



CITY OF DEL REY OAKS

Staff Report

DATE: August 22, 2023

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Approve Resolution 2023-15 Authorizing the City Manager to Execute a Quit Claim Deed Transferring Parcel E29A.1 to the City of Del Rey Oaks

CEQA: This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378 as it is an administrative activity of the City that will not result in direct or indirect physical changes in the environment.

Recommendation

Approve a Resolution authorizing the City Manager to execute a Quit Claim Deed transferring Parcel E29a.1 to the City of Del Rey Oaks.

Summary & Discussion

After the dissolution of the Fort Ord Reuse Authority (FORA), the City of Seaside discovered that it had no record of transfer of Parcel E29a.1 from FORA to the City of Del Rey Oaks. The City of Seaside is recognized as the Local Redevelopment Authority (LRA) and the Successor-in-Interest to FORA. Parcel E29a.1 is currently held in title by FORA and the City of Seaside as the successor LRA. Seaside, as successor to FORA will quitclaim the property to the City of Del Rey Oaks.

Recording the Quit Claim Deed will complete the transfer process to the City of Del Rey Oaks. The Quit Claim deed has been reviewed by Seaside and Del Rey Oaks attorneys and is ready for signature.

Parcel E29a.1 is a 4.628 acre parcel of the former Fort Ord situated on the northeast corner of South Boundary Rd and General Jim Moore Blvd. The legal description and map are included as Exhibit A to the Quit Claim Deed.

Fiscal Impacts

There will be no direct financial impact as a result of this action. Any future costs associated with maintenance of the parcel will be included in future budgets.

ATTACHMENTS:

- Resolution 2023-15 Authorizing the City Manager to Execute a Quit Claim Deed Transferring Parcel E29A.1 to the City of Del Rey Oaks
- Quit Claim Deed

Respectfully Submitted,

John Guertin
City Manager

RESOLUTION NO. 2023-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS TO TRANSFER PARCEL E29A.1 FROM THE CITY OF SEASIDE, ACTING AS THE FEDERALLY RECOGNIZED LOCAL REDEVELOPMENT AUTHORITY AND SUCCESSOR TO THE FORT ORD REUSE AUTHORITY

WHEREAS, In 1994, the Fort Ord Reuse Authority (FORA), a regional governmental entity, was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Sections 67650 et seq.) to plan, facilitate and manage the transfer of property of the former Fort Ord from the United States Army to the governing local jurisdictions or their designee(s); and

WHEREAS, the Office of Economic Adjustment on behalf of the Secretary of Defense of the United States of America recognized FORA as the Local Redevelopment Authority ("LRA") for property transfers from the Army; and

WHEREAS, On or about June 23, 2000, FORA and the Army entered into an Economic Development Conveyance Memorandum of Agreement ("EDC MOA"), whereby FORA acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, drainage areas, and other real property interests as defined (Document No. 2000040124, recorded on June 23, 2000 in the Office of the Monterey County Recorder); and

WHEREAS, the EDC MOA, among other things, enumerated the property to be transferred with reference to Army parcel numbers and identified the local jurisdictions to which each of the referenced parcels were to be transferred; and

WHEREAS, the EDC MOA identified Parcel E29a.1, described as "Habitat Reserve Area," as a parcel to be transferred to the City of Del Rey Oaks; and

WHEREAS, FORA and the City of Del Rey Oaks entered into an Implementation Agreement, dated May 31, 2001, setting forth terms and conditions for transfer of certain identified properties to Del Rey Oaks, including identifying Parcel No. E29a.1 as a parcel to be transferred to the Del Rey Oaks (as Document No. 2001088379 in the Office of the Monterey County Recorder); and

WHEREAS, Parcel No. E29a.1 consists of a 4.628 acre area, located west of General Jim Moore Boulevard within the Del Rey Oaks jurisdictional limits, as more fully described and shown in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, FORA dissolved by operation of law on June 30, 2020 pursuant to California Government Code section 67700; and

WHEREAS, on or about February 21, 2020, in anticipation of the dissolution of FORA, FORA and Seaside entered into an agreement in which FORA nominated the City of Seaside as the LRA to succeed FORA, and Seaside agreed to assume the LRA designation and the remaining responsibilities under the EDC after FORA dissolution (Exhibit B); and

