

April 17, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: A. CNPS letter to LAFCO re the failure by FORA to name a successor agency to FORA for (1) contracts with the California Native Plant Society and (2) as CEQA lead agency for road projects that would cause harm to Rare Plant Reserve 1North.

 B. Addressing and rebutting new recent statements by FORA regarding (1) successor lead agencies and a purported unwritten and unauthorized “transfer,” (2) the inaccurate FORA claim that South Boundary Road construction is “in progress,” and (3) the need for FORA to assign its role in the contracts with CNPS.

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

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS). At all times CNPS has acted and is acting for the public benefit and in the public interest regarding protected small reserves of rare plants and habitat at Fort Ord.

You are no doubt aware of the issues about which CNPS is concerned because CNPS repeatedly has raised the issues to FORA of the longstanding CNPS-FORA contracts and the CNPS role in any action to proceed with the South Boundary Road and General Jim Moore intersection project. FORA has rebuffed CNPS’ pleas for years and essentially has ignored CNPS’s position regarding the Plant Reserve 1North. FORA has not honored the mandatory step to obtain CNPS’s consent regarding the South Boundary Road impacts to Plant Reserve 1North. FORA’s actions are inconsistent with FORA’s commitment in the environmental documents prepared by FORA, adopted by FORA, and defended by FORA in recent litigation. FORA has not named a successor agency to the FORA-CNPS contracts.

You have received the April 14 CNPS letter to LAFCO on these issues, and it is attached here for your convenience. The letter contains background and identifies issues that should be familiar to you because CNPS has raised them repeatedly with FORA. Since the April 14 letter there have been some developments that this letter addresses.

FORA has not named successor lead agencies for proposed road projects.

The proposed FORA transition plan in the FORA packet for the April 17 FORA board special meeting does not include language as to successor lead agencies for the road projects. The draft plan in the packet (at pp. 109-116) reflects the proposal in the FORA staff report (at p. 98) that the Board delete the former draft language section

2.2.6 that addressed some of general road project issues and delete the former Exhibit A that referenced some of the 19 road projects that FORA claims. That former language and exhibit would not resolve the issues in any event because the language proposed for deletion does not address all the road projects and all the critical issues that CNPS has raised.

No "transfer of lead agency status" is written or authorized, contrary to FORA's claim.

FORA stated this week that "FORA's position is that CEQA lead agency status will transfer to the underlying land use jurisdiction" post-FORA. This "position" is problematic for several reasons including because: the "position" is not in the transition plan; FORA has shown no authority for the FORA "position," and CEQA does not authorize such a "transfer." The CEQA guidelines do address circumstances where a responsible agency can assume lead agency status (e.g., §§ 15050-15053). However, FORA has not claimed those guidelines sections apply here and they would not apply in any event because FORA's adopted CEQA documents do not name as responsible agencies the cities of Seaside (for the Gigling Road project) and Del Rey Oaks and Monterey (for the South Boundary Road and General Jim Moore Boulevard projects).

The South Boundary Road and General Jim Moore intersection and widening projects are not "in progress construction projects" contrary to claims in the draft transition plan. Instead, the projects are far from construction-ready.

The draft transition plan inaccurately characterizes the South Boundary Road project as "in progress construction projects (such as South Boundary Road)" (packet p. 107). Not so. No construction is in progress. The South Boundary Road and General Jim Moore intersection projects are neither fully designed nor fully permitted. The South Boundary Road project cannot be built as FORA approved it because FORA has failed to receive the necessary consent from CNPS for the proposed South Boundary Road realignment as required by FORA's CEQA document and by the FORA-CNPS contracts. CNPS has opposed the realignment due to its irreversible and significant harm to the protected biological resources. That would mean a different road alignment and new CEQA analysis if a subsequent project proponent pursues the road project. The General Jim Moore intersection is newly proposed to be redesigned as a roundabout which also would cause irreversible and significant harm to the protected biological resources of which CNPS is the acknowledged steward. In addition to the steadfast opposition from CNPS, there are significant hurdles remaining as far as future permitting from regulatory agencies. That means a significant amount of work, redesigning, and other challenges remain and must be addressed before the projects would be able to proceed, if at all.

FORA knows about the FORA-CNPS contracts and
FORA should address the contracts in the transition plan.

FORA has not discussed with CNPS a proposed assignment of the FORA-CNPS contracts and FORA has not assigned the contracts in any event. These are meaningful contracts in place that FORA should address now. The FORA-CNPS contracts are not "late-discovered" items that could be addressed under draft plan section 2.2.8 (at p. 110 of the FORA board packet).

Request.

These are important issues made urgent due to the upcoming FORA dissolution. CNPS asks for the courtesy of a written response. Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment: April 14, 2020 letter to LAFCO with attached excerpts from South Boundary Road initial study approved by FORA

April 14, 2020

Via email

Kate McKenna, AICP, Executive Officer
Local Agency Formation Commission of Monterey County
132 W. Gabilan Street, #102
Salinas, CA 93901

Subject: Failure by FORA to name a successor agency to FORA for (1) contracts with the California Native Plant Society and (2) as CEQA lead agency for road projects that would cause harm to Rare Plant Reserve 1North.

Dear Ms. McKenna:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS). This letter addresses the failure by FORA to name and ensure successor agencies for the FORA agreements with CNPS and the FORA-approved road development projects that affect rare native plants. These road projects have not yet been constructed.

Background

The California Native Plant Society is a § 501(c)3 non-profit dedicated to conserving California native plants and their natural habitats. It is a leading voice in plant science and native plant appreciation. Starting in the 1960s CNPS and its members worked cooperatively with the U.S. Army at Fort Ord to preserve approximately a dozen rare plant reserves. The plant reserves were officially formalized as protected areas through binding mitigations for the Army's Ammunition Supply Depot Project in the early 1990's. After the Army left, CNPS continued to work to protect the small areas of rare plants that remain, despite efforts by FORA and others to encroach on them with harmful development. Fort Ord contains rare plants found in very few places in the world, and the reserves protect the remaining areas that are a tiny fraction of the original spread of the rare plants. As part of its efforts the CNPS negotiated with FORA and put written contracts in place regarding the Rare Plant Reserve 1North that is located at the northeast corner of South Boundary Road and General Jim Moore Boulevard.

