would cause significant adverse harm to the habitat area.

- A “relocation” of the reserve as proposed by FORA would require FORA and Del Rey Oaks to approve a renegotiated contract and, in CNPS officials’ opinion, the FORA proposals for relocation of the existing protected habitat would have significant and unmitigated biological impacts, for all the reasons stated above. Thus, any approval by FORA and Del Rey Oaks of a modified contract would require a prior environmental document under CEQA detailing the impacts of the new smaller and different site boundaries, and mitigating the impacts, along with other CEQA issues. This analysis and mitigation was not part of the 2010 EA/IS.

CNPS urges FORA and Del Rey Oaks to consider a project that realigns South Boundary Road to the north, either along or north of the existing dirt road that runs along the approximate northern boundary of parcel E29a.1. A northerly realignment is feasible, it could be successful in avoiding impacts to the protected habitat to the south of the dirt road, and it could be consistent with the language and intent of the FORA-DRO-CNPS contracts.

Summary.

CNPS emphasizes that CNPS has not agreed to a modification to the reserve, that no agreement with FORA has been reached regarding any “relocation” of the reserve, and that FORA’s proposals to date are inconsistent with the purposes of the reserve, the binding agreements and the CEQA mitigations. FORA cannot deliver an approved South Boundary Road project to Del Rey Oaks. Even if CNPS were to agree to a boundary modification, which CNPS has not agreed to, approval of any such modification would be a discretionary act by FORA and Del Rey Oaks and thus would require prior compliance with CEQA to investigate, disclose, analyze and mitigate the significant and potentially significant environmental impacts of the boundary change.

Offer to meet.

CNPS offers to meet with you with the goal of resolving this matter. FORA controls the schedule. CNPS does not control the schedule. If you would like to meet, please contact me at erickson@stamlaw.us.

Request.

CNPS asks FORA to rescind its approvals of the EA/IS and the South Boundary Road project. If in the future an agency wants to pursue an alternative road project, that agency would be the project proponent and as should comply with CEQA and all contracts with CNPS. CNPS asks for the courtesy of a written response.

Thank you.

Sincerely,

STAMP | ERICKSON

/s/ Molly Erickson



Molly Erickson

Attachments: Exhibits A, B and C, as described above, highlighted in pertinent parts

cc: Mayor Kerr and members of the city council, Del Rey Oaks
Kate McKenna, Executive Officer, LAFCO of Monterey County
Debbie Hale, Executive Director, Transportation Agency of Monterey County

Exhibit A to May 1, 2020 letter

EXPLANATION

-  Transfer Parcel with Number
-  Not Part of this Transfer
-  Building with ID Number

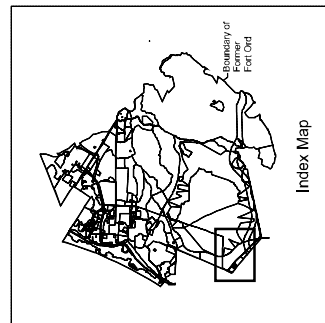
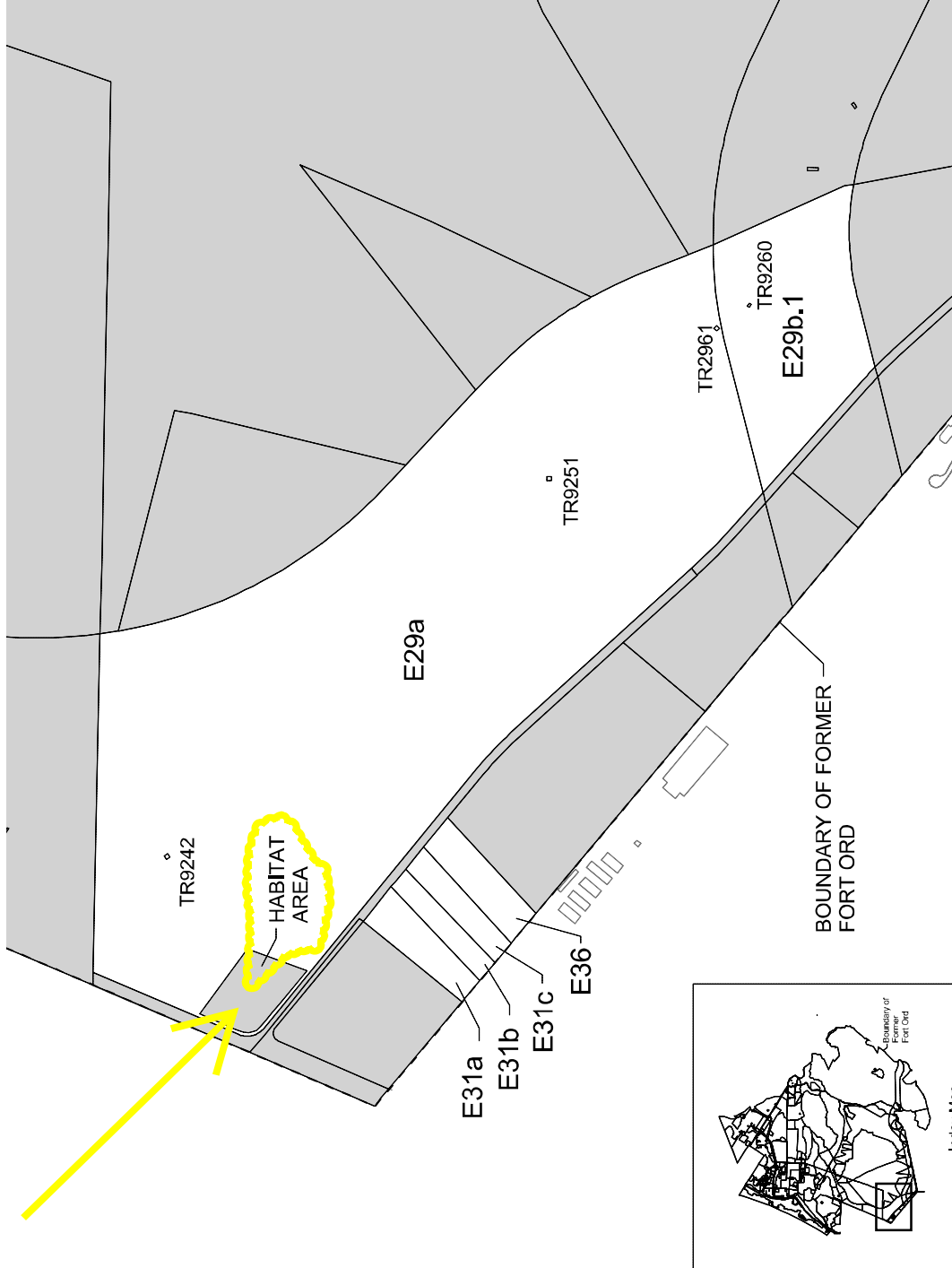



PLATE **1**

REVISION DATE 6/03

DATE 10/00

APPROVED 

CS# NUMBER 52703 00134

DRAWN JCF



Location Map
 Del Rey Oaks FOSSET
 Former Fort Ord
 Monterey, California

Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF:

AUG 03 2004

CESPK-PM

MEMORANDUM FOR Ms. Gail Youngblood, Fort Ord Office, Army Base Realignment and Closure,
Monterey, CA 93944

SUBJECT: **Del Rey Oaks 5-acre Parcel Walkabout**

1. REFERENCES:

- a. U.S. Army Corps of Engineers (USACE), Sacramento District, 2001. Site Del Rey Oaks Group After Action Report Geophysical Sampling, Investigation and Removal, Former Fort Ord, Monterey, California. Final. Prepared by USA Environmental, Inc., April.
- b. U.S. Army Corps of Engineers (USACE), 2000. Unexploded Ordnance (UXO) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities. EP 75-1-2. Prepared by U.S. Army Engineering and Support Center, Huntsville, November.
- c. Parsons, 2004. Del Rey Oaks Walk about Memorandum for Record. August.

