



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG) And

### SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE

Friday, February 14, 2020 at 10:00 a.m.

910 2<sup>nd</sup> Avenue, Marina, CA 93933 (FORA Board Room)

## AGENDA

### 1. CALL TO ORDER

### 2. PUBLIC COMMENT PERIOD

*Members of the public wishing to address the Committee on matters within its jurisdiction may do so for up to 3 minutes and will not receive Committee action. Whenever possible, written correspondence should be submitted to the Committee in advance of the meeting, to provide adequate time for its consideration.*

### 3. BUSINESS ITEMS

- a. Approve meeting minutes from January 31, 2020 **ACTION**
- b. Today's Meeting Objective **INFORMATION**
- c. Recap discussion from January 31, 2020 meeting **INFORMATION**
  - i. Straw Poll Consensus Points
    - 1. FORA staff and consultants to contract with CEQA attorney to opine on legality and risks of certifying an EIR without approving a project (HCP).
    - 2. Interest in forming a legal entity (i.e. JPA) that could be delegated FORA Board's habitat management and conservation responsibilities.
    - 3. Recommend FORA Board establish an escrow account to hold funds currently planned for use as HCP endowment while JPA-based habitat planning efforts continue.
    - 4. Request FORA Executive and Finance committees consider habitat endowment funds for the JPA process.
- d. Discussion of JPA draft document and its language (**Attachment A**) **INFORMATION/ACTION**
- e. Other discussion

### 4. FUTURE AGENDA ITEMS

**DISCUSSION**

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

### 5. ADJOURNMENT

**NEXT MEETING: February 21, 2020**

Persons seeking disability related accommodations should contact the Deputy Clerk at (831) 883-3672 48 hours prior to the meeting. Agenda materials are available on the FORA website at [www.fora.org](http://www.fora.org).



## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP

10:00 a.m. Friday, January 31, 2020 | Carpenters Union Hall  
910 2<sup>nd</sup> Avenue, Marina, CA 93933

#### 1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:01 a.m.

The following FORA Board and Administration Committee members were present:

Melanie Beretti (County of Monterey)  
Patrick Breen (MCWD)  
Councilmember John Gaglioti (City of Del Rey Oaks)  
Councilmember Alan Haffa (City of Monterey)  
Layne Long (City of Marina)  
Craig Malin (City of Seaside)  
Steve Martin (MPC)  
Steve Matarazzo (UCSC)  
Mayor Pro Tem Gail Morton (City of Marina)  
Councilmember Ian Oglesby (City of Seaside)  
Supervisor Jane Parker (Monterey County)  
Dino Pick (City of Del Rey Oaks)  
Anya Spear (CSUMB)  
Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)  
Aaron Gabbe (ICF)  
Tom Graves (RGS)  
Erin Harwayne (DDA) (via phone)  
Kristie Reimer (RMA)  
David Willoughby (KAG)

#### 2. PUBLIC COMMENT PERIOD

No public comments were received.

#### 3. BUSINESS ITEMS

##### a. Today's Meeting Objective

Not discussed.

##### b. Review and next steps on Habitat discussion

###### i. Recap discussion from January 24<sup>th</sup>

Not discussed.

**ii. Pros and Cons of continued discussions on reduced scope HCP – Should discussions continue?**

Co-Chair Parker asked the HWG whether they want to continue working as a group on habitat issues, or would they like to tackle the issues on their own. Mr. Haffa and Mr. Gaglioti noted that the City of Monterey and the City of Del Rey Oaks, respectively, are interested in a Joint Powers Authority (“JPA”) for a Habitat Conservation Plan (“HCP”), not a Habitat Management Plan (“HMP”). Co-Chair Parker noted that the County of Monterey is interested in a reduced scope or phased HCP. Ms. Morton stated that the City of Marina supports moving forward with an interim JPA with a cutoff date. Ms. Damon stated that the City of Seaside is interested in creating a structure that allows the basic habitat management functions to be funded. Mr. Martin of MPC said that they are very interested in continuing the discussion and moving the HCP forward. Mr. Matarazzo (UCSC), Mr. Breen (MCWD), Mr. Bachman (California State Parks), and Dr. Payan (Monterey Peninsula Regional Parks) affirmed their organizations’ support of an HCP. After receiving supportive comments, Co-Chair Parker stated that it is worth it to continue having this conversation. Co-Chair Metz stated that FORA staff will put together an agenda and that he’ll have Ms. Flint set up items for discussion, with Co-Chair Parker and himself moderating.