CNPS has grave concerns about foreseeable potential imminent harm to Rare Plant Reserve 1North.

LAFCO's March 2020 letter to FORA identified two concerns at issue here:

- "FORA has certified a number of CEQA documents and approved projects as a CEQA lead agency. FORA will need to identify its lead agency CEQA projects, identify its responsibilities for mitigation measures implementation, enforcement, and monitoring, and take actions such as making assignments or successor agency designations to FORA member agencies before June 30;" and

- “The possibility of additional FORA-related litigation that could occur in the future (such as challenges to transition plan implementation steps, enforcement of a FORA contract, or transfer of FORA’s assets or liabilities).”

CNPS is concerned because:

- FORA has not designated FORA’s successor in interest with regard to the CNPS contracts as to the Rare Plant Reserve 1North and nearby area.
- FORA has not named a successor in interest with regard to the South Boundary Road and General Jim Moore projects that FORA approved and has not yet constructed, and CNPS has key role in the projects.

South Boundary Road: In 2010 FORA as the CEQA and NEPA lead agency approved environmental review for the South Boundary Road realignment and widening project. The FORA-approved initial study specifically addresses and refers to the Rare Plant Reserve 1North as a “habitat preserve area,” and acknowledges the FORA-CNPS contract and the proposed realignment’s significant and unavoidable impacts on the reserve. The initial study states as follows:

Widening of South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has be [sic] designated . . . land for a habitat preserve area along General Jim Moore Boulevard, . . . approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location

(Initial study, ch. 3, emph. added.) The initial study says that “If negotiations with CNPS are unsuccessful,” then there is an alternate alignment, called Alternative #2, that could be considered. FORA approved the initial study and the proposed realignment that would harm the rare plant reserve. Prior to approving the project FORA had not discussed it with the CNPS. FORA did not approve the Alternative #2 alignment.

After approving the realignment/widening project in 2010, FORA made no effort to contact CNPS for nine years. CNPS made repeated statements in writing and in person to the FORA Board of Directors pointing out that CNPS had to be consulted in order for the project to proceed. In 2019, FORA asked to meet with CNPS. At the meetings FORA did not negotiate with CNPS. Instead, FORA essentially argued that the road realignment was a done deal.

CNPS objects and has objected to the proposed approved alignment due to the impacts on the rare plant reserve. CNPS has informed FORA that no "relocation" of a reserve area is possible without significant impacts on the rare plants. Rare plants grow in specific locations for specific reasons that are not fully understood. If another area was suitable for rare plants then they already would be growing there. In sum, there have not been successful negotiations regarding the rare plant reserve and to "relocate it" to a different area as the FORA-certified initial study requires. This means that the FORA has not met the terms of the FORA initial study. FORA has not finalized the South Boundary Road project design and FORA has not implemented the mitigations.

In presiding over a CEQA challenge to the FORA actions, the superior court carefully reviewed the initial study and stated as follows:

"My understanding is that actually the Plant Society is in the driver's seat currently with respect to where the road ultimately is, whether it's in the approved roadway or whether it is alternative 2. Alternative 2 was specifically put in there because of FORA's recognition that the Native Plant Society may say . . . we don't see a way that you can have your new extension and still preserve our area. So it still seems like the Native Plant Society is in the driver's seat, not FORA."

The superior court judge separately stated that in the initial study FORA "did provide for if [C]NPS blocks this, then we have to go with alternative 2." (Transcript, Feb. 11, 2019, case no. 17CV004540, *Keep Fort Ord Wild v. Fort Ord Reuse Authority*.) The judge was right. The CNPS is the key decision maker as to the location of any realignment and widening of the South Boundary Road, and FORA must abide by the CNPS decision. There should be a successor in interest to the commitments by FORA with regard to the road project.

General Jim Moore Boulevard: Years ago FORA approved a General Jim Moore Boulevard project that included a traditional intersection with South Boundary Road and a widening of General Jim Moore from the new intersection to highway 218. The project has not been constructed. FORA certified the environmental review for the intersection/widening project and it is not clear who would take over as lead agency for it and who would be responsible for any subsequent modifications and environmental review. Recently the intersection has been proposed to be changed to a roundabout which would have significant, unanalyzed and unmitigated impacts on Rare Plant Reserve 1 North, in the expert opinion of CNPS board members. Not only would a roundabout have significant impacts on Plant Reserve 1 North, any widening of General Jim Moore Boulevard in the segment from the roundabout to Highway 218 would severely impact Seaside bird's beak, a California Endangered plant, which flanks the existing roadway. These potential impacts have not been adequately considered in an environmental document.

Status.

FORA and the City of Del Rey Oaks are pushing for development of the South Boundary Road project and the General Jim Moore intersection/roundabout and widening projects. FORA has not named a successor agency that would be required to stand behind the adopted environmental analysis and have the responsibility for ensuring that the initial study language is fully complied with, the mitigations are fully implemented, and any changes to the project description undergo the appropriate level of environmental review. Further, it is possible that additional environmental analysis would be required by one or more regulatory agencies due to the passage of more than ten years from the original environmental review and the likelihood that the environmental data would be deemed stale for purposes of current permitting.

Plea.

CNPS has raised these concerns with FORA and Del Rey Oaks, to no avail. FORA and Del Rey Oaks have taken a confrontational attitude with CNPS. The approach of FORA and Del Rey Oaks has been neither cooperative nor consistent with the written agreements, with the approved CEQA documents, and with the public interest. CNPS is very concerned about the risk of harm to Rare Plant Reserve 1North and the rare plants along General Jim Moore Boulevard. FORA has not identified the successor agency as to each of the written contracts and the road projects, and has not identified which agency would be the appropriate defendant/respondent in any litigation for declaratory relief and to enforce CEQA and other laws should such litigation become necessary following FORA's dissolution. These are all reasons why LAFCO should ensure that FORA name a successor lead agency for each project and a successor in interest for each contract. For the FORA projects which FORA as lead agency has approved, and for which FORA has not named a successor agency, and the decision makers of the named successor agency have not affirmatively and formally accepted the assignment prior to the dissolution of FORA, the FORA project approvals and environmental actions should be deemed null and void as of the date of dissolution of FORA. If one of those project is proposed in the future, the future efforts would be required to start the CEQA process from the beginning.

