

## MONTEREY COUNTY BOARD OF SUPERVISORS

<b>MEETING:</b> March 22, 2011 – Consent	<b>AGENDA NO.:</b>
<b>SUBJECT</b> a. Adopt a resolution approving a Property Conveyance Agreement between the Redevelopment Agency of the County of Monterey and the County of Monterey for the conveyance of certain real property located in the Fort Ord Redevelopment Project Area; b. Authorize the Chair of the Board of Supervisors to execute the Property Conveyance Agreement and to accept said conveyances; and c. Direct the Director of Redevelopment and Housing to cause the recordation of all necessary documents, to maintain on behalf of the County the properties conveyed, and to report back to the Board of Supervisors on this issue within thirty (30) days.	
<b>DEPARTMENT:</b> RMA – Redevelopment & Housing Office	

### **RECOMMENDATION:**

It is recommended that the Board of Supervisors:

- a. Adopt a resolution approving a Property Conveyance Agreement between the Redevelopment Agency of the County of Monterey and the County of Monterey for the conveyance of certain real property located in the Fort Ord Redevelopment Project Area;
- b. Authorize the Chair of the Board of Supervisors to execute the Property Conveyance Agreement and to accept said conveyances; and
- c. Direct the Director of Redevelopment and Housing to cause the recordation of all necessary documents, to maintain on behalf of the County the properties conveyed, and to report back to the Board of Supervisors on this issue within thirty (30) days.

### **SUMMARY:**

The recommended action will transfer ownership of certain properties in the unincorporated areas of the former Fort Ord, currently owned by the Redevelopment Agency, to the County of Monterey so that, in the event that the State approves legislation eliminating redevelopment agencies, those properties could continue to be used to effectuate redevelopment goals for the County. Without this action, many of the Agency properties may be liquidated without regard for redevelopment purposes, and any funds received therefore distributed to the State and possibly local taxing agencies. Directing the County Redevelopment and Housing staff to maintain the properties so conveyed is recommended because of that department's familiarity with the properties.

### **DISCUSSION:**

State legislation currently anticipated to be adopted is intended to eliminate local redevelopment agencies, thereby redistributing tax increment funds to the State and possibly local taxing entities (SB 77 and AB 101). To address continuing obligations of the Agency, the legislation calls for the establishment of a "Successor Agency," subject to an "Oversight Board" whose members would represent various local taxing entities such as fire and school districts, as well as the County. The current representation of the proposed Oversight Board is weighted in favor of school districts. Upon direction by the Oversight Board, the Successor Agency would be

required to dispose of the assets the Redevelopment Agency, including all of its properties. Proceeds would then be distributed as property tax proceeds.

Requirements to identify which properties could potentially be liquidated are unknown, but the process could potentially include properties at the former Fort Ord such as the MST/Whispering Oaks property, the Ord Market, and the "East Garrison II" development area.

As of July 1, 2011, the status and fate of all properties owned by the Agency would come under control of the Oversight Board, and the County may lose control of the future use and disposition of these properties. In turn, this puts in jeopardy many future development opportunities in which the Agency has made significant investments, over many years.

The Agency received title to these properties from the Fort Ord Reuse Authority (FORA) pursuant to the terms of the Fort Ord Special Legislation and the 2001 Implementation Agreement between the County and FORA. Under the terms of the Special Legislation as well as the Implementation Agreement, use of the properties must be consistent with the Base Reuse Plan, and land sales or lease proceeds from the properties must be divided equally between local jurisdictions and FORA. Also recorded on the properties is an Economic Development Conveyance (EDC) Memorandum of Agreement (MOA) between the United States Army and FORA that requires the division of the land sales proceeds between the County and FORA. However, it is unclear how the Fort Ord Special Legislation and related documents will be affected by the proposed budget legislation.

Transfer of the properties to the County is designed to remove any uncertainty with regard to the disposition procedures and conditions, as well as the distribution of sales proceeds, in the event the properties become subject to the proposed legislation eliminating redevelopment agencies.

The California Redevelopment Association and the California State Association of Counties (CSAC) anticipate that the Governor's budget, with the provisions eliminating redevelopment, could be approved by the Assembly and Senate and be signed into law very soon. There is, however, a widespread understanding that the action would violate Proposition 22 and the State Constitution, and would be legally challenged. The proposed actions by the Agency and the Board of Supervisors are no guarantee that the State will not act to nullify the agreement proposed herein. Nonetheless, this is the best action the County and Agency can take to protect themselves in the use and disposition of these properties, and is a course of action being followed in other communities, including the cities of Salinas and Marina.

Transfer of these properties to the County is not without some small risk. All the property on the former Fort Ord potentially contains hazardous materials, although the Army has performed significant clean up and has funded FORA clean up of remaining property. No lands are supposed to be conveyed from the Army or FORA unless they have been found to be clean or satisfactorily remediated and subject to stated restrictions. There is also currently in place a Pollution Legal Liability Policy, but the policy could lapse. The proposed Property Conveyance Agreement does provide for the Agency to indemnify the County for such matters, and is designed to establish an enforceable obligation that any Successor Agency will be subject to. However, given the lack of certainty in the proposed budget legislation and/or implementation

measures, this risk cannot be eliminated. On the other hand, the potential market value of these properties is significant, and it is anticipated that the County will act only as a holder of property and not undertake activities that would cause the release of hazardous materials. Any subsequent disposition of the properties is also anticipated to contain indemnifications from any developers, as has been the practice in other former Fort Ord conveyances.

Under the 2001 Implementation Agreement between FORA and the County, the County already bears these same risks and responsibilities, as it was originally designated to accept all these properties. Transfer of the properties from the Agency to the County does not change these risks or responsibilities; the additional properties are more likely to generate revenues and less likely to incur costs.

**OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved the proposed Property Conveyance Agreement as to form. Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

**FINANCING:**

The recommended action may involve unknown future County liabilities and responsibilities for maintaining and/or disposing of the properties, depending upon the adoption of such documents as a Base-wide Habitat Management Plan, currently under consideration by FORA. This will vary from property to property. The properties designated for conveyance in this Agreement have already been determined to be remediated sufficiently to be suitable for transfer for development purposes. The Agreement does not impose any affirmative obligation on the County to develop the property, but does confirm the intent to permit development only in accordance with the Fort Ord Reuse Base Plan and the various other agreements respecting Fort Ord property referenced above. Upon disposition of the properties to others for development, the County can anticipate receiving potentially significant land sale proceeds.

Prepared by:

Approved by:

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Nick Nichols, PE, 755-5386  
Civil Engineer

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Jim Cook, 755-5390  
Director, Redevelopment and Housing Office

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Date:

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Date:

Attachments: List of Affected Properties, Resolution, Property Conveyance Agreement