Ms. Flint stated to the group that they have three possible options moving forward: Option 1: certify the EIR and adopt the HCP in current form; Option 2: not adopt the HCP and consider certifying the EIR. Continue coordinated habitat planning beyond FORA via formation of a new JPA. Revise & republish HCP to reflect a “phased” approach and more closely align with development; or Option 3: do not adopt the HCP and continue individual implementation of the Habitat Management Plan. A discussion took place among the members regarding the three options and the legal ramifications for each, with Mr. Willoughby providing FORA Authority Counsel’s perspective on the issues. Ms. Morton asked CDFW if they are prepared to give the group a basewide permit. Ms. Vance noted that without the BLM lands for California Tiger Salamander and Sand Gilia, the basewide permit is an option, pending some revisions.

**iii. If yes to ii, what steps needs to be taken in the next few weeks to preserve this option post June 30, 2020?**

Mr. Haffa motioned for the HWG to move forward with Option 2 including the EIR/EIS and Mr. Gaglioti seconded. Mr. Pick noted that it seems the HWG is in agreement on most of the core tenets of Option 2 and that the HWG should move forward by recommending that the FORA board certifies the EIR/EIS. Ms. Flint made a recommendation to table the motion until the HWG hears back from FORA consultants regarding the financial and legal details of executing Option 2. She noted that the HWG could have that feedback by the end of February in time for the March 12 FORA board meeting. Ms. Morton asked that this recommendation be moved to the FORA Finance Committee so they can examine how it will impact the midyear budget. Mr. Oglesby suggested that the HWG move the recommendation to the Executive Committee so that it can then move to the Finance Committee. A discussion took

place regarding whether the HWG should move forward with Mr. Haffa’s motion, and if not, how to capture the group’s consensus so that it is officially recorded. Co-Chair Parker recommended taking a straw poll on the various points of the motion to see where the group stands on them.

Points	Consensus
1. FORA staff and consultants to contract with CEQA attorney to opine on legality and risks of certifying an EIR without approving a project (HCP).	YES
2. Interest in forming a legal entity (i.e. JPA) that could be delegated FORA Board’s habitat management and conservation responsibilities (Option 2).	YES
3. Recommend FORA Board establish an escrow account to hold funds currently planned for use as HCP endowment while JPA-based habitat planning efforts continue.	YES
4. Request FORA Executive and Finance committees consider habitat endowment funds for the JPA process.	YES

- iv. **If no to ii, what steps needs to be taken convey the \$17M for existing habitat obligations?**  
Not applicable.

**c. Review of option for focus of future working group**

Co-Chair Metz stated that FORA can direct its Authority Counsel to start preparing a draft JPA for the HWG to consider. Mr. Willoughby stated that he can circulate a skeletal version of the last draft JPA to the various jurisdictions’ attorneys and have it serve as a clearinghouse for their comments and suggestions.

Co-Chair Parker suggested that the HWG discuss financial details in the next week’s meeting, however, Co-Chair Metz noted that FORA consultant Ellen Martin has not received any feedback from the jurisdictions and that she would be hard-pressed to bring back anything of substance by the February 7 HWG meeting. The HWG heard from Ms. Harwayne and Mr. Gabbe regarding the timing and substance of their analyses that they are preparing for the HWG. Based on this feedback, Ms. Morton recommended that the HWG not meet on February 7, and that instead the jurisdictions take the time to meet with Ms. Harwayne and hone in on phasing projections.