CNPS asks for LAFCO's assistance in addressing these important issues.
Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment: Excerpts from initial study approved by FORA as lead agency for the South Boundary Road project

Environmental Assessment (EA)/Initial Study (IS)

FOR

South Boundary Road/Gigling Road Improvement Project

Volume I of II

Prepared For:

Fort Ord Reuse Authority (FORA)

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Marina, CA 93933

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May 2010

SUMMARY AND CONCLUSIONS

Proposed Action/Project

This Environmental Assessment/Initial Study (EA/IS) has been prepared to assess the environmental impacts associated with the roadway widening and associated improvements of approximately 12,476 linear feet (2.36 miles) right-of-way along South Boundary Road and Gigling Road on the former Fort Ord Army Base. The scope of the project includes roadway improvements, intersections, sidewalks, bicycle paths/lanes, water and recycled water transmission lines, wastewater gravity and force main pipelines, gas lines, electric lines, cable television and communication facilities, and street lighting. For the purpose of environmental review, proposed intersections and roadway connections were included in this analysis of the proposed action/project, although these improvements may be constructed at a later date.

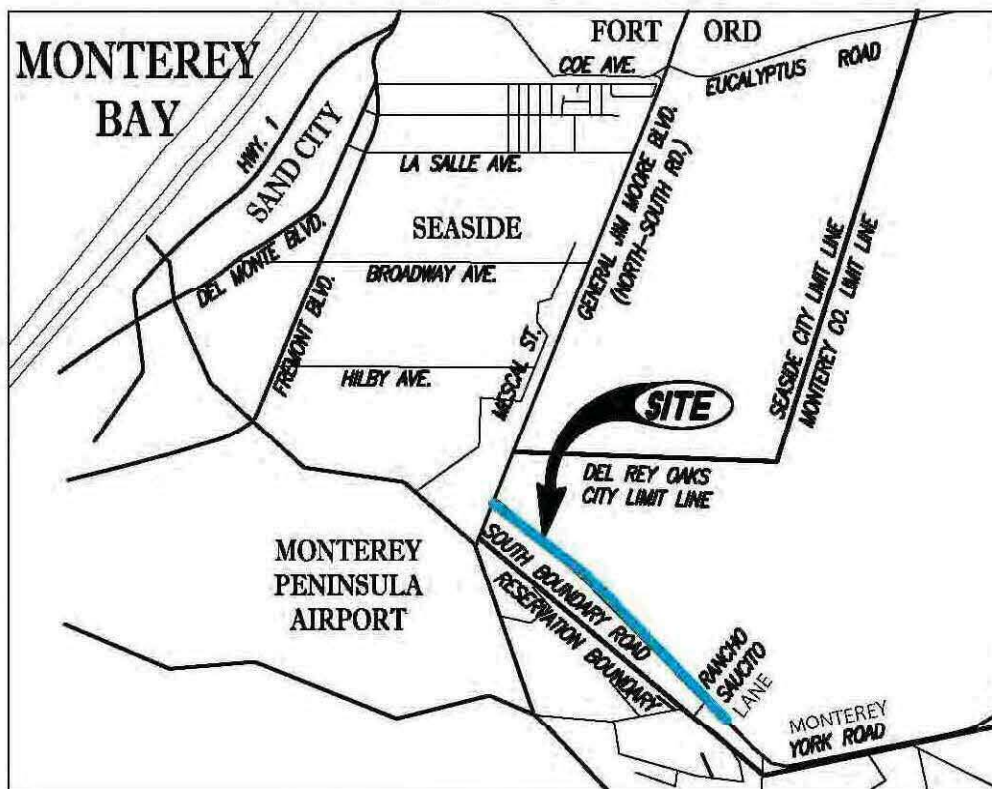
The roadway and associated improvements are proposed by the Fort Ord Reuse Authority (FORA) for South Boundary and Gigling Roads (hereinafter "proposed action/project"). The purpose of the proposed action/project is to: 1) provide adequate roadway capacity to mitigate future traffic volumes resulting from the buildout of the Fort Ord Reuse Plan; and 2) upgrade the roadways to current safety and design standards and improve the present level of service (LOS).

This EA/IS has been prepared pursuant to the National Environmental Policy Act (NEPA), the regulations of the Federal Council on Environmental Quality (40 CFR, Part 1500 et seq.), the Department of the Army (Army Regulation [AR] 200-2), and the California Environmental Quality Act (CEQA).