2. At the request of the US Army Corps of Engineers, Sacramento District, Parsons conducted a "walkabout – A Schonstedt assisted visual reconnaissance" over a **5-acre parcel known as "DRO Habitat Area"** on 7 June 2004. The walkabout was limited to accessible areas only (**attached map**). Additional details can be found on attached letter from Parsons, 3 August 2004. The area is contained within the Impact Area which was previously used for ordnance training operations. During the walkabout no military munitions (MM) or debris (MD) were found. As result, under EP-75-1-2, the subject area can be categorized as a low probability area to encounter Unexploded Ordnance (UXO). EP-75-1-2 requires the following: (1) a UXO team consisting of a minimum of two qualified UXO personnel (one UXO Technician III and one UXO Technician II) to support construction activities including oversight and monitoring, (2) OE recognition training for all construction workers performing ground disturbing activities, and (3) on-site UXO safety briefings prior to initiation of any ground disturbing activities. The U.S. Army should make necessary arrangements for disposal of any ordnance found in the subject area.

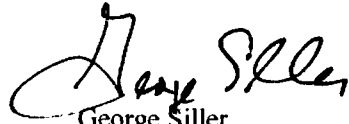
Exhibit B to May 1, 2020 letter
p. 2 of 4

CESPK-PM

SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

3. The U.S. Army should evaluate ground disturbing activities performed at the subject site after work is completed to determine if additional ordnance safety measures are required.

4. If you have any questions, please contact Mr. Juan Koponen, Project Manager, at (831) 884-9925 ext. 233 or Mr. Clinton Huckins at (831) 884-9925 ext 226.



George Siller
Program Manager
U.S. Army Corps of Engineers,
Sacramento District

CC (w/encls):

PM-M (George Siller) (Juan Koponen)

CO-Monterey (Clinton Huckins)

PARSONS

Building 4522 - 8th Avenue & Joe Lloyd Way • Ord Military Community, CA 93944

3 August 2004

MEMORANDUM FOR RECORD, Revised

A site walkabout was performed in accessible areas of the 5 acre DRO Group Habitat area on June 7th, 2004. Areas under accessible tree canopies and small pathways with low to moderate growth vegetation were investigated.

The personnel conducting the site walkabout consisted of two UXO QC personnel, one swept accessible areas with a Schonstedt GA52Cx flux-gate magnetometer and the second person carried a Leica Global Positioning System which documented the path walked and checked with the Schonstedt magnetometer. All 12 anomalies encountered were investigated and determined to be Range Related Debris (RRD) consisting of c-ration cans, wire, and assorted miscellaneous scrap. No Military Munitions (MM) or Munitions Debris (MD) were encountered.

As illustrated on the attached site walkabout map, access was restricted due to extremely dense vegetation.

The table shown below lists the MM/MD items that were encountered outside the 5 acre Habitat parcel during prior DRO Group Military Munitions removal action conducted in CY 2000.

| OE Type | QTY | Depth | Weight | Nomenclature | Condition | RIA Code | GRID |
|---------|-----|-------|--------|----------------------------------|-----------|----------|------|
| MD | 1 | 1 | 0 | Rocket, 2.36inch, practice, M7 | Expended | 0 | 33 E |
| MD | 0 | 0 | 1 | FRAGMENTS, UNKNOWN | Expended | 0 | 33 I |
| MD | 0 | 0 | 1 | FRAGMENT, UNKNOWN | Expended | 0 | 35 I |
| UXO | 1 | 4 | 0 | Grenade, hand, smoke, M18 series | UXO | 1 | 40 G |

The US Army Corps of Engineers requires that construction support be provided on sites where the probability of encountering UXO is low. These requirements are established in EP 75-1-2, Unexploded Ordnance (UXO) Toxic, and Radioactive Waste (HTRW) and Construction Activities, 20 November 2000.

Based on information from previous removal actions in the surrounding area, the level of construction support should include the following: (1) UXO safety support during construction activities including oversight and monitoring, (2) OE recognition training, and (3) on-site UXO safety briefings prior to initiation of any on-site intrusive activities.

Any questions regarding this site walkabout can be addressed by contacting Mike Coon (831) 884-2306 or Andreas Kothleitner (831) 884-2313.

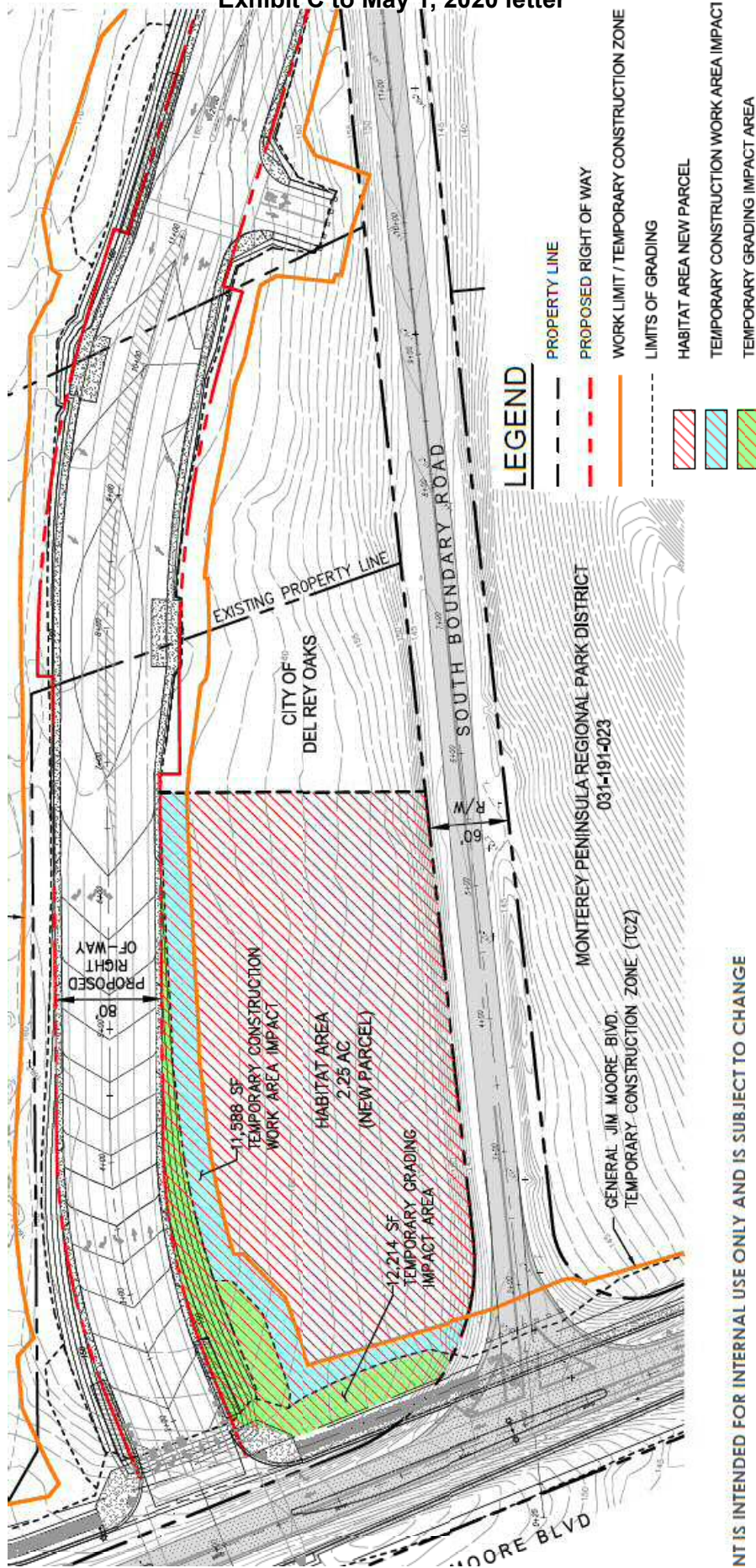
Regards,

Gary Griffith

Exhibit B to May 1, 2020 letter
p. 4 of 4



Exhibit C to May 1, 2020 letter



LEGEND

- PROPERTY LINE
- - - PROPOSED RIGHT OF WAY
- WORK LIMIT / TEMPORARY CONSTRUCTION ZONE
- - - LIMITS OF GRADING
- [Red Hatched Box] HABITAT AREA NEW PARCEL
- [Blue Hatched Box] TEMPORARY CONSTRUCTION WORK AREA IMPACT
- [Green Hatched Box] TEMPORARY GRADING IMPACT AREA