**d. Review of options for staffing and meetings**

Co-Chair Metz noted the following tentative meeting schedule and topics:

- o February 7 – meeting cancelled
- o February 14 – discussion of the JPA draft document and its language
- o February 21 – discussion of finances and the HMP management cost model

- February 28 – discussion of the phasing (hopefully with feedback from regulators and consultants)

Co-Chair Metz noted that the points listed in the straw poll will be included in the next meeting's agenda for members to review.

**e. Other discussion**

None

**4. ITEMS FROM MEMBERS**

None

**5. ADJOURNMENT** at 11:57 a.m.

DRAFT

JOINT EXERCISE OF POWERS AGREEMENT

CREATING THE

**FORT ORD REGIONAL**

**HABITAT COOPERATIVE**

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

\_\_\_\_\_, 2020  
(for reference purposes)

## JOINT EXERCISE OF POWERS AGREEMENT

### CREATING THE FORT ORD REGIONAL HABITAT COOPERATIVE

This Joint Exercise of Powers Agreement (this “Agreement”) is dated for reference purposes \_\_\_\_\_, 2020 and is entered into by and among:

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

### RECITALS

**A.** Each of the parties to this Agreement is a public agency within the meaning of the Joint Exercise of Powers Act (California Government Code Section 6500 *et seq.*, hereinafter referred to as the “JPA Act”). The parties may be referred to collectively as the “Parties” and each individually as a “Party.”

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

**C.** The Parties have a common interest in creating an entity through which they may meet to investigate, discuss, and make decisions regarding (i) the prospect of cooperatively managing among themselves the habitat and environmental resources located on the former Fort Ord military installation (including through the Fort Ord Multispecies Habitat Conservation Plan prepared by FORA for the former Fort Ord military installation (the “HCP”), a phased, narrowed, reduced, or otherwise modified version thereof, the revised Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord issued by the U.S. Army Corps of Engineers in April 1997 (the “HMP”), a revised or modified version thereof, or any other plan that the Cooperative may prepare or agree upon for the cooperative management of the habitat and environmental resources located on the former Fort Ord military installation (a “New Management Plan”)), (ii) managing the process of revising and updating the HCP, HMP or developing a New Management Plan (including any necessary or desirable environmental review) if the Cooperative elects to do so, and (iii) how incidental take permits for development and other covered activities on the former Fort Ord military installation may be obtained from the United States Fish and Wildlife Service pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 United States Code Section 1531 *et seq.*) and from the California Department of Fish and Wildlife under California Fish and Game Code Section 2081 (including through continuing dialog and negotiation with such wildlife agencies).

## **AGREEMENT**

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

### **1.0 DEFINITIONS**

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

- 1.1 “Agreement”** means this Joint Exercise of Powers Agreement.
- 1.2 “Appointer”** has the meaning given in Section 2.4.
- 1.3 “BLM”** means the Bureau of Land Management, an agency of the U.S. Department of Interior.
- 1.4 “Cities”** collectively means the cities of Seaside, Marina, Del Rey Oaks, and Monterey.
- 1.5 “Contract Date”** means the latest of the dates set forth beside the signatures of the Parties below, which shall be deemed to be the effective date of this Agreement.
- 1.6 “Cooperative”** means the Fort Ord Regional Habitat Cooperative created by this Agreement. The Cooperative is composed of appointed and elected officials from each Party.
- 1.7 “Cooperative Governing Board”** means the body governing the Fort Ord Regional Habitat Cooperative pursuant to this Agreement.
- 1.8 “County”** means the County of Monterey, a California general law county.
- 1.9 “CSUMB”** means the Board of Trustees of the California State University, acting on behalf of the Monterey Bay Campus.
- 1.10 “Del Rey Oaks”** means the City of Del Rey Oaks, a California general law city.
- 1.11 “FORA”** means the Fort Ord Reuse Authority, a public corporation of the State of California.
- 1.12 “HCP”** means the Fort Ord Multi-Species Habitat Conservation Plan prepared by the Fort Ord Reuse Authority for the former Fort Ord military installation.
- 1.13 “HMP”** means the revised “Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord” issued by the U.S. Army Corps of Engineers in April 1997.
- 1.14 “JPA Act”** means the Joint Exercise of Powers Act (California Government Code Section 6500 *et seq.*).