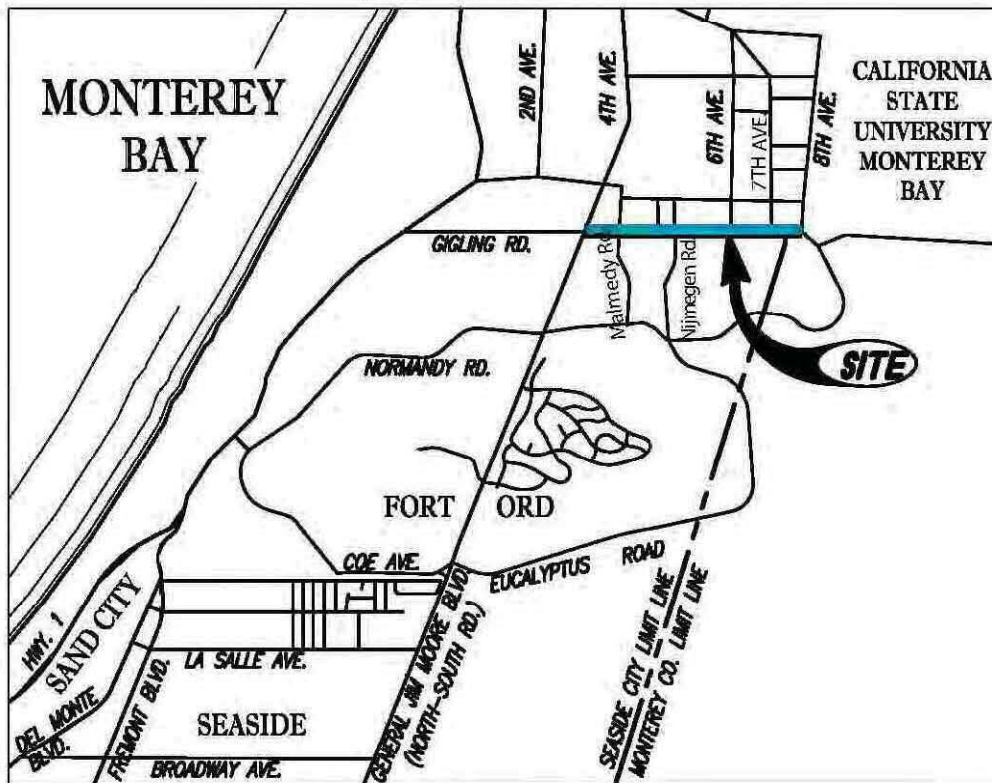
South Boundary Road

The proposed action/project involves improving and realigning the South Boundary Road/General Jim Moore Boulevard Intersection to approximately 300 feet north of the existing intersection and continuing for approximately 600 feet eastward, where the realignment meets up with the existing alignment to continue on for an additional 7,050 linear feet, for a total of approximately 7,593 linear feet (1.44 miles). Realignment would be from a point approximately 300 feet north of the existing South Boundary Road/General Jim Moore Boulevard intersection extending 600 feet eastward, for a total realignment length of 600 linear feet. The existing roadway would be improved from this point to approximately 200 linear feet east of Rancho Saucito. South Boundary Road would be improved as a 2-lane arterial roadway with median and left turn channelization, and 8-foot wide shoulders. The proposed roadway will include the construction of a new intersection at proposed South Boundary Road/General Jim Moore Boulevard intersection. South Boundary Road is located within the City of Del Rey Oaks Sphere of Influence and proposed annexation area.

South Boundary Road Improvement Area



Gigling Road Improvement Area



Source: Creegan + D'Angelo 2007, PMC 2009

NOT TO SCALE



Figure 2-2
Vicinity Map



Grading

In previously unpaved areas, the proposed action/project would involve clearing of vegetation and grading at the realigned South Boundary Road/General Jim Moore Boulevard intersection and where the realigned South Boundary Road joins the existing alignment, which is approximately 600 linear feet east of General Jim Moore Boulevard. Native soil would be removed and replaced with aggregate base prior to paving.

Approximately 19.5 acres would be disturbed by the proposed improvements along South Boundary Road, which would result in the export of approximately 2,200 cubic yards (yd³) of soil (21,500 yd³ of cut, 19,300 yd³ of fill). Approximately 15.7 acres would be disturbed by the proposed improvements along Gigling Road, which would result in the import of approximately 11,100 yd³ of soil (19,000 yd³ of cut, 30,100 yd³ of fill).

Tree and Vegetation Removal

Implementation of the proposed action/project would result in tree and vegetation removal within the project footprint (proposed rights-of-way) and may disturb trees and vegetation within a 20-foot buffer or Temporary Construction Zone (TCZ) surrounding the project footprint. Based on field surveys conducted by PMC, the proposed action/project would result in the removal of approximately 13.3 acres of Maritime Chaparral, and 5.1 acres of Coast Live Oak woodland. In addition, the proposed action/project would result in a direct loss of approximately 0.05 acres of Monterey spineflower habitat, and may result in a loss and/or disturbance of sandmat Manzanita, Hickman's onion and Santa Cruz microseris within the Maritime Chaparral habitat. Furthermore, implementation of the proposed action/project would result in the removal of Coast live oak, Monterey pine, and Monterey cypress trees. Coast live oak trees are located within the Coast oak woodland habitat (5.1 acres) and Maritime Chaparral (13.3 acres). Non-native Monterey pine and Monterey cypress trees are located throughout the project area.

Drainage

Drainage from the proposed action/project would be conveyed via curb and gutters along the edges of the South Boundary Road improvements to underground infiltration systems, which will include oil and sediment interceptor tanks, designed to accommodate runoff up to 100-year storm events. Eight underground infiltration systems are proposed along the northern side of South Boundary Road. Improvements along Gigling Road would include a similar underground infiltration system as proposed along South Boundary Road. The underground infiltration system is shown in South Boundary Road improvement plans included in **Appendix B**.

Landscaping and Erosion Control

The proposed action/project would include hydroseeding of all exposed surfaces after grading is complete and implementation of irrigation and landscaping plan consistent with Recreation Policies B-2 and G-3 in the BRP and the FORA "In Tract vs. Basewide Policy." The proposed landscaping plans would be developed according to the FORA minimum standards.

Reallocation Study prepared in April 2005. Since the 1997 *TAMC Fort Ord Transportation Study*, FORA has reviewed and reassessed obligations as determined in 1997 due to potential inconsistency with the *Regional Transportation Plan (RTP)* and because current projects and land uses proposed were not included in the 1997 analysis. Based on current land use and road network data and projections, the *Fee Reallocation Study* identified transportation improvements that would better improve operations.

Under **Alternative 2-Revised Project Design** the proposed project design would be revised to be consistent with the projects identified in FORA's *Fee Reallocation Study* and *CIP*, and *TAMC's RTP*. Although the proposed action/project is mostly consistent with the *Fee Reallocation Study*, *CIP*, and *RIP* there are some slight differences in design. Under **Alternative 2-Revised Project Design**, South Boundary Road would be upgraded to a 2-lane arterial along the existing alignment to York Road, which would increase the total improvement area by approximately 1,650 feet (0.30 miles); the existing South Boundary Road/General Jim Moore intersection would remain in place; and a new South Boundary Road/York Road intersection would be required. Gigling Road would be upgraded as a new 4-lane arterial between General Jim Moore Boulevard and the proposed Eastside Parkway, which would increase the total improvement area by approximately 875 feet longer (0.17 miles). However, extending Gigling Road to Eastside Parkway would be unnecessary until the final alignment of that roadway has been defined or constructed.

Under this alternative, the effects to biological resources, soil, water quality, noise and air quality would be slightly increased within the Gigling Road improvement area due to more area of disturbance. South Boundary Road may be subject to increasing congestion as development occurs within the City of Del Rey Oaks since the roadway would no longer provide direct access to the City of Del Rey Oaks property designated for commercial development, which is anticipated to generate substantial trips. In addition, additional trips to and from State Route 68 would likely be redistributed to York Road and South Boundary Road. This may cause additional congestion on these roadways. This potential increased congestion could result increased noise and air quality impacts. However, these impacts may be offset by improved operations along State Route 68, which operates at LOS F under existing conditions.