WHEREAS, on or about April 30, 2020, the United States Department of Defense accepted the City of Seaside as the successor LRA to FORA, effective July 1, 2020, for the purpose of implementing the EDC at the former Fort Ord (Exhibit C); and

WHEREAS, after the dissolution of FORA, Seaside discovered that it had no record of transfer of Parcel E29a.1 from FORA to the Del Rey Oaks; and

WHEREAS, Seaside and Del Rey Oaks confirmed through research that the Army had transferred the parcel to FORA as part of a quitclaim deed (Document No. 2009043259 recorded on July 10, 2009 in the Office of the Monterey County Recorder), but FORA had not transferred Parcel E29a.1 to the Del Rey Oaks or to any other jurisdiction; and

WHEREAS, the parties recognize that Seaside as LRA and successor to FORA has the authority and responsibility to transfer Parcel E29a.1 to Del Rey Oaks; and

WHEREAS, the transfer of Parcel E29a.1 from the Fort Ord Reuse Authority through Seaside as successor LRA to Del Rey Oaks is not a project under California Environmental Quality Act Guidelines section 15378(b)(5) because it is an administrative action that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Del Rey Oaks hereby authorizes the City Manager to execute such documents effectuating the transfer of Parcel E29a.1 from the Fort Ord Reuse Authority to the City of Del Rey Oaks, including related Quit Claim Deed for Parcel E29a.1, in substantially the form as attached hereto, and as finally approved by the City Attorney.

PASSED AND ADOPTED by meeting of City of Del Rey Oaks duly held on the 22nd day of August 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Scott Donaldson, Mayor

ATTEST:

John Guertin, City Manager

APPROVED AS TO FORM:

Alex Lorca, City Attorney



ACQUISITION
AND SUSTAINMENT

Exhibit C
OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

Mr. Joshua Metz
Executive Officer
Fort Ord Redevelopment Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Mr. Craig Malin
City Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

Dear Mr. Metz and Mr. Malin:

On behalf of the Secretary of Defense and pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, this letter serves as recognition of the City of Seaside as the successor Local Redevelopment Authority with an effective date of July 1, 2020, for the purposes of implementing the Economic Development Conveyance Agreement with the U.S. Army at the former Fort Ord.

Questions pertaining to this recognition or requests for assistance to guide your implementation activity may be directed to Ms. Liz Chimienti, Office of Economic Adjustment Project Manager, at (703) 901-7644.

Sincerely,

O'BRIEN.PATRIC
K.J.1231200319

Digitally signed by
O'BRIEN.PATRICK.J.123120031
9
Date: 2020.04.30 17:42:28 -04'00'

Patrick J. O'Brien
Director
Office of Economic Adjustment

cc:
DASA(IH&P)

Exhibit A

EDC Parcel E29a.1
FOST 10
Fort Ord Military Reservation
City of Del Rey Oaks
Monterey County, California

Legal Description


SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map recorded in Volume 19 of Surveys at Page 1, and being a portion of Parcel 1 as it is shown on that certain map recorded in Volume 23 of Surveys at Page 103, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point on the northerly boundary of South Boundary Road shown as Parcel 18 on that certain map recorded in Volume 20 of Surveys at Page 110, being also "Point B" in the legal description of EDC parcel E29a, said parcel being shown as Parcel A on that certain map recorded in Volume 28 of Surveys at Page 40; thence from said Point of Beginning along said northerly boundary

1. North 50° 41' 04" West for a distance of 511.18 feet to the beginning of a tangent curve; thence
2. Along a curve to the right, through a central angle of 73° 55' 59", having a radius of 150.00 feet, for an arc length of 193.56 feet, and whose long chord bears North 13° 43' 04" West for a distance of 180.40 feet to a point of intersection with a tangent line being also a point on the easterly boundary of General Jim Moore Boulevard as shown on said map; thence along said easterly boundary
3. North 23° 14' 55" East for a distance of 271.56 feet to an angle point in the boundary of said Parcel A; thence leaving said easterly boundary and following the boundary of said Parcel A
4. North 84° 50' 03" East for a distance of 36.80 feet; thence
5. South 14° 52' 39" East for a distance of 90.78 feet; thence
6. South 45° 00' 00" East for a distance of 565.69 feet; thence
7. South 26° 00' 01" West for a distance of 293.98 feet to the POINT OF BEGINNING.

Containing an area of 4.628 acres, more or less.