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

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

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

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

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

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

**1.21 “New Management Plan”** means a plan prepared or agreed upon by the Cooperative for the cooperative management of the habitat and environmental resources located on the former Fort Ord military installation.

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

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

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

**1.25 “UC”** means The Regents of the University of California.

## **2.0 CREATION AND OPERATION OF COOPERATIVE**

**2.1 Establish Cooperative.** This Agreement creates the Cooperative as an entity, the principal purpose of which is outlined in Recital C above. At such time as the Cooperative may determine, the purpose of the Cooperative may be expanded to include implementation of cooperative management of the habitat and environmental resources located on the former Fort Ord military installation through such plan as the Cooperative may approve and adopt or in any other manner that the Cooperative may determine consistent with the requirements of the JPA Act and any other applicable law.

**2.2 Debts, Liabilities and Obligations.** As provided in the JPA Act, the Cooperative is a public entity separate from its members. Debts, liabilities, and obligations of the Cooperative are its own and not those of its members.

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

**2.4 Appointments to Cooperative Governing Board.** The Cooperative will be governed by a Cooperative Governing Board consisting of voting and non-voting members as described in

Section 2.5 of this Agreement. Within thirty (30) days following the Contract Date, each Party's legislative body, or if the Party has no legislative body, the Party's designated administrator (in either instance, the "Appointer"), shall appoint that Party's member(s) of the Cooperative Governing Board(s) and may also appoint alternate representative(s). The Manager of the Fort Ord National Monument, or another representative appointed by such Manager, will serve as the BLM member. The term of office of each member and alternate shall be two (2) years; provided, however, that his/her term shall expire on the first to occur of any of the following: (a) replacement by his/her Appointer, (b) if he/she is an elected official of the Party which caused his/her appointment at the time of such appointment, when he/she ceases to be such an elected official, (c) the effective date of his/her resignation as a member or alternate, or (d) his/her death, disqualification, or permanent incapacity to serve as a member or alternate. Within sixty (60) days after a member's seat on the Cooperative Governing Board becomes vacant, his/her Appointer shall appoint a replacement to complete any unserved portion of the predecessor's two (2) year term. Replacement of any alternate may be made at the discretion of his/her Appointer. Any member or alternate may be reappointed by his/her Appointer for a subsequent term or terms. Each Party shall maintain its own records of its appointments and related terms of office.

**2.5 Membership and Voting.** The initial Cooperative Governing Board shall include fourteen (14) voting members, appointed by the Appointers of the following Parties in the following numbers: County (2), Marina (2), Seaside (2), Del Rey Oaks (1), Monterey (1), State Parks (1), UC (1), CSUMB (1), MPC (1), MPRPD (1), and MCWD (1). Because County, Marina and Seaside each have been apportioned a greater amount of Fort Ord development lands than the other Parties who may appoint voting members to the Cooperative Governing Board, each may appoint two (2) voting Cooperative Governing Board members. Each voting Cooperative Governing Board member shall have one (1) vote for each decision relating to the governance, budget, or administration of the Cooperative. BLM shall be the sole non-voting member.