Widening of South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has been designated approximately 2-acres of land for a habitat preserve area along General Jim Moore Boulevard, adjacent to the proposed Del Rey Oaks Resort, and approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location, which would be adjacent to the existing South Boundary Road alignment (to be abandoned under the proposed project description). If negotiations with CNPS are unsuccessful, **Alternative #2** provides an alternate alignment for South Boundary Road, if necessary. However, this

resort is no longer proposed

would require re-design of the access point to the proposed Del Rey Oaks Resort. This alternative would have similar impacts to biological resources as the proposed project. However, relocating the habitat preserve area south of the currently designated location may result in more benefits to habitat preserve as it would no longer be located sandwiched between a proposed retail center/roadway and a boutique hotel. Instead the habitat preserve would be adjacent to the abandoned existing South Boundary Road with additional habitat to the south and the proposed boutique hotel.

Alternative 2-Revised Project Design would be considered an option if negotiations with CNPS are unsuccessful and if the alignment of Eastside Parkway is identified. However, this alternative would likely result in greater impacts to biological resources, soil, water quality air quality and noise.

no reliable evidence of this

retail center and boutique hotel are no longer proposed

2020

April 17, 2020

Commissioners

Chair

Matt Gourley
Public Member

Fort Ord Reuse Authority
Chair/Supervisor Jane Parker and Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Vice Chair

Ian Oglesby
City Member

Subject: Assignment of FORA lead agency CEQA responsibilities and FORA contractual obligations to FORA member agencies

Luis Alejo

County Member

Joe Gunter

City Member

Dear FORA Chair/Supervisor Jane Parker and FORA Board,

Mary Ann Leffel

Special District Member

I am writing to transmit a copy of the California Native Plant Society's (CNPS) letter of April 14, 2020 to the Local Agency Formation Commission of Monterey County. The letter requests LAFCO's 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 in interest for existing FORA contracts with CNPS to protect rare plant reserve areas.

Christopher Lopez

County Member

LAFCO brought this issue to FORA's attention several months ago as part of our State-mandated responsibility to provide for an orderly FORA dissolution. In previous communications, we requested that FORA take actions to designate successors for FORA lead agency CEQA responsibilities, and, specifically, to identify FORA's lead agency CEQA projects; identify its responsibilities for mitigation measures implementation, enforcement and monitoring; and make assignments or successor agency designations to FORA member agencies before June 30. For reference, these communications included emails on February 25, February 26, March 16 and March 26, 2020; transmittal of an Executive Officer's Report from LAFCO's February 24, 2020 meeting packet; LAFCO's March 3, 2020 letter to FORA, discussion at a LAFCO-FORA coordination meeting on March 24, and oral comments at the March 12 FORA Board meeting and April 15 FORA Administrative Committee meeting.

Warren Poitras

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

At this time, the FORA Transition Plan does not yet address assignment of FORA CEQA lead agency status to three Cities for FORA Capital Improvement Program (CIP) projects (including the projects of concern to CNPS), nor does it address assignment of FORA's contracts with CNPS to a successor. For successor assignments (such as ESCA to City of Seaside), FORA has generally included the assignment in its Transition Plan and completed a Transition Plan Implementing Agreement to formalize the assignment.

Executive Officer

Kate McKenna, AICP

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Salinas, CA 93901

P. O. Box 1369

Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

We appreciate that the FORA Board and staff are working hard to address the outstanding issues to effect an orderly dissolution. In view of our previous communications and the recent letter from the California Native Plant Society representative, we respectfully encourage FORA to include the following items in actions to be taken in coming weeks:

1. Add language in the 2020 Transition Plan to assign the Cities of Del Rey Oaks, Marina, and Seaside as FORA CEQA lead agency status successors for FORA CIP projects of South Boundary Road, Marina Stockade, and General Jim Moore Boulevard/Eucalyptus Road;
2. Complete work to prepare and execute individual agreements to designate each City as a FORA CEQA lead agency successor for these CIP projects before June 30;
3. Add language in the 2020 Transition Plan to assign a successor agency for FORA's contracts with CNPS, and

4. Prepare and execute an agreement between FORA and a successor to assign FORA's contracts with CNPS to a successor.

Thank you for your consideration of these requests. Also, please be informed that the Local Agency Formation Commission will conduct a public hearing on May 18 at 4:00 p.m. to consider a resolution making determinations about FORA's scheduled dissolution on June 30. We will continue to work closely with your staff, counsel and consultants throughout the process, and appreciate the opportunity to be of service to FORA and the Monterey Bay communities.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachment: Letter from the Law Offices of Stamp | Erickson dated April 14, 2020 on behalf of CNPS

cc: Josh Metz, FORA Executive Officer
Molly Erickson, Esq., Stamp | Erickson, Attorneys at Law

April 14, 2020

Via email

Kate McKenna, AICP, Executive Officer
Local Agency Formation Commission of Monterey County
132 W. Gabilan Street, #102
Salinas, CA 93901

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Background

The California Native Plant Society is a § 501(c)3 non-profit dedicated to conserving California native plants and their natural habitats. It is a leading voice in plant science and native plant appreciation. Starting in the 1960s CNPS and its members worked cooperatively with the U.S. Army at Fort Ord to preserve approximately a dozen rare plant reserves. The plant reserves were officially formalized as protected areas through binding mitigations for the Army's Ammunition Supply Depot Project in the early 1990's. After the Army left, CNPS continued to work to protect the small areas of rare plants that remain, despite efforts by FORA and others to encroach on them with harmful development. Fort Ord contains rare plants found in very few places in the world, and the reserves protect the remaining areas that are a tiny fraction of the original spread of the rare plants. As part of its efforts the CNPS negotiated with FORA and put written contracts in place regarding the Rare Plant Reserve 1North that is located at the northeast corner of South Boundary Road and General Jim Moore Boulevard.

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(Initial study, ch. 3, emph. added.) The initial study says that “If negotiations with CNPS are unsuccessful,” then there is an alternate alignment, called Alternative #2, that could be considered. FORA approved the initial study and the proposed realignment that would harm the rare plant reserve. Prior to approving the project FORA had not discussed it with the CNPS. FORA did not approve the Alternative #2 alignment.