This legal description was prepared by



Lynn A. Kovach L.S. 5321
My license expires December 31, 2009



Exhibit A

EDC Parcel E29a.1
City of Del Rey Oaks
Fort Ord FOST 10
Being a Portion of
Parcel 1 as shown on Vol. 23 of Surveys at Page 103
Lying within the Fort Ord Military Reservation
as shown on Vol. 19 of Surveys at Page 1
Being also within Monterey City Lands Tract No. 1
Monterey County, California

Note: Course Numbers Refer to the
Legal Description.

"ORDINANCE REMOVAL
LIMITS"
27 SURVEYS 14

EDC PARCEL E29a

PARCEL 1
23 SURVEYS 103

PARCEL A
28 SURVEYS 40

POB

EDC PARCEL L6.1

General Jim Moore Boulevard

PARCEL 18

E29a.1
4.628 acres

20 SURVEYS 110

South Boundary Road



Not to Scale

Exhibit B

Execution Version

**FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE
ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND
LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT
CONVEYANCE AGREEMENT (EDC AGREEMENT)
SUCCESSOR IMPLEMENTING AGREEMENT**

RECITALS.

WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.

WHEREAS, the City of Seaside, California ("Seaside"), is a general law Municipal Corporation of the State of California.

WHEREAS, FORA and Seaside are each a "Party", and together the "Parties" to this Agreement.

WHEREAS, Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill.

WHEREAS, in 1990, the Army executed a Federal Facility Agreement ("FFA") under CERCLA Section 120 outlining the Army's Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC.

WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement with the United States of America ("EDC Agreement").

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1 **WHEREAS**, the EDC Agreement provided for transfers of property in accordance
2 with the Army's clean-up schedule. Subsequent to the EDC Agreement execution, FORA
3 and the local communities decided to pursue an early transfer process pursuant to Title 42
4 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and
5 ultimate reuse and economic recovery for the communities affected by the Fort Ord
6 closure.

7
8 **WHEREAS**, in furtherance of the early transfer process, the Army, with the
9 approval of the EPA Administrator and the concurrence of the Governor of California,
10 transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed
11 to FORA before all action to protect human health and the environment had been
12 completed. Concurrent with this transfer without the otherwise required CERCLA
13 covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted
14 title and agreed to perform the Army's environmental remediation with funding from the
15 Army. Excluded from FORA's performance obligation are matters related to the
16 groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in
17 the ESCA and elsewhere.

18
19 **WHEREAS**, in 2007 an "Administrative Order on Consent ("AOC") [Docket No. R9-
20 2007-003] [was] entered into voluntarily by the United States Environmental Protection
21 Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and
22 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of
23 potential removal actions, one or more remedial investigations and feasibility studies
24 ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for
25 contaminants present on portions of the former Fort Ord located at Monterey, California
26 ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in
27 connection with such CERCLA response actions."

28
29 **WHEREAS**, in 2007 the Army executed an amendment to the Federal Facilities
30 Agreement.

31
32 **WHEREAS**, in 2007 the Army and FORA executed an Environmental Services
33 Cooperative Agreement W9128F 07 2-0162 ("ESCA") under the authority of Title 10 United
34 States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701)
35 whereby FORA would perform the Army's environmental responsibilities as the Army
36 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with
37 the Army providing funding to perform these services.

38
39 **WHEREAS**, the ESCA has been amended several times, the ESCA Mod 9
40 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight
41 Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC
42 remedial-completion documentation, property transfer process through 30 June 2020 and
43 to perform the required long-term land management tasks, including Munitions and
44 Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring
45 and reporting through June 30, 2028.

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ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$6,846,204

WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792 (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028):

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$4,234,443

WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest ("Successor") provisions of the ESCA contract.

WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA's dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: <http://fortordcleanup.com/documents/administrative-record/>.

WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

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1 **NOW, THEREFORE**, the Parties agree as follows:

2
3 1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein by
4 reference.

5
6 2. **Acknowledgement.** FORA agrees to acknowledge Seaside as the ESCA
7 Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the
8 Department of Defense as the LRA Successor.