NT IS INTENDED FOR INTERNAL USE ONLY AND IS SUBJECT TO CHANGE



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA

910 2nd Avenue • Marina, CA 93933 • (831) 883-1931 • FAX (831) 883-1902

April 8, 2020

Board Chair Jane Parker and Board Members
Fort Ord Reuse Authority
920 2nd Avenue
Marina, CA 93933

Re: Fort Ord Reuse Authority Transition Plan and Recordation of the Master Resolution

Dear FORA Chair Parker and Board Members,

On behalf of Carpenters Locals 605, I am writing to comment on the Fort Ord Reuse Authority (FORA) Transition Plan, specifically concerning the need to clarify and maintain the community benefit standards enshrined in the FORA Master Resolution. This letter follows on public comments made by Carpenters Local 605 officer Tony Uzzle at the FORA Board meeting on March 12, 2020.

First, we wish to thank the Board of Directors for reaffirming FORA’s commitment to the maintenance and enforcement of the Master Resolution at its March 12th meeting. We appreciate that the proposed Transition Plan that will be presented at the April 9th meeting reflects the will of the Board on this matter.ⁱ

Local 605 is also appreciative of the efforts by the Authority Counsel to have the Master Resolution recorded at the County Recorder’s Office.ⁱⁱ To the extent possible in these challenging times, we respectfully urge the Board to take all steps necessary to record the Master Resolution as soon as practicable. Given past instances of prevailing wage and labor compliance issues on Fort Ord projects, every effort should be made to underscore and clarify the existing obligations that apply to Fort Ord development, in order to support the local construction industry, avoid ambiguity, and forestall potential legal challenges which would be to the detriment of the Monterey Bay community.

As you are aware, the California Legislature created the Fort Ord Reuse Authority in 1994 to oversee the reuse and development of the decommissioned Fort Ord military base and tasked FORA with ensuring that development at Fort Ord would benefit the Monterey Bay community. Toward this end, FORA adopted a Master Resolution that includes commitments to build affordable housing, protect the environment, and pay prevailing wages to workers on First Generation Construction.

FORA included the prevailing wage policy in the Master Resolution in order to provide economic opportunity for local laborers and contractors.ⁱⁱⁱ The prevailing wage policy (as well as the other policies in the Master Resolution) also reflected the desire of federal legislators to use base redevelopment to generate jobs for the regional economy, help address homelessness in the region, and promote environmental restoration and mitigation.^{iv}

The requirements in the FORA Master Resolution were incorporated into the Implementation Agreements executed between FORA and the local jurisdictions/agencies and recorded as deed covenants at the time of transfer.^v **As courts have noted, the responsibility to comply with the Master Resolution carries over to new owners.**^{vi}

Although the Fort Ord Reuse Authority is due to sunset on June 30, 2020, the obligations under the deed covenants and Implementation Agreements do not. Therefore, in 2018, the Board of Directors enacted a Transition Plan that directed staff to record the Master Resolution in its entirety prior to FORA's sunset, should the local jurisdictions fail to take all necessary legal steps to adopt these policies.^{vii} As the Board has noted, recording the Master Resolution does not create new obligations but rather is intended to make a clear record of ones that already exist.^{viii} In addition, as indicated in a recent report presented to the Local Agency Formation Committee of the County of Monterey, failure to record the Master Resolution would likely result in litigation that would delay or even halt the development of decommissioned land.^{ix}

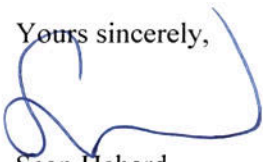
Unfortunately, in early March 2020, FORA staff recommended that the Board reverse its decision to record the Master Resolution.^x This is extremely alarming. Local 605 is concerned that staff urged the Board to take the drastic step of rescinding the Master Resolution as a result of pressure from developers who are looking for a way to get around commitments attached to the redevelopment of Fort Ord land. Such efforts should be roundly and publicly rejected.

In addition, a Transition Plan Implementation Agreement (TPIA) will be presented to the Board and local agencies and jurisdictions for adoption prior to June 30, 2020. The latest publicly available draft TPIA states that it will supersede the Implementation Agreements referenced in the quitclaim deeds transferring former base lands to local jurisdictions and agencies.^{xi} The draft TPIA makes no mention of the obligations contained in the original Implementation Agreements. This is additionally very concerning.

We strongly urge the Board to expedite recording the Master Resolution and add a clear provision in the TPIA that reaffirms the obligations the local jurisdictions and agencies undertook when they were given former Fort Ord land.

If you would like to discuss our comments further, please do not hesitate to contact me by phone: (408) 472-5802 or email at shebard@nccrc.org.

Yours sincerely,



Sean Hebard
Field Representative
Carpenters Local 605

Sent by Email and by Post

cc: FORA Ex-Officio Officers
FORA Executive Officer Josh Metz
FORA Deputy Clerk Natalie Van Fleet
AICP Executive Officer Kate McKenna

ⁱ Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, April 9, 2020, p. 132.

ⁱⁱ Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, April 9, 2020, p. 17.

ⁱⁱⁱ Fort Ord Reuse Authority Prevailing Wage Program, accessed March 2, 2020.

^{iv} National Defense Authorization Act for Fiscal Year 1994 (amended);
Defense Base Closure and Realignment Act of 1990

Section 2905 (4)(A) 1990 Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65 (1999), Section 2905 1 (A) (C)

^v E.g., Quitclaim Deed for Parcels E 15.1, L 19.2, L 19.3, L 19.4 on the Former Fort Ord, Monterey, California, # 2005108853, p.16; Implementation Agreement Between Fort Ord Reuse Authority and the City of Seaside, entered into on May 31, 2001, ps 3 an 4 and Exhibit F, p. 19 and 20.

^{vi} *Monterey/Santa Cruz County Bldg. and Construction Trades Council v. Cypress Marina Heights LP*, Judgement, California Sixth Appellate District Court of Appeal, H034143, January 10, 2011

^{vii} Fort Ord Reuse Resolution No. 18-11, adopted by the Fort Ord Reuse Authority Board of Directors on December 19, 2018.

^{viii} Fort Ord Reuse Resolution No. 18-11, adopted by the Fort Ord Reuse Authority Board of Directors on December 19, 2018.

^{ix} Item 13, August 27, 2018, Memo from AICP EO Kate McKenna to Board and Commissioners, LAFCO of the County of Monterey, p.2.

^x Board Packet, Fort Ord Reuse Authority Board of Directors Meeting, March 12, 2020, ps. 41 and 51

^{xi} Committee Packet, Fort Ord Reuse Authority Administrative Committee Meeting, March 4, 2020, p.3 and 7-17.

April 17, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: Agenda item 6c; Keep Fort Ord Wild objections to new draft transition plan and failure by FORA to adequately consider mitigations, CEQA, and due process

Dear Chair Parker and members of the FORA Board of Directors:

This office represents Keep Fort Ord Wild, which reiterates each and every of its objections and reminds you of KFOR's past comments provided to FORA on the FORA actions with regard to the Reuse Plan, the Reuse Plan EIR, CEQA mitigations, and consistency determinations, including but not limited to the KFOR letters and evidence submitted to FORA on November 8, 2018, October 29, 2018, September 28, 2018, March 9, 2018, December 7, 2017, April 7, 2017, December 22, 2016, July 1, 2016, February 13, 2014, March 6, 2013, and March 12, 2013.