After approving the realignment/widening project in 2010, FORA made no effort to contact CNPS for nine years. CNPS made repeated statements in writing and in person to the FORA Board of Directors pointing out that CNPS had to be consulted in order for the project to proceed. In 2019, FORA asked to meet with CNPS. At the meetings FORA did not negotiate with CNPS. Instead, FORA essentially argued that the road realignment was a done deal.

CNPS objects and has objected to the proposed approved alignment due to the impacts on the rare plant reserve. CNPS has informed FORA that no "relocation" of a reserve area is possible without significant impacts on the rare plants. Rare plants grow in specific locations for specific reasons that are not fully understood. If another area was suitable for rare plants then they already would be growing there. In sum, there have not been successful negotiations regarding the rare plant reserve and to "relocate it" to a different area as the FORA-certified initial study requires. This means that the FORA has not met the terms of the FORA initial study. FORA has not finalized the South Boundary Road project design and FORA has not implemented the mitigations.

In presiding over a CEQA challenge to the FORA actions, the superior court carefully reviewed the initial study and stated as follows:

"My understanding is that actually the Plant Society is in the driver's seat currently with respect to where the road ultimately is, whether it's in the approved roadway or whether it is alternative 2. Alternative 2 was specifically put in there because of FORA's recognition that the Native Plant Society may say . . . we don't see a way that you can have your new extension and still preserve our area. So it still seems like the Native Plant Society is in the driver's seat, not FORA."

The superior court judge separately stated that in the initial study FORA "did provide for if [C]NPS blocks this, then we have to go with alternative 2." (Transcript, Feb. 11, 2019, case no. 17CV004540, *Keep Fort Ord Wild v. Fort Ord Reuse Authority*.) The judge was right. The CNPS is the key decision maker as to the location of any realignment and widening of the South Boundary Road, and FORA must abide by the CNPS decision. There should be a successor in interest to the commitments by FORA with regard to the road project.

General Jim Moore Boulevard: Years ago FORA approved a General Jim Moore Boulevard project that included a traditional intersection with South Boundary Road and a widening of General Jim Moore from the new intersection to highway 218. The project has not been constructed. FORA certified the environmental review for the intersection/widening project and it is not clear who would take over as lead agency for it and who would be responsible for any subsequent modifications and environmental review. Recently the intersection has been proposed to be changed to a roundabout which would have significant, unanalyzed and unmitigated impacts on Rare Plant Reserve 1 North, in the expert opinion of CNPS board members. Not only would a roundabout have significant impacts on Plant Reserve 1 North, any widening of General Jim Moore Boulevard in the segment from the roundabout to Highway 218 would severely impact Seaside bird's beak, a California Endangered plant, which flanks the existing roadway. These potential impacts have not been adequately considered in an environmental document.

Status.

FORA and the City of Del Rey Oaks are pushing for development of the South Boundary Road project and the General Jim Moore intersection/roundabout and widening projects. FORA has not named a successor agency that would be required to stand behind the adopted environmental analysis and have the responsibility for ensuring that the initial study language is fully complied with, the mitigations are fully implemented, and any changes to the project description undergo the appropriate level of environmental review. Further, it is possible that additional environmental analysis would be required by one or more regulatory agencies due to the passage of more than ten years from the original environmental review and the likelihood that the environmental data would be deemed stale for purposes of current permitting.

Plea.

CNPS has raised these concerns with FORA and Del Rey Oaks, to no avail. FORA and Del Rey Oaks have taken a confrontational attitude with CNPS. The approach of FORA and Del Rey Oaks has been neither cooperative nor consistent with the written agreements, with the approved CEQA documents, and with the public interest. CNPS is very concerned about the risk of harm to Rare Plant Reserve 1 North and the rare plants along General Jim Moore Boulevard. FORA has not identified the successor agency as to each of the written contracts and the road projects, and has not identified which agency would be the appropriate defendant/respondent in any litigation for declaratory relief and to enforce CEQA and other laws should such litigation become necessary following FORA's dissolution. These are all reasons why LAFCO should ensure that FORA name a successor lead agency for each project and a successor in interest for each contract. For the FORA projects which FORA as lead agency has approved, and for which FORA has not named a successor agency, and the decision makers of the named successor agency have not affirmatively and formally accepted the assignment prior to the dissolution of FORA, the FORA project approvals and environmental actions should be deemed null and void as of the date of dissolution of FORA. If one of those project is proposed in the future, the future efforts would be required to start the CEQA process from the beginning.

CNPS asks for LAFCO's assistance in addressing these important issues.
Thank you.

Very truly yours,
STAMP | ERICKSON
/s/ Molly Erickson
Molly Erickson

Attachment: Excerpts from initial study approved by FORA as lead agency for the South Boundary Road project

Environmental Assessment (EA)/Initial Study (IS)

FOR

South Boundary Road/Gigling Road Improvement Project

Volume I of II

Prepared For:

Fort Ord Reuse Authority (FORA)

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May 2010

SUMMARY AND CONCLUSIONS

Proposed Action/Project

This Environmental Assessment/Initial Study (EA/IS) has been prepared to assess the environmental impacts associated with the roadway widening and associated improvements of approximately 12,476 linear feet (2.36 miles) right-of-way along South Boundary Road and Gigling Road on the former Fort Ord Army Base. The scope of the project includes roadway improvements, intersections, sidewalks, bicycle paths/lanes, water and recycled water transmission lines, wastewater gravity and force main pipelines, gas lines, electric lines, cable television and communication facilities, and street lighting. For the purpose of environmental review, proposed intersections and roadway connections were included in this analysis of the proposed action/project, although these improvements may be constructed at a later date.