9
10 3. **Insurance Policies.** FORA will request the transfer of its two pollution legal
11 liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured
12 retention funds to Seaside to be used exclusively for ESCA and claims-related obligations.
13 Seaside acknowledges that these insurance policies will expire in 2022 and 2024,
14 respectively, and that Seaside's designation will be subject to approval by the insurers.
15 Seaside's successful designation through December 31, 2024 is a condition precedent to
16 becoming FORA's ESCA successor. Pollution legal liability insurance will be required by
17 the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be
18 funded by the Army.

19
20 4. **ESCA LTO Program Evidence of Fiduciary and Technical Capability.** FORA
21 agrees to provide technical and/or financial assistance to Seaside to meet the terms
22 required by the Army, EPA, and DTSC that the Successor be a single entity and
23 demonstrate technical and financial competence to complete the work.

24
25 5. **ESCA records and contracts funds.** FORA and Seaside shall establish a
26 mechanism for transfer of all ESCA records, back-up documents, computer files and
27 accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

28
29 6. **Technical Assistance.** FORA agrees to request the Army extend the funding
30 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find
31 Assessments and Long Term/LUCs Management) for Seaside to provide technical
32 assistance and funding to complete the ESCA transfer process through June 30, 2020,
33 including specialized legal, drafting and other staff or contract support. FORA agrees to
34 establish and fund a pool of monies to support Seaside's assumption of responsibilities
35 and obligations of the EDC Agreement.

36
37 7. **Obligations.** FORA agrees to nominate and Seaside agrees to assume the
38 Federal local redevelopment authority "LRA" designation and the remaining reporting,
39 monitoring, and stewardship or other identified responsibilities associated with (i) the
40 FORA-Army 2007 ESCA, as FORA's Successor through the end of the ESCA Contract
41 June 30, 2028 in order to complete property transfers and the ESCA to the extent that
42 ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds,
43 and (ii) the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA
44 funds with which to compensate Seaside for the performance of ESCA obligations will
45 constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its
46 responsibility to perform FORA's surviving ESCA obligations.

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1 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside
2 agrees to provide evidence of its fiduciary and technical capability to comply with the
3 terms of the ESCA and manage the contract financial assets with associated invoicing
4 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA
5 fiduciary capability.

6
7 Seaside agrees to assume FORA's ESCA Long Term Obligations Management
8 Program, as approved by the US Army, EPA and DTSC, and:

- 9
10 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under
11 the contract provisions as currently amended through 2028, but with allowances
12 for indirect administrative overhead to assure the Army, EPA and DTSC of
13 continued ESCA technical capacity.
14
15 ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support
16 Services Contracts through 2028 with specialists Arcadis, Weston Solutions,
17 Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including
18 allowances for indirect administrative overhead to assure the Army, EPA and
19 DTSC of continued ESCA technical capacity.
20
21 iii. Representation. Contract with Counsel reasonably qualified on environmental
22 issues with experience in working with state and federal entities (Army, EPA
23 and DTSC) for review and compliance as noted in the ESCA and the AOC.
24
25 iv. No Obligation of Other Entities. Monterey Peninsula Community College
26 District, the Board of Trustees of the California State University (on behalf of the
27 Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks,
28 Marina and Monterey, the Marina Coast Water District (hereinafter collectively
29 "Grantees"), will not be a party to the ESCA, and will not bear any financial
30 liability as a result of the ESCA.
31

32 9. Coordination with other Entities. Seaside agrees to enter into agreements with
33 the Grantees for the property transfers and other necessary property-related rights to
34 effectuate the reuse and the oversight, reporting, response, and other long-term
35 stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf
36 of the Army, and (b) the EDC Agreement.

- 37
38 i. Water Rights Allocations. Until such time as such allocations may be amended
39 by agreements, Seaside agrees to honor and abide by the water rights'
40 allocations set forth in Exhibit A attached hereto, for Government Water Rights
41 as defined in Subsection 5.02 of the EDC Agreement, that may be released by
42 the Government in the future, subject to compliance with all applicable laws.
43
44 ii. Wastewater Discharge Rights. Until such time as such allocations may be
45 amended by future agreements, Seaside agrees to establish and apply, in
46 consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a
47 fair process to ensure that all Grantees will enjoy equitable utilization of

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Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.

iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or EDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's City limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.

iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.

10. ESCA Amendment. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.

11. Administrative Order on Consent. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.

12. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.

13. No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this

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1 Agreement that it can be reasonably assumed that the Parties would not have contracted
2 this Agreement without the invalid terms. In such case, the Party affected may terminate
3 this Agreement by written notice to the other Party without prejudice to the affected Party's
4 rights in law or equity.