Objections to transition plan

CEQA requires implementation of the Reuse Plan programs, policies and mitigations, and FORA has not taken steps to ensure that implementation. These are "remaining obligations" of FORA that FORA is required to assign and has not assigned. Abandonment of the many approved Reuse Plan programs, policies and mitigations is a project subject to CEQA. For each and every of the reasons described in KFOR letters and the concerns stated by others, the proposed transition plan would result in direct or indirect physical changes in the environment, and the plan does not fit within any CEQA exemption.

As FORA senior staff has stated, FORA was created because of the parochial views of disparate communities, each of which considered its own concerns in a vacuum. Sadly, the FORA board members have continued that behavior – each jurisdiction considers its own concerns in a parochial manner, which has led to many of FORA's failures.

The transition plan should unambiguously state the status of the Reuse Plan going forward after FORA sunsets, and identify the agency(ies) that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations, after FORA sunsets. These are existing powers of FORA that FORA has not identified and assigned.

Examples of Reuse Plan mitigations, programs and policies that land use jurisdictions have not adopted as required.

The city and county plans do not reflect the mitigations and policies required by the Reuse Plan, the Master Resolution, and CEQA. The problem stems from FORA's fundamental failure to implement the Reuse Plan policies and CEQA mitigations and FORA's failure to follow its own Master Resolution. FORA's actions on consistency determinations cannot be relied on because the FORA actions have violated the FORA Master Resolution requirement that states as follows: "Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord Territory by including the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, into their respective general, area, and specific plans." The land use agencies have not adopted the applicable open space and conservation policies into their respective plans, and the FORA acts as to consistency have been improper and inconsistent with the FORA Master Resolution.

The cities of Seaside and Del Rey Oaks have not substantially adopted or incorporated verbatim all applicable requirements of the Reuse Plan into their own general plan and zoning codes. To the contrary, Seaside has not adopted many of the required Reuse Plan policies and CEQA mitigations, as shown in the Reassessment Report and in comments to FORA, and Del Rey Oaks also has failed, as shown in the FORA records.

The oak woodlands mitigation still has not been implemented. The County and Seaside have not adopted the mitigation into their plans applicable to Fort Ord. If the Reuse Plan goes away, it is foreseeable that the County and Seaside will abandon any pretense and implementing the mitigation.

The cities of Del Rey Oaks and Monterey have not adopted the following requirements as stated in the Reuse Plan EIR documents and that are applicable to the land designated to those cities:

Page 4-202. Amend Program A-8.2 to read as follows: "The County shall require installation of appropriate firebreaks and barriers sufficient to prevent unauthorized vehicle access along the border of Polygon 31a and 31b. A fuel break maintaining the existing tree canopy (i.e., shaded fuel break) shall be located within a five acre primary buffer zone on the western edge of Polygon 31b. No buildings or roadways will be allowed in this buffer zone with the exception of picnic areas, trailheads, interpretive signs, drainage facilities, and park district parking. Firebreaks should be designed to protect structures in Polygon 31b from potential wildfires in Polygon 31a. Barriers shall ~~should~~ be designed to prohibit unauthorized access into Polygon 31a." [341-34]

Page 4-204. Amend Program C-2.1 to read as follows:

"Program C-2.2: The County shall ~~encourage~~ cluster ~~ing-of~~ development wherever possible so that contiguous stands of oak trees can be maintained in the non-developed natural land areas." [328-2]

Page 4-134. Amend Biological Resources Program A-8.1 to read as follows:

"The County shall prohibit development in Polygons 31b, 29a, 29b, 29c, 29d, 29e and 25 from discharging storm water or other water into the ephemeral drainage that feeds into the Frog Pond." [341-24]

Page 4-134. Amend Program A-8.2 to read as follows:

"The County shall ... along the border of Polygons 31a and 31b. A fuel break maintaining the existing tree canopy (i.e. shaded fuel break) shall be located within a five acre primary buffer zone on the western edge of Polygon 31b. No buildings or roadways will be allowed in this buffer zone with the exception of picnic areas, trailheads, interpretive signs, drainage facilities, and park district parking. Firebreaks should be designed to protect structures in Polygon 31b from potential wildfires in Polygon 31a. Barriers shall ~~should~~ be designed to prohibit unauthorized access into Polygon 31a." [341-34]

Page 4-135. Add the following mitigation measure to impact #1.

"Mitigation: Because of the unique character of Fort Ord flora, the County shall use native plants from on-site stock shall be used in all landscaping except for turf areas. This is especially important with popular cultivars such as manzanita and ceanothus that could hybridize with the rare natives. All cultivars shall be obtained from stock originating on Fort Ord". [298-3]

The County and Del Rey Oaks (which took some land that had been designated for the County) have not adopted the following programs and policies applicable to the land in their respective jurisdictions, and Del Rey Oaks has approved large projects (e.g., the resort, the RV park) and has not applied these required mitigations to them:

Program C-2.1: The County shall ~~encourage~~ clustering of development wherever possible so that contiguous stands of oak trees can be maintained in the non-developed natural land areas.

Program C-2.2: The County shall apply ~~certain~~ restrictions for the preservation of oak and other protected trees in accordance with Chapter 16.60 of Title 16 of the Monterey County Code (Ordinance 3420). Except as follows: No oak or madrone trees removed [sic]

Program C-2.3: The County shall require the use of oaks and other native plant species for project landscaping. To that end, the County shall ~~collection and propagation of~~ acorns and other plant material from former Fort Ord oak woodlands to be used for restoration areas or as landscape material.

Program C-2.5: The County shall require that paving within the dripline of preserved oak trees be avoided wherever possible. To minimize paving impacts, the surfaces around tree trunks shall ~~should~~ be mulched, paving materials shall ~~should~~ be used that are permeable to water, aeration vents shall ~~should~~ be installed in impervious pavement, and root zone excavation shall ~~should~~ be avoided. [328-2]

Impact 1 addressed the FORA Reuse Plan project's vast impacts on biological resources.

1. Impact: Loss of Sensitive Species and Habitats Addressed in the Habitat Management Plan (HMP)

The proposed project would result in the loss of up to approximately 2,333 acres of maritime chaparral, zero acres of native coastal strand, two acres of dune scrub, and the potential loss of special-status species associated with these habitats.

Comment letter 298 from the Sierra Club included this comment:

“Because of the unique character of flora of Fort Ord as well as the need to conserve water, native plants from on-site stock should be used in exterior landscaping, and cultivars or manzanita and ceanothus that could hybridize with the rare natives must not be planted. Any annual wildflower plantings should be from seeds collected on site. not from commercial wildflower mixes. Bermuda. Kikuyu. and Ehrhiana grasses must not be used.”

In response, the Final EIR made the following change to the Reuse Plan:

Final EIR Page 4-135. Add the following mitigation measure to impact #1.

"Mitigation: Because of the unique character of Fort Ord flora, the County shall use native plants from on-site stock shall be used in all landscaping except for turf areas. This is especially important with popular cultivars such as manzanita and ceanothus that could hybridize with the rare natives. All cultivars shall be obtained from stock originating on Fort Ord". [298-3]

The cities and county have not adopted this mitigation measure as required, and FORA has not required its implementation. There are many other examples of similar omissions and failures with regard to the Reuse Plan and its EIR requirements.

KFOW reminds you of the FORA Board meeting agenda and packet for November 2016 regarding the Del Rey Oaks RV Park resort. The Board packet and staff report did not discuss the fact that the Reuse Plan includes mitigations with which Del Rey Oaks must comply. Instead, Del Rey Oaks and FORA call the Reuse Plan a "framework for development". In other words, the actions of Del Rey Oaks and FORA show that they want Del Rey Oaks to have only the benefit, rather than also shoulder the accompanying burden of the required mitigations. In fact, Del Rey Oaks has not complied with the Reuse Plan policies applicable to the land it has received or will receive. The jurisdictions' general plans applicable to the territory of Fort Ord are intended to be fully in conformity with the Reuse Plan. Instead, FORA has a pattern and practice of applying a much lower and incorrect standard of substantial evidence. FORA also has a pattern and practice of failing to require the county and cities to timely implement their zoning and other implementing actions.

A CEQA determination is required before acting on the transition plan.