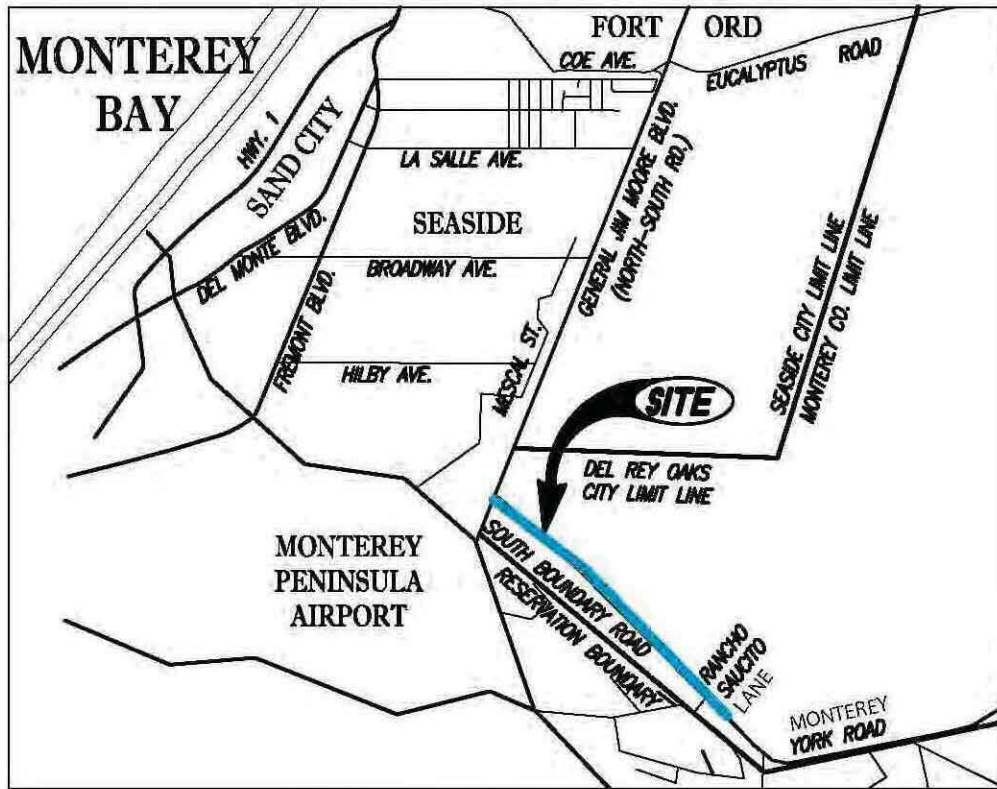
The roadway and associated improvements are proposed by the Fort Ord Reuse Authority (FORA) for South Boundary and Gigling Roads (hereinafter "proposed action/project"). The purpose of the proposed action/project is to: 1) provide adequate roadway capacity to mitigate future traffic volumes resulting from the buildout of the Fort Ord Reuse Plan; and 2) upgrade the roadways to current safety and design standards and improve the present level of service (LOS).

This EA/IS has been prepared pursuant to the National Environmental Policy Act (NEPA), the regulations of the Federal Council on Environmental Quality (40 CFR, Part 1500 et seq.), the Department of the Army (Army Regulation [AR] 200-2), and the California Environmental Quality Act (CEQA).

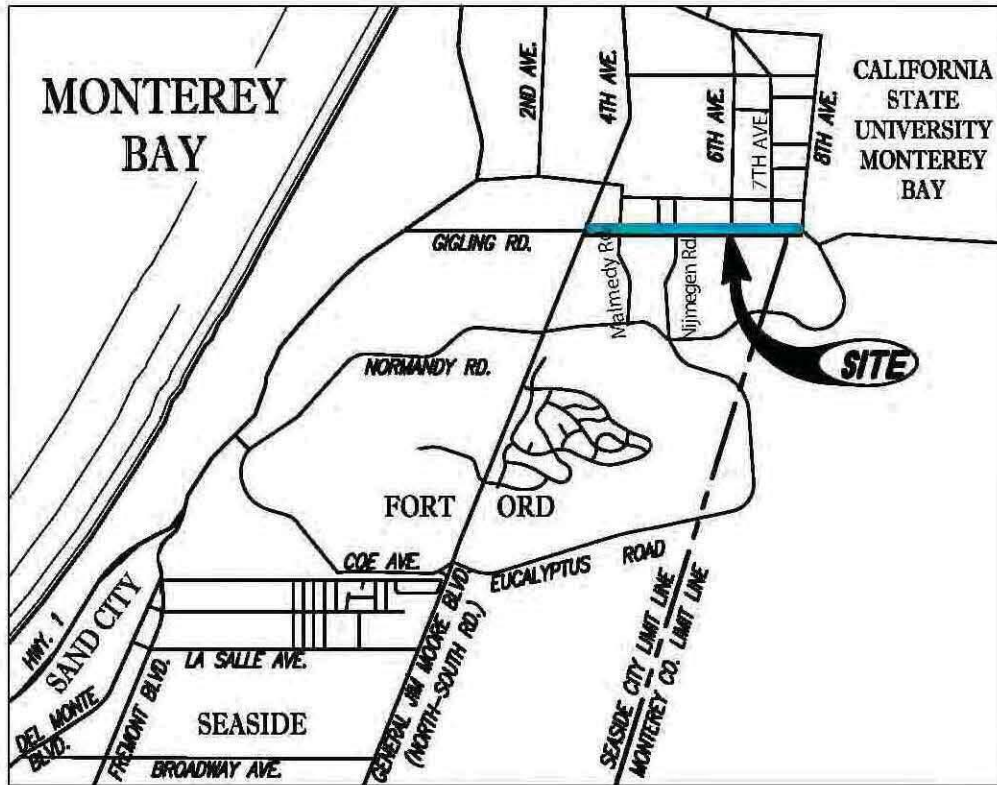
South Boundary Road

The proposed action/project involves improving and realigning the South Boundary Road/General Jim Moore Boulevard Intersection to approximately 300 feet north of the existing intersection and continuing for approximately 600 feet eastward, where the realignment meets up with the existing alignment to continue on for an additional 7,050 linear feet, for a total of approximately 7,593 linear feet (1.44 miles). Realignment would be from a point approximately 300 feet north of the existing South Boundary Road/General Jim Moore Boulevard intersection extending 600 feet eastward, for a total realignment length of 600 linear feet. The existing roadway would be improved from this point to approximately 200 linear feet east of Rancho Saucito. South Boundary Road would be improved as a 2-lane arterial roadway with median and left turn channelization, and 8-foot wide shoulders. The proposed roadway will include the construction of a new intersection at proposed South Boundary Road/General Jim Moore Boulevard intersection. South Boundary Road is located within the City of Del Rey Oaks Sphere of Influence and proposed annexation area.