5
6 15. Entire Agreement. This Agreement is intended by the Parties as a final
7 expression of their agreement and is intended as a complete and exclusive statement of
8 the terms and conditions thereof. Acceptance of or acquiescence in a course of
9 performance rendered under this Agreement shall not be relevant to determine the
10 meaning of this Agreement even though the accepting or acquiescing Party had
11 knowledge of the nature of the performance and opportunity for objection.

12
13 16. Choice of Law. This Agreement will be construed in accordance with the
14 laws of the State of California.

15
16 17. Further Assurances. Each Party agrees to execute and deliver all further
17 instruments and documents and take all further action that may be reasonably necessary
18 to complete performance of its obligations hereunder and otherwise to effectuate the
19 purposes and intent of this Agreement.

20
21 18. Headings. The headings of the sections hereof are inserted for convenience
22 only and shall not be deemed a part of this Agreement.

23
24 19. Notices. Any notice, demand, offer, or other written instrument required or
25 permitted to be given pursuant to this Agreement shall be acknowledged by the Party
26 giving such notice, and shall to the extent reasonably practicable be sent by hand
27 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,
28 overnight courier, electronic mail, or registered mail, in each case to the other Party at the
29 address for such Party set forth below (Note: A Party may change its place of notice by a
30 notice sent to all other Parties in compliance with this section):

31
32 City of Seaside
33 Attn: City Manager
34 440 Harcourt Avenue
35 Seaside, CA 93955

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

36
37 w/ an email copy to cityattorney@ci.seaside.ca.us

38
39 20. Term of Agreement: This Agreement shall be effective on the Effective Date
40 specified at the beginning of the Agreement and shall remain in effect unless and until
41 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort
42 Ord Reuse Authority, provided, however, that this Agreement shall survive as to the
43 Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22,
44 for so long as Seaside remains the successor LRA.

45
46 21. Authorization. Each party affirms that it is fully authorized to enter into this
47 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to

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1 review and approval of documents by the Seaside City Attorney, to enter into the terms
2 and conditions of this Agreement, the AOC and the ESCA and sign related ESCA and
3 AOC reporting and financial documents.

4
5 22. Third-Party Rights. The Grantees are intended to be third-party
6 beneficiaries of this Agreement as it relates to future transfers of property, water rights,
7 and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right
8 to enforce the provisions hereof as if they were direct parties hereto. Nothing in this
9 Agreement is intended to confer upon any individual or entity, other than the Parties and
10 the above-identified third-party beneficiaries, any rights or remedies whatsoever.


11
12
13 **IN WITNESS WHEREOF**, each Party has executed the Agreement with the
14 approval of its governing body as of the date first written above.

15 16 17 **CITY OF SEASIDE:**

18
19
20
21 
22 Craig Malin
23 City Manager

Date: 2/21/20

24 APPROVED AS TO FORM:

25
26
27 
28 CITY ATTORNEY

29 30 31 **FORT ORD REUSE AUTHORITY:**

32
33
34 
35 Joshua Metz Executive Officer

Date: 2/21/20

36
37 APPROVED AS TO FORM:

38
39
40 
41 AUTHORITY COUNSEL
42
43

Exhibit B

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EXHIBIT A

Current Water Allocations & Percentage-based Allocations of Future Army Water*

	Current Water Allocations in Acre Feet	Allocation of Future Army Water Based on Percentage of Current Water Allocation
City of Marina	1340	29%
City of Monterey	65	1%
City of Seaside	1012.5	22%
County of Monterey	720	15%
CSUMB	1035	22%
City of Del Rey Oaks	242.5	5%
CA State Parks	44.5	1%
UCMBEST	230	5%

*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provided above. These allocations reflect previously agreed upon water distribution as per FORA Board Resolution No. 07-1 (potable water), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

EXHIBIT "B"**ENVIRONMENTAL PROTECTION PROVISIONS****1. FEDERAL FACILITY AGREEMENT**

The Grantor acknowledges that the former Fort Ord has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the Fort Ord Federal Facility Agreement, and any additional amendments thereto (FFA), entered into by the United States Environmental Protection Agency Region IX (USEPA), the State of California, and the Department of the Army, effective on November 19, 1990, and will provide the Grantee with a copy of any future amendments thereto. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. Grantor shall give Grantee reasonable notice of its action required by the FFA and use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee's, its successors' or assigns' use of the Property. In addition, should any conflict arise between the FFA and any amendment thereto and the deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property. Grantor agrees to use its best efforts to the extent practicable to avoid and/or minimize interference with Grantee's, its successors' or assigns' use of the Property, and to provide Grantee with a copy of any amendments to the FFA.

2. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

- A. The Grantee is hereby notified that, due to the former use of the Property as a military installation, all of the parcels may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard. For the purposes of the basewide Military Munitions Response Program (MMRP) being conducted for the former Fort Ord and these Environmental Protection Provisions (EPPs), MEC does not include small arms ammunition (i.e. ammunition .50 caliber or smaller, or for shotguns, with projectiles not containing explosives, other than tracers).
- B. The Property was previously used for a variety of purposes, including operational ranges for live-fire training (small arms ammunition); leadership reaction course; combat leader course; field battalion training; mechanic training; engineering training; field expedient training; and tactical training. Munitions responses were conducted on the Property. Any

MEC discovered were disposed of by a variety of methods, including open detonation, either in place or as a consolidated shot, or destroyed using contained detonation. A summary of MEC discovered on the Property is provided in Exhibit "C." Site maps depicting the locations of Munitions Response Sites are provided at Exhibit "D."

- C. The Grantor represents that, to the best of its knowledge, no MEC are currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. Per this acknowledgment, and to promote safety, the Grantor provides munitions recognition and safety training to anyone who requests it. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the local law enforcement agency having jurisdiction on the Property so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations and at no expense to the Grantee. The Grantee hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet.

D. Easement and Access Rights.

1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

2) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property; however, the use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the

exercise of the easement and right of access hereby retained and reserved by the United States.

3) In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

E. The Grantee acknowledges receipt of the Track 0 Record of Decision (June 2002), the Track 1 Record of Decision (March 2005), the Track 0 Plug-In Approval Memorandum, Group D Parcels (May 2006), the Track 0 Approval Memorandum, East Garrison Area 1 (December 2003); the Track 1 Plug-In Approval Memorandum, East Garrison Areas 2 and 4 NE (March 2006); and the Track 1 Plug-In Approval Memorandum, Multiple Sites, Groups 1-5 (July 2006).

3. NOTICE OF RARE, THREATENED AND ENDANGERED SPECIES MANAGEMENT

The Grantee acknowledges and agrees to implement the following provisions, as applicable, relative to listed species:

- A. The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.
- B. The March 30, 1999, Biological and Conference Opinion on the Closure and Reuse of Fort Ord, Monterey County, California (1-8-99-F/C-39R); the October 22, 2002, Biological Opinion on the Closure and Reuse of Fort Ord, Monterey County, California, as it affects Monterey Spineflower Critical Habitat, (1-8-01-F-70R); and the March 14, 2005, Biological Opinion for the Cleanup and Reuse of Former Fort Ord, Monterey County, California, as it affects California Tiger Salamander and Critical Habitat for Contra Costa Goldfields Critical Habitat (1-8-04-F-25R) identify sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the Property.
- C. The HMP does not exempt the Grantee from complying with environmental regulations enforced by Federal, State, or local agencies. These regulations could include obtaining the Endangered Species Act (ESA) (16 U.S.C. §§ 1531-1544 et seq.) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against take of listed animals under ESA Section 9; complying with prohibitions against the removal of listed plants occurring on Federal land or the destruction of listed plants in violation of any State laws; complying with measures for

conservation of State-listed threatened and endangered species and other special-status species recognized by California ESA, or California Environmental Quality Act (CEQA); and complying with local land use regulations and restrictions.

- D. The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.
- E. Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize incidental take of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than HMP target species are proposed for listing or are listed.
- F. The HMP does not authorize incidental take of any species listed as threatened or endangered under the ESA by entities acquiring land at the former Fort Ord. The USFWS has recommended that all non-Federal entities acquiring land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from these entities that are in conformation with the HMP, those entities without incidental take authorization would be in violation of the ESA if any of their actions resulted in the take of a listed animal species. To apply for a Section 10 (a)(1)(B) incidental take permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be covered by the permit, and a conservation plan (50 CFR 17.22[b]).