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

**2.7 Staffing Needs.** The Cooperative Governing Board shall determine how to best meet any staffing needs of the Cooperative (including whether by coordinating the contribution of services by one or more of the Parties, hiring full or part time employees, retaining consultants or independent contractors, engaging the services of another public or private entity, utilizing other means identified by the Cooperative Governing Board, or through any combination of the above), as those needs may evolve over time. The Cooperative Governing Board will meet and confer in good faith within sixty (60) days following the Contract Date to cooperatively develop and establish an initial staffing plan for the Cooperative.

## **2.8 Meetings of Cooperative Governing Board.**

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

**2.8.2 Notice.** Meetings of the Cooperative Governing Board shall be called, noticed, held, and conducted subject to the provisions of the Ralph M. Brown Act (California Government

Code Section 54950 *et seq.*) and the Bagley Keene Open Meeting Act (California Government Code Section 11120 *et seq.*).

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

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

## **2.9 Officers: Duties; Bonding.**

**2.9.1 Chair and Vice Chair.** Within sixty (60) days following the Contract Date and subsequently at its first regular meeting after the start of each fiscal year, the Cooperative Governing Board shall elect from its members a Chair and a Vice Chair. The Chair and the Vice Chair shall have the duties assigned by the Cooperative Governing Board or set forth in by-laws adopted by the Cooperative Governing Board.

**2.9.2 Administrator.** Within sixty (60) days following the Contract Date and subsequently at its first regular meeting after the start of each fiscal year, the Cooperative Governing Board shall appoint an administrator, who shall (a) serve as the custodian of the Cooperative's records; (b) prepare minutes to be submitted for review and approval by the Cooperative Governing Board; (c) act as Secretary at meetings; (d) keep a journal record of the Cooperative's proceedings; and (e) perform duties incident to the office as assigned by the Cooperative Governing Board.

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

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

## **3.0 TERMINATION AND WITHDRAWAL**

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

**3.2 Withdrawal.** Any Party may withdraw from this Agreement upon ninety (90) days' written notice to the other Parties. The withdrawing Party remains obligated to the same extent, if any, that the remaining Parties are obligated to contribute money to pay any debts, liabilities, and obligations

incurred by, arising from, or related to actions taken by the Cooperative while the withdrawing Party was a party to this Agreement.

**3.3 Effect of Withdrawal.** Upon withdrawal, the withdrawing Party shall no longer be a party to this Agreement, and the term “Parties” as used in this Agreement shall thereafter mean the remaining Parties. Within thirty (30) days after receiving notice of withdrawal, the Parties who will remain will meet to discuss whether any amendments to this Agreement are necessary or appropriate in light of the withdrawal and to prepare any appropriate amendments for consideration by the remaining Parties.

#### **4.0 POWERS AND RESPONSIBILITIES**

The Cooperative has the powers granted to joint powers authorities by the JPA Act. The Cooperative may do acts necessary to exercise those powers including any of the following: (a) make contracts; (b) employ agents and employees; (c) receive, collect, manage, and disburse funds; (d) receive grants, contributions, and donations of property, funds, and services; and (e) sue and be sued in its own name.

#### **5.0 FISCAL YEAR**

Unless and until changed by a Majority of the Cooperative Governing Board, the fiscal year of the Cooperative shall be the period from July 1 of each year to and including the following June 30 (to match the State of California’s fiscal year), except for the first fiscal year which shall be the period from the Contract Date to the following June 30.

#### **6.0 DISPOSITION OF ASSETS AND REAL PROPERTY**

Upon termination of this Agreement, and after the repayment of advances and contributions made in accordance with Section 7 of this Agreement, assets acquired as the result of the joint exercise of powers under this Agreement, other than real property and funding for the restoration or management of real property, shall be distributed to the Parties in proportion to each Party’s overall unreimbursed contribution of assets to the Cooperative. The Cooperative shall transfer any real property, and any money set aside for the restoration or management of real property, acquired by the Cooperative as the result of the joint exercise of powers under this Agreement to one or more public agencies or appropriate conservation non-profit entities. The funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside.