As stated in the KFOW letter to FORA dated November 8, 2018, FORA cannot proceed with action on the transition plan until FORA first makes a CEQA determination. There is no CEQA action stated on the agenda today. The Board cannot find that the action is exempt from CEQA because there is no evidence that FORA provided the public notice required by Master Resolution section 8.03.060, "PUBLIC NOTICE OF ENVIRONMENTAL DECISION":

"Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County."

The Master Resolution controls here, because it states that “Where conflicts exist between this Article [Master Resolution] and State [CEQA] Guidelines, the State Guidelines shall prevail except where this Article is more restrictive.” Absent proper notice under the Master Resolution, FORA cannot even proceed with a first vote.

The Fort Ord Reuse Plan is the plan for the future use of Fort Ord adopted pursuant to Section 67675. That future use will continue after FORA sunsets. The plan programs, policies and mitigations are still viable, to a significant extent. The Reuse Plan is the official local plan for the reuse of the base for all public purposes, including all discussions with the Army and other federal agencies, and for purposes of planning, design, and funding by all state agencies. FORA should not abandon the Reuse Plan when FORA sunsets, as the FORA transition plan appears to propose. The approach that FORA proposes is illegal and fraught with foreseeable problems. FORA has admitted that many of the policies and mitigations have not yet been adopted and implemented. It is, as the Legislature directed, the plan for the reuse of Fort Ord. Thus, FORA should ensure that the Reuse Plan and its EIR are binding on all Fort Ord land, and FORA should assign to each land use jurisdiction all applicable programs, policies and mitigations, with specificity, and the land use jurisdiction must accept all of the assignments. The public should be able to review and comment on the proposed specific assignments because the public can then assist FORA by providing comments as to accidental omissions, accidental inclusions, misstatements and other errors. The process is already filled with errors, as shown by the Reassessment Report. Most of those errors have not been corrected. That is the only that the mission can continue – the reuse of Fort Ord in compliance with the mandated Reuse Plan and its adopted CEQA review. FORA has failed to carry out and complete that mission. That is not a reason to abandon the mission now. But that is what FORA’s transition plan proposes. FORA has not proposed to ensure that the Reuse Plan stay in effect after FORA transitions. FORA has not proposed to ensure that the Reuse Plan would be effectively enforced by any particular entity. FORA still has not identified with specificity what is considers a “mitigation” and how it would be enforceable in FORA’s absence. This is a critical issue because of the multiple and inconsistent ways that FORA uses the word “mitigation.”

KFOW and others repeatedly have challenged the FORA notion that the FORA CIP is a Reuse Plan requirement that must be implemented and developed. Instead, they are projects and costs that FORA voluntarily took on, and which FORA is not required to complete or pay for. One example is the South Boundary Road project that is not in the Reuse Plan or the EIR. Rather, FORA proposed a South Boundary Road project approximately ten years after the Reuse Plan was adopted. The circumstances are that Fort Ord development is far behind what was expected in 1997 Reuse Plan. The development that has occurred has gone in a different direction, and the economy and circumstances have materially changed, and even more so now there have been and will be changes of untold magnitude and type due to the coronavirus pandemic. Thus, the big public works projects that FORA has claimed are “necessary” are neither necessary nor wise. It remains unclear what FORA means by “mitigations”. It is not

defined and the jurisdictions and FORA have many different and inconsistent uses and interpretations of the word “mitigations.” Most of the Reuse Plan/EIR mitigations are not capital improvements.

The draft plan fails to address numerous foreseeable situations. For example, a land use jurisdiction that has not adopted a Reuse Plan EIR mitigation, or has not adopted a Reuse Plan policy or program, could and foreseeably would continue not to adopt the mitigation, policy or program. The question remains whether that is an action subject to CEQA if the Reuse Plan has been allowed to go away. If a land use jurisdiction considers a project on Fort Ord that would have been subject to the mitigation, policy or program, but is not subject to it because the jurisdiction failed to adopt it, there is a significant question as to what remedies are available to the other jurisdictions and KFOW if the Reuse Plan is no longer in place.

The whole of the action includes FORA’s abandonment of the Reuse Plan policies and procedures and the EIR mitigations, and the enforcement and implementation thereof. Viewed from that perspective, FORA, once dissolved, will never again be able to protect the environment through its adopted programs, policies and mitigations that were designed to protect the environment. And FORA proposes no other entity to take over those roles. That is a change to the existing baseline and that would affect the environment.

Inadequate notice.

FORA cannot proceed with action on the transition plan until FORA first makes a CEQA determination. The Board cannot find that the action is exempt from CEQA because there is no evidence that FORA provided the public notice required by Master Resolution section 8.03.060, “PUBLIC NOTICE OF ENVIRONMENTAL DECISION”:

“Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County.”

Please provide to me as soon as possible the evidence that FORA provided this prior notice. The Master Resolution controls here, because it states that “Where conflicts exist between this Article [Master Resolution] and State [CEQA] Guidelines, the State Guidelines shall prevail except where this Article is more restrictive.” Absent proper notice under the Master Resolution, FORA cannot even proceed with a first vote on this item, because the first vote would be invalid and void. FORA has not responded to this request that I made on October 29, and I ask it again here.

Proposed resolution is subject to second vote requirement.

Master Resolution section 2.02.040(b) states that “A resolution, ordinance, or other action of the Board will not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration.” This requirement applies to the action on the transition plan, which is the first time the board will vote on this version of the plan, and this version was introduced less than 72 hours before the Board meeting. These are important rules adopted in the interest of fair public process and justice. Before you act today, each of you should consider that “The provisions of this Master Resolution and all proceedings under this Master Resolution are to be construed so as to give effect to the objectives of the Authority Act, this Master Resolution, and the promotion of justice” (Master Resolution, § 1.01.100(f)) and “This chapter contains the minimum requirements of the protection of the public convenience, safety, health, and general welfare” (Master Resolution, § 1.01.100(a)).

Offer to meet.

As KFOR has offered numerous times in the past, KFOR again offers to meet with you to discuss these issues in the hope of a resolution before FORA acts. You, the FORA Board members, control the schedule. KFOR does not. KFOR urges you to carefully consider all of the information provided before you vote on the CEQA determination and the transition plan.

Summary.

For each of the concerns and issues identified here, in the public process, and in FORA’s records, KFOR urges that you consider all of these issues carefully before you act to adopt any transition plan. The plan is not exempt from CEQA and the newly proposed draft plan would have unanalyzed and unmitigated impacts and unintended consequences. Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment: July 1, 2016 KFOR letter to FORA board identifying specific problems with regard to the failure to implement Reuse Plan policies, programs and mitigations.

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

July 1, 2016

Via E-mail

Frank O'Connell, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: Keep Fort Ord Wild's objections to failure by Fort Ord Reuse Authority to adequately enforce the mitigations for the Fort Ord Reuse Plan, including Reuse Plan programs and policies, and the Master Resolution; objections to acceptance of Michael Baker International report on Reassessment Report Categories I and II – July 8, 2014 FORA Board meeting.

Dear Chair O'Connell and members of the FORA Board of Directors:

This Office represents Keep Fort Ord Wild (KFOR). Keep Fort Ord Wild is a coalition of individuals dedicated to the preservation of trails, recreation, wildlife and habitat on Fort Ord. Keep Fort Ord Wild supports sensible, economically viable, redevelopment of the extensive blight within the urban footprint of the former base. Keep Fort Ord Wild supports conservation of existing undeveloped open space for the enjoyment of current and future generations.

On June 10, 2016, KFOR informed FORA in writing that KFOR objected to the Michael Baker International (MBI) opinion, and provided reasons. KFOR also objected to FORA's failure to adequately monitor and enforce the mitigations required pursuant to the Reuse Plan and its EIR. FORA has an independent duty to enforce the mitigations, independent of FORA consistency determinations. As of the finalizing of this letter at 2 PM on July 1, KFOR has not received a response from FORA.

Keep Fort Ord Wild again expresses its serious concerns about the failure of FORA to adequately enforce the mitigations for the development and redevelopment of the former Fort Ord, including the Fort Ord Reuse Plan policies and programs. The California Environmental Quality Act requires that "A public agency shall provide the measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." (Pub. Resources Code, § 21081.6, subd. (b), emphasis added.)