South Boundary Road Improvement Area



Gigling Road Improvement Area



Source: Creagan + D'Angelo 2007, PMC 2009

NOT TO SCALE



Figure 2-2
Vicinity Map

Grading

In previously unpaved areas, the proposed action/project would involve clearing of vegetation and grading at the realigned South Boundary Road/General Jim Moore Boulevard intersection and where the realigned South Boundary Road joins the existing alignment, which is approximately 600 linear feet east of General Jim Moore Boulevard. Native soil would be removed and replaced with aggregate base prior to paving.

Approximately 19.5 acres would be disturbed by the proposed improvements along South Boundary Road, which would result in the export of approximately 2,200 cubic yards (yd³) of soil (21,500 yd³ of cut, 19,300 yd³ of fill). Approximately 15.7 acres would be disturbed by the proposed improvements along Gigling Road, which would result in the import of approximately 11,100 yd³ of soil (19,000 yd³ of cut, 30,100 yd³ of fill).

Tree and Vegetation Removal

Implementation of the proposed action/project would result in tree and vegetation removal within the project footprint (proposed rights-of-way) and may disturb trees and vegetation within a 20-foot buffer or Temporary Construction Zone (TCZ) surrounding the project footprint. Based on field surveys conducted by PMC, the proposed action/project would result in the removal of approximately 13.3 acres of Maritime Chaparral, and 5.1 acres of Coast Live Oak woodland. In addition, the proposed action/project would result in a direct loss of approximately 0.05 acres of Monterey spineflower habitat, and may result in a loss and/or disturbance of sandmat Manzanita, Hickman's onion and Santa Cruz microseris within the Maritime Chaparral habitat. Furthermore, implementation of the proposed action/project would result in the removal of Coast live oak, Monterey pine, and Monterey cypress trees. Coast live oak trees are located within the Coast oak woodland habitat (5.1 acres) and Maritime Chaparral (13.3 acres). Non-native Monterey pine and Monterey cypress trees are located throughout the project area.

Drainage

Drainage from the proposed action/project would be conveyed via curb and gutters along the edges of the South Boundary Road improvements to underground infiltration systems, which will include oil and sediment interceptor tanks, designed to accommodate runoff up to 100-year storm events. Eight underground infiltration systems are proposed along the northern side of South Boundary Road. Improvements along Gigling Road would include a similar underground infiltration system as proposed along South Boundary Road. The underground infiltration system is shown in South Boundary Road improvement plans included in **Appendix B**.

Landscaping and Erosion Control

The proposed action/project would include hydroseeding of all exposed surfaces after grading is complete and implementation of irrigation and landscaping plan consistent with Recreation Policies B-2 and G-3 in the BRP and the FORA "In Tract vs. Basewide Policy." The proposed landscaping plans would be developed according to the FORA minimum standards.

Reallocation Study prepared in April 2005. Since the 1997 *TAMC Fort Ord Transportation Study*, FORA has reviewed and reassessed obligations as determined in 1997 due to potential inconsistency with the *Regional Transportation Plan (RTP)* and because current projects and land uses proposed were not included in the 1997 analysis. Based on current land use and road network data and projections, the *Fee Reallocation Study* identified transportation improvements that would better improve operations.

Under **Alternative 2-Revised Project Design** the proposed project design would be revised to be consistent with the projects identified in FORA's *Fee Reallocation Study* and *CIP*, and *TAMC's RTP*. Although the proposed action/project is mostly consistent with the *Fee Reallocation Study*, *CIP*, and *RIP* there are some slight differences in design. Under **Alternative 2-Revised Project Design**, South Boundary Road would be upgraded to a 2-lane arterial along the existing alignment to York Road, which would increase the total improvement area by approximately 1,650 feet (0.30 miles); the existing South Boundary Road/General Jim Moore intersection would remain in place; and a new South Boundary Road/York Road intersection would be required. Gigling Road would be upgraded as a new 4-lane arterial between General Jim Moore Boulevard and the proposed Eastside Parkway, which would increase the total improvement area by approximately 875 feet longer (0.17 miles). However, extending Gigling Road to Eastside Parkway would be unnecessary until the final alignment of that roadway has been defined or constructed.

Under this alternative, the effects to biological resources, soil, water quality, noise and air quality would be slightly increased within the Gigling Road improvement area due to more area of disturbance. South Boundary Road may be subject to increasing congestion as development occurs within the City of Del Rey Oaks since the roadway would no longer provide direct access to the City of Del Rey Oaks property designated for commercial development, which is anticipated to generate substantial trips. In addition, additional trips to and from State Route 68 would likely be redistributed to York Road and South Boundary Road. This may cause additional congestion on these roadways. This potential increased congestion could result increased noise and air quality impacts. However, these impacts may be offset by improved operations along State Route 68, which operates at LOS F under existing conditions.

Widening of South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has been designated approximately 2-acres of land for a habitat preserve area along General Jim Moore Boulevard, adjacent to the proposed Del Rey Oaks Resort, and approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location, which would be adjacent to the existing South Boundary Road alignment (to be abandoned under the proposed project description). If negotiations with CNPS are unsuccessful, **Alternative #2** provides an alternate alignment for South Boundary Road, if necessary. However, this

resort is no longer proposed

would require re-design of the access point to the proposed Del Rey Oaks Resort. This alternative would have similar impacts to biological resources as the proposed project. However, relocating the habitat preserve area south of the currently designated location may result in more benefits to habitat preserve as it would no longer be located sandwiched between a proposed retail center/roadway and a boutique hotel. Instead the habitat preserve would be adjacent to the abandoned existing South Boundary Road with additional habitat to the south and the proposed boutique hotel.

Alternative 2-Revised Project Design would be considered an option if negotiations with CNPS are unsuccessful and if the alignment of Eastside Parkway is identified. However, this alternative would likely result in greater impacts to biological resources, soil, water quality air quality and noise.

no reliable evidence of this

retail center and boutique hotel are no longer proposed

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
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July 1, 2016

Via E-mail

Frank O'Connell, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
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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 KFOW has provided them. KFOW 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