#### **7.0 CONTRIBUTIONS AND ADVANCES**

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

#### **8.0 ACCOUNTS AND REPORTS**

**8.1 Accounts.** The Cooperative shall establish and maintain such funds and accounts as may be required by good accounting practice and as may be required by the terms of any state or federal

grant that the Cooperative may receive. The books and records of the Cooperative shall be open to inspection at reasonable times by the Parties and their representatives.

**8.2 Audits.** The Cooperative shall cause to be prepared: (a) a special audit as required by California Government Code Section 6505 every year during the term of this Agreement and (b) a report in writing on the first day of February, May, August, and November of each year to the Cooperative Governing Board and the Parties. The report shall: (a) describe the amount of money held by the Cooperative; (b) the manner in which the money is held and invested; (c) include the income received since the last such report; and (d) the amount paid out since the last such report. To the extent required by California Government Code Section 6505.6, the Cooperative shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Cooperative. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under California Government Code Section 26909 and shall conform to generally-accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with the Parties and, if required by California Government Code Section 6505.6, also with the Auditor Controller of County. Such report shall be filed within twelve (12) months of the end of the fiscal year or years under examination. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit under this Section 8.2 shall be borne by the Cooperative and shall be a charge against any unencumbered funds of the Cooperative available for that purpose.

## **9.0 CONFLICT OF INTEREST CODE**

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

## **10.0 FORM OF APPROVALS**

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

## **11.0 MISCELLANEOUS PROVISIONS**

**11.1 No Partnership.** This Agreement shall not make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**11.7 No Third-Party Beneficiaries.** Without limiting the applicability of rights granted to the public pursuant to law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof.

**11.8 Applicable Laws.** All activities undertaken pursuant to this Agreement must be in compliance with all applicable state and federal laws and regulations.

**11.9 Successors; Assignment.** This Agreement binds and benefits successors to the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

**11.10 Calendar Days.** Throughout this Agreement the use of the term “day” or “days” means calendar days, unless otherwise specified.

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

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

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

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

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

**11.16 Interpretation.** The provisions of this Agreement shall be interpreted in a reasonable manner to carry out the purposes of the Parties and this Agreement. The organization and format of this Agreement (including the numbering of, or the captions, headings, or titles to, any sections or

paragraphs of this Agreement) are intended solely for convenience of reference and shall not be used to construe the scope, meaning, intent, or interpretation of any part of this Agreement. Whenever used in this Agreement, the word “including” shall be deemed to be followed by the words “but not limited to.” Each number, tense, and gender used in this Agreement shall include any other tense, number, or gender where the context and references so require. Any pronoun used in this Agreement shall be read in the singular or plural number and in such gender as the context may require.

**11.17 Drafting of Agreement.** It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the Parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.

*[signatures appear on following pages]*



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

Dated: \_\_\_\_\_, 2020

COUNTY OF MONTEREY

By: \_\_\_\_\_  
County Administrative Officer

Approved as to form:

By: \_\_\_\_\_  
County/Deputy County Counsel

Dated: \_\_\_\_\_, 2020

CITY OF MARINA

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2020

CITY OF SEASIDE

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2020

CITY OF DEL REY OAKS

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2020

CITY OF MONTEREY

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2020

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: \_\_\_\_\_  
Regional Manager

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_  
Secretary to the Regents

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

CALIFORNIA STATE UNIVERSITY

By: \_\_\_\_\_  
President

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

MONTEREY PENINSULA COMMUNITY COLLEGE  
DISTRICT

By: \_\_\_\_\_  
President

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

MONTEREY PENINSULA REGIONAL PARK  
DISTRICT

By: \_\_\_\_\_  
General Manager

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

MARINA COAST WATER DISTRICT

By: \_\_\_\_\_  
General Manager

Approved as to form:

By: \_\_\_\_\_  
District Counsel

Dated: \_\_\_\_\_, 2020

BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
District Manager  
Central California District Office  
El Dorado Hills, California