The Reuse Plan, as modified by the Final EIR, contains policies and programs that are mitigations for the impacts of development of the former Fort Ord. The Reuse

Plan is a document binding on FORA. It is not merely a document to be set on a shelf, or be misread by FORA for FORA's convenience. "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.) The mitigations adopted in the Reuse Plan are mandatory. Adopted mitigations "are not mere expressions of hope." (*Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) Once incorporated, mitigation measures cannot be defeated by ignoring them or by "attempting to render them meaningless by moving ahead with the project in spite of them." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 450.) Yet that is what FORA has tried to do for years.

KFOW has expressed and here reiterates serious concerns, including these:

- **FORA has failed to include Reuse Plan mitigations including policies, programs and other mitigations in the Reuse Plan that FORA relied on – the version “republished” in 2001.** The 2001 “republished” document is the version of the Reuse Plan that FORA and all public agencies rely on; the failure to require public agencies to adopt the Reuse Plan policies and programs that were required in the Reuse Plan, including EIR mitigations intended to address the impacts of the Reuse Plan. These omitted policies, programs and mitigations include, e.g., Seaside hydrology and water quality programs A-1.2, B-1.4 through B-1.7, and C-6.1. These are provided as examples to assist FORA. There are other policies and programs that FORA also has not ensured have been implemented by the jurisdictions, as required by the Reuse Plan and its EIR. The underlying EIR documents consistently imparted an understanding to public officials reviewing the Reuse Plan project, and to the general public, that mitigation measures to address the environmental concerns would accompany the build out of Fort Ord. However, FORA has omitted material mitigation measures from the 2001 Reuse Plan that is the primary version of the Reuse Plan that FORA and the land use agencies rely on. FORA has been regularly violating the mandates of its own Fort Ord Reuse Plan and its EIR. An agency may not say that it is going to implement mitigation measures, then simply defer those measures unilaterally, as it chooses.
- **Although FORA's 2012 Reassessment Report identified some for the policies and programs that the jurisdictions had not adopted, but not all, FORA has not taken prompt and effective steps to remedy the identified problems.** The Reassessment Report identified some of the numerous unmet and unfulfilled Reuse Plan policies, programs and other mitigations at pages 3-34 through 3-41. That was only a partial list. The Reassessment Report acknowledged that “Policies and programs

identified as ongoing are not included in this table.” (Report, p. 3-41.) At the time of the Reassessment Report in 2011, FORA admitted that many of the listed Reuse Plan “policies or programs are not contingent on triggering events, and should be implemented as soon as feasible.” (*Id.* at p. 3-41.) Now, four years later, many of the policies, programs and other mitigations still have not been implemented. These unmet requirements include controversial and important issues including, for example, oak tree protection (e.g., Seaside biological resources program 2.1 and recreation policy C-1), noise (e.g., Seaside noise policies A-1, B-1, B-3 and their implementing programs), pedestrian and bicycle access (e.g., Seaside policy A-1 and its implementing program), trails (Seaside recreation program F-2.1, policies G-1, G-2 and G-4), open space (e.g., Seaside recreation/open space land use policy B-1 and its implementing program, and program D-1.3), residential land use (Seaside policies E-1, E-3, I-1 and programs E-1.1, E-3.2, I-1), homeless (Seaside policy F-1 and implementing programs), streets and roads (e.g., Seaside policy B-1, program B-1.2), and County biological resources policy A-2. As other and additional examples, the City of Marina General Plan fails to include Reuse Plan City of Marina Residential Land Use Objective F, Program F-1 and implementing policies F-1 and F-2 to address the needs of the homeless, Residential Land Use program G-1.3 regarding reduction in barriers to accessibility, Commercial Land Use Policy B-2 and Program B-2.1 regarding prohibition of card rooms or casinos for gambling as acceptable land uses on the former Fort Ord, Recreation/Open Space Land Use Policy A-1 requiring the City of Marina to “protect irreplaceable natural resources and open space at former Fort Ord,” Program B-2.4 and C-1.1, policies D-1, D-1.1, and D-1.2, and Recreation policy B-1, as a few examples. This partial list has been very time-consuming, complex, and resource-intensive to prepare, due to the multiple lengthy and inconsistent documents involved. These are provided as examples. There are other policies and programs that FORA also has not ensured that the jurisdictions have implemented, as required by the Reuse Plan and its EIR. FORA decided to defer and not enforce many of the omissions that the Reassessment Report identified when FORA decided to not proceed with the omissions identified in the Reassessment Report Category III, “Implementation of Policies and Programs.” That category listed Reuse Plan policies and programs determined in an earlier report (the Reassessment Scoping Report) to be incomplete.

- **The Reassessment Report approved by FORA was incomplete. The Reassessment Report failed to identify key Reuse Plan policies and programs including Reuse Plan EIR mitigations and key portions thereof that have not been adopted and implemented by FORA and the jurisdictions.** There are many examples, including, for example, for

Seaside: biological resources policies A-4, B-1, B-2, C-3, D-1, E-1 and the implementing programs to those policies, policy E-2, programs B-3.2 and C-2.1 through 2.6, and D-2.1 and 2.3; commercial land use policies A-1, B-1 through B-3, C-1, D-1, E-1 and E-2, F-1 and F-2, and the implementing programs to those policies; hydrology and water quality policies A-1, B-1, C-1, C-2, C-4 through C-6 and the implementing programs to those policies, and program C-3.1; institutional land use policies A-1, B-1, C-1, D-1, D-2 and the implementing programs to those policies; noise policies B-2, B-4 through B-8, and the implementing programs to those policies, programs B-1.2; pedestrian and bicycle policy B-1 and the implementing programs to those policies; recreation policies A-1, B-1, D-1 through D-4, F-1, G-3, H-1 and the implementing programs to those policies, and program E-1.1; recreation/open space policies A-1, B-1, C-3 and the implementing programs for those policies, and the implementing programs for policies B-1, C-1, C-2, C-3 and D-1; residential land use policies A-1, B-1, C-1, D-1, E-2, G-1, H-1, I-2 and the implementing programs for those policies, and programs E-1.2, E-1.3, E-3.1, F-1.2, H-1.1, I-1.2), streets and roads policies A-1, C-1, C-2, D-1 and the implementing programs for those policies, and programs B-1.1)' and, for the County, commercial land use policy B-1, hydrology and water quality program A-1.2, noise policy B-3, recreation and open space programs B-2.2 and E-1.4, recreation policies E-1.1 through E-1.6 and programs E-2.2 and E-3.1, residential land use programs C-1.1, I-1.1, transit programs A-1.4 and A-1.5. These are examples. There are other policies, programs, and other mitigations that FORA also has not ensured have been implemented by the jurisdictions, as required by the Reuse Plan and its EIR.

- CEQA requires that if a lead agency finds that mitigation measures have been incorporated into the project to mitigate or avoid a project's significant effects, the "agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation." (Pub. Resources Code, § 21081.6, subd. (a)(1).) The Reuse Plan mitigation monitoring and reporting program (MMRP) adopted by FORA in 1997 is inadequate and has not ensured compliance as required. FORA placed in the MMRP only some of the mitigations added by the final EIR. The MMRP did not include all mitigations added by the final EIR and did not include the mitigations that were part and parcel of the draft Reuse Plan as policies and programs. FORA also failed to implement all mitigations, including those listed on the MMRP in the final EIR, as explained in this letter. FORA has acted continually for years as the implementation of BRP

policies or programs is primarily the responsibility of local jurisdictions, instead of the responsibility of FORA. (See, e.g., the statements in the Reassessment Report, at p. 1-7.)

At the same time, while FORA has been failing to fulfill its mandatory duties, FORA and the land use jurisdictions have proceeded to approve projects and make consistency determinations, thus improperly allowing plans and projects to proceed that have not demonstrated compliance with the Reuse Plan policies and programs. FORA has the ability to stop that and has not prevented it from happening. As a result, projects and plans have been approved that do not adequately respect, follow and implement the Reuse Plan and its policies and programs.

This is particularly important now, while the Monterey Downs project is going through the review process by Seaside, the County and FORA. The Monterey Downs project is being processed and reviewed pursuant to Seaside documents, County documents, and FORA documents that are not in compliance with the mitigations, mitigating policies and mitigating programs of the Reuse Plan and its EIR. It also is particularly important now because FORA will sunset in 2020. FORA has failed to ensure that the land use jurisdictions have adopted many key policies, programs, and other protections that were put in place by FORA nearly 20 years ago in certifying the Reuse Plan EIR and adopting the Reuse Plan based on that certification.

The Reuse Plan policies and programs, along with other Reuse Plan EIR mitigations are CEQA mitigations that FORA has a mandatory duty to enforce. FORA has failed on a continuing basis to fulfill that duty.

FORA has made a confusing jumble of what FORA calls its "governing documents." FORA does not use the original documents adopted by FORA. FORA regularly refers to the Reuse Plan that was "republished" in 2001, even though the FORA Board never adopted the 2001 version, there was no environmental review performed on the 2001 version, and the 2001 version was different in material ways from the 1997 Reuse Plan adopted by the FORA Board in 1997. The 2001 "republished" Reuse Plan does not accurately reflect the FORA adopted 1997 Reuse Plan. The 2001 version contains material omissions and misstatements. As one example, the "republished" 2001 plan adds the veterans cemetery, without environmental review. As another example, the "republished" plan includes policies and programs that are materially different from the Reuse Plan and EIR documents approved and adopted by the FORA Board in 1997. (E.g., Biological Resources County policy C-2 and program C-1 [see our March 6, 2014 letter, exhs. J and K].) We have addressed this issue in the past, including, for example, in our March 6, 2014 letter.

To make matters worse, FORA's website provides only the 2001 republished version of the Reuse Plan and what FORA calls a "Final EIR" but which is not the Final EIR. Instead, it is a hodgepodge of the 1996 Draft EIR with some but not all the

changes made in the 1997 Final EIR response to comments as a result of public comments. FORA's webpage for "Base reuse plan" states that "The FORA Base Reuse Plan is made up of four volumes. All files are available in electronic format as Adobe Acrobat files (pdf):" The claim is not accurate because FORA makes only three of the four volumes available, stating that "Volume 3 – Appendices (not yet available for download)."

This problem is exacerbated by FORA's refusal to acknowledge the fundamental problems that KFOW and others have identified in the past. As one example, FORA has repeatedly insisted that the 2001 version of the Reuse Plan is the valid governing document, and that the land use jurisdictions and KFOW should rely on it. However, the 2001 versions of the Reuse Plan and the EIR are not accurate and not complete.

FORA's past acts do not create confidence in FORA's abilities. As one example, in March 2010, the Executive Director proposed making changes to the FORA Master Resolution. The changes were numerous and material. There were many hundreds of changes proposed, including to the language of Chapter 8 of the Master Resolution. Chapter 8 governs the consistency determinations that are required to be made by FORA. More than a hundred word changes were proposed for Chapter 8, primarily changing the word "shall" to the word "may." FORA's Executive Director and Authority Counsel recommended adopting the changes. The FORA Board approved the changes. The changes were significant and material because they changed specific actions that FORA was required to perform – what FORA "shall" do – to permissive actions that FORA "may" fulfill at FORA's discretion.

FORA had no authority to unilaterally change Chapter 8. Chapter 8 had been created when in 1998 FORA approved the settlement agreement with the Sierra Club; pursuant. In 2013, members of the public realized that FORA had made drastic changes to Chapter 8. They alerted the Sierra Club. The Sierra Club promptly put FORA on notice that FORA was in violation of the 1998 settlement agreement that required the original language using the word "shall" throughout. FORA had been required to give the Sierra Club prior notice of the changes to Chapter 8 and perform environmental review (pursuant to CEQA) on the proposed changes. (Settlement Agreement, p. 2, term 4.) FORA had violated both requirements: FORA had failed to notify the Sierra Club and FORA had failed to perform a CEQA review.

As another example of FORA's history of lack of compliance with its own rules, FORA has a pattern and practice of failing to apply the proper standard for its consistency determinations. According to the Master Resolution, the proper test for determining consistency is whether "there is substantial evidence" that the General Plan "is not in substantial conformance" with the Reuse Plan. (Master Resolution, § 8.02.010, emphasis added.) Instead, FORA has looked only to whether there is substantial evidence to support a finding of consistency, and FORA has largely ignored substantial evidence to the contrary – that the plan is not consistent. The FORA staff

memo dated December 19, 2000 stated the very deferential standard used by FORA then and now to make consistency determinations. That memo states in pertinent part as follows: "The standard provided then, is that of substantial compliance between the Reuse Plan and submitted document. The manner in which substantial compliance might be demonstrated is more flexible than a verbatim restating of the Reuse Plan, but would need to be backed up with substantial evidence read into the record, and with findings made relative to the evidence presented." That standard is not consistent with FORA's Master Resolution Chapter 8 or the intent and language of the Reuse Plan and the Reuse Plan EIR. That lenient standard is still used today, according to FORA staff. Instead of doing an independent and stringent analysis of whether consistency should be found, FORA staff defers to the land use jurisdiction to present an argument for consistency. The December 19, 2000 memo reveals this when it says "The basic philosophy behind this approach is that, although FORA has been assigned regulatory authority over these matters by the State Legislature, it is appropriate to place the burden on the jurisdiction making the request to make their best case in favor of consistency." And if there is substantial evidence to support the jurisdiction's argument, then FORA has adopted to the jurisdiction's claim of consistency. As a result of FORA's failure to properly implement its Reuse Plan and its Master Resolution, FORA has applied a loose, lax, and deferential standard of review to the consistency determinations made by the land use agency. That approach is not consistent with the required rigorous analysis of whether "there is substantial evidence" that the plan or project "is not in substantial conformance" with the Reuse Plan, which is the mandatory analysis under the Master Resolution.

The Monterey County General Plan follows the weak language of the draft reuse plan, instead of the adopted and approved Reuse Plan. That weak language that would allow for unmitigated and unanalyzed environmental impacts, and would not achieve the goals and objectives of the adopted Reuse Plan. There are many examples of this. We provide examples here, which are the same examples FORA has ignored in the past when KFOR has provided them. KFOR is prepared to provide other examples, which FORA can easily identify on its own by reviewing the draft reuse plan, the Final EIR, and the adopted 1997 Reuse Plan. As one example, Draft EIR public comment letter 328 was from the Watershed Institute at California State University at Monterey Bay. The Watershed Institute made thoughtful expert comments on the draft reuse plan policies. The Watershed Institute stated that the draft EIR's claim that effects on coast live oak woodland "would be reduced" was "an unjustifiable claim given the inadequacies" of the proposed policies and programs in the draft reuse plan. The Watershed Institute stated that the policy language was "far too weak to provide any reasonable protection, and criticized the draft plan's use of ineffectual words such as "encourage", "wherever possible," and "should be avoided." In response to this and other similar comments, the Final EIR made changes to the text in the reuse plan policies and programs to make the language stronger. For example, the Final EIR replaced the weak language, "the County shall encourage the preservation and enhancement of oak woodland elements," with the stronger language, "The County

shall preserve and enhance the woodland elements." As another example, in response to comments the Final EIR replaced the weak language "the County shall encourage clustering of development," with the stronger language, "the County shall cluster development." The response to comments (which were part of the Final EIR) added stronger language to many policies and programs throughout the reuse plan. The Final EIR version of the plan text showed this improved stronger language. The stronger language was part of the final 1997 Reuse Plan that was adopted by the FORA Board when it certified the EIR. As stated above, the 2010 County General Plan/Fort Ord Master Plan uses the weaker 1996 draft Reuse Plan text and should not be found consistent with the Reuse Plan, and the Reuse Plan should not be amended based on the County General Plan.

FORA adopted the Reuse Plan in 1997, nearly 20 years ago, and since then has failed to ensure that the land use jurisdictions have adopted the Reuse Plan mitigations as required. Instead, FORA has made consistency determinations for plans and projects that are not consistent with the Reuse Plan requirements and mitigations, and allowed those plans and project to proceed. FORA is scheduled to sunset in the year 2020. It is now the second half of the year 2016, and FORA has shown no indication that it is going to change its pattern and practice.

The Reassessment process FORA followed was fundamentally flawed, as KFOW and others have explained in past letters. FORA ignored material changes in circumstances and increases in knowledge such as the unsustainability of the Deep Aquifer, which is the water source for Fort Ord, and the creation of the Fort Ord national Monument. Instead of adapting the Plan to current realities, FORA plowed ahead with the same unsustainable and outdated plan. As we have told FORA in the past, nobody knows how long the Deep Aquifer will last. Nobody knows how much water is in the Deep Aquifer. Only recently has it been acknowledged that the Deep Aquifer is subject to contamination - for example, from the contaminated shallower aquifers or other sources. Under the circumstances, it is irresponsible for FORA to allow any development that is supplied by water from the Deep Aquifer. Fort Ord is getting its water from the overdrafted deep aquifers approximately 800 to 1400 feet below ground. These water sources are unsustainable, because they are not being recharged. Existing Fort Ord development relies on those unsustainable sources. New development at Fort Ord also would rely on these unsustainable water sources. FORA's Reassessment Report failed to investigate or disclose this serious problem.

FORA has taken minor steps following the Reassessment to take some actions, but not nearly the amount of action required to bring FORA and the land use jurisdictions into compliance with the Plan. The Reassessment categories I and II changes have been handled in ways that do not comply with the applicable laws or follow an adequate public process.

The MBI opinion and the FORA staff report of June 8, 2016 failed to disclose the fact that at least several of the consistency determinations were made by the FORA Board during the time that the illegal amendments to Master Resolution Chapter 8 were in place. In March 2010, FORA illegally and improperly amended the chapter 8 requirements to replace many of the “shall” to “may,” thus making permissive what the settlement agreement required to be mandatory. It appears that these changes were made to benefit specific projects, including Monterey Downs. FORA called those changes to the Master Resolution as follows: “Amended March 12, 2010 [Minor corrections throughout the document to add clarity].” When the illegal changes were brought to light by KFOW and the Sierra Club in 2013, the Board reversed the illegal changes. FORA called those changes to the Master Resolution: “Amended April 12, 2013 [. . . 23 typographical corrections to Chapter 8].” In FORA’s opinion, the fundamental change from “may” to “shall” was a mere “typographic” change. FORA did not review the actions taken by FORA while the illegal language was in effect from 2010 to 2013. Thus, FORA does not know for certain that those determinations were proper or supported. These determinations included the County housing element in 2010, the Seaside housing element in 2011, the Seaside Local Coastal Program in March 2013, and at least two projects, and possibly more.

The 1996 draft Reuse Plan and the 1997 final Reuse Plan did not assign policies and programs to Del Rey Oaks and the City of Monterey because those agencies were not intended to receive land at the former Fort Ord. Later, Del Rey Oaks and the City of Monterey were assigned land that had been intended to go to the County. All the land was at the southern end of the former Fort Ord. The Reuse Plan had assigned Monterey County numerous policies and program to ensure that the land designated for the County, when developed, would be mitigated. FORA has failed to understand this. FORA failed to ensure that the policies applicable to the County were made applicable to Del Rey Oaks (DRO) and the City of Monterey. The applicable Reuse Plan policies have not been adopted by Del Rey Oaks and the City of Monterey. Multiple important and material policies applicable to the County are applicable to DRO and the City, including the water supply policies, the drainage policies, and natural resource protection policies, including the oak woodlands protection policies, and the social issues including affordable housing and recreation and other land use issues. Del Rey Oaks’ land at Fort Ord has oak woodlands, and Monterey’s has dense pine trees. (See Exhibits A and B to this letter.) FORA has taken the apparent position that those trees, resources and habitats on Del Rey Oaks and Monterey lands are not protected by the Reuse Plan policies. FORA’s positions are inconsistent with the Reuse Plan and its EIR and with the fundamentals of good regional planning.

FORA has not directly communicated to DRO and the City about the Reuse Plan policies and programs are applicable to them, according to FORA’s response to my recent California Public Records Act request for those communications. In FORA’s opinion, not even the Reuse Plan objectives – which applied to the County, Marina and Seaside – apply to Del Rey Oaks and Monterey. No past or future FORA consistency

determinations as to DRO and City of Monterey plans and projects are proper due to this material failure. No changes to the Reuse Plan to reflect DRO and City of Monterey plans and projects should be made due to these material omissions. One example of why this is urgent is the Del Rey Oaks City Council approval of an RV park on the former Fort Ord land, without taking any steps to ensure that the project complies with the Reuse Plan. The project does not comply.

These issues were raised in past years by KFOW and by others, including during the Reassessment process and also when considering certification of Fort Ord Master Plan and the County General Plan. KFOW has expressed its concerns on these issues in the past, including but not limited to those provided in comments to FORA on or around June 15, 2012, September 2013, February 13, 2014, March 6, 2014, and March 12, 2014. FORA has on a recurring basis failed to perform its ongoing statutory duties.

Conclusion and Request

FORA has a mandatory duty to enforce the Fort Ord Reuse Plan policies and programs and the mitigations of the Reuse Plan. These actions are overdue now. Every day is a continuing violation. This issue requires prompt remedial action. KFOW asks the Board to act promptly. KFOW intends to pursue all available remedies to ensure that FORA fulfills its duties and follows the law. KFOW urges you to carefully review this letter. You control the time frame. We suggest that the Board meet immediately to address this issue, and then tell us promptly what FORA is going to do to address the problems. We offer to meet with you to discuss the problems and hear about your proposed response and action. Thank you.

Very truly yours,

STAMP | ERICKSON


Molly Erickson













Jen Simon <jen@fora.org>

Attachment 5

April 9 Board Meeting - Agenda Item 8b

1 message

Vicki Nakamura <vnakamura@mpc.edu>

Thu, Apr 9, 2020 at 4:19 PM

To: Board@fora.org

Cc: David Martin <dmartin@mpc.edu>, Brian Finegan <brian@bfinegan.com>, Michael Harrington <michael@bfinegan.com>, Shawn Anderson <sanderson@mpc.edu>

FORA Board Members:

I have been involved with Fort Ord development issues on behalf of MPC since 1992. I was there when the Agreement with FORA and the County regarding the East Garrison land swap was negotiated. The conflict between MPC and the County over two very different visions for the East Garrison was difficult, and reaching an agreement took several years. But in 2002, an agreement was reached. MPC gave up the East Garrison for land in the Parker Flats area for its future public safety training facility. Included was a 200-acre habitat reserve that surrounded a potential site for a firing range. MPC did not want to manage habitat, this was not something we do, or which we are funded for. But the habitat reserve was part of a regional approach to mitigating development across the base, forming the basis for both the habitat management and habitat conservation plan. MPC has been a partner with the other jurisdictions in this planning effort, which has finally come to fruition in FORA's final year. With FORA's imminent dissolution; however, commitment to this approach has also seemed to evaporate.

The habitat funding allocation decision before the FORA Board has been characterized at the Habitat Working Group meetings as a worst case scenario, in the event a replacement JPA is not formed before FORA sunsets. However, discussions regarding a JPA have ended for now. It seems likely this worst case scenario will go into effect. And, if you approve Alternative 5, with the premise that all land use jurisdictions should get a share, then the purpose of the funds, which was to manage habitat land set aside to mitigate basewide development will have been negated.

Alternative 5 does not acknowledge Monterey County's extensive habitat lands. Alternative 5 leaves out MPC and the other educational institutions. Alternative 5 does not recognize the mutual benefit of these habitat lands to all jurisdictions and their development interests over the long-term.

Thank you for the opportunity to comment.

Vicki Nakamura