

Attachment A

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**MONTEREY COUNTY BOARD OF SUPERVISORS
FORT ORD COMMITTEE**

MEETING: January 27, 2014	AGENDA NO.:
SUBJECT Receive information related to the Fort Ord Reuse Authority (FORA) Pollution Legal Liability (PLL) Insurance Coverage program and consider parameters for possible coverage.	
DEPARTMENT: Resource Management Agency	

RECOMMENDATION:

Staff recommends that the Fort Ord Committee receive a report on FORA Pollution Legal Liability Insurance Coverage program and consider recommendations on parameters for possible coverage.

SUMMARY:

Pollution Legal Liability (PLL) insurance covers incidents that are not typically covered under general liability policies. In 2004, Fort Ord Reuse Authority established a \$100 million PLL policy to reduce risk from remediation, litigation (legal/defense costs), personal damage, and property damage related to Munitions and Explosives of Concern (MEC). There have been no claims to date and the policy is scheduled to expire December 31, 2014.

On January 10, 2014, the FORA Board authorized their staff to prepare a Request for Proposals (RFP) and submit that to the market March 1, 2014. Meanwhile, FORA has been working with stakeholder agencies to determine interest in participating with FORA extending coverage or seeking new coverage. Policies can be written for up to 10 years but FORA is schedule to expire June 30, 2020. The FORA Board indicated a preference for a 10-year policy, which would require the remaining land use jurisdictions be able to assume the policy under some type of JPA.

DISCUSSION:

Out of a total of 27,709.4 acres in the former Fort Ord, 28 parcels consisting of 16,916.9 acres located in the unincorporated County are not being insured. This accounts for about 90% of the uninsured lands (18,760.6 acres total), which includes lands owned by BLM, State Parks, and CSUMB. County parcels being insured consists of about 4,234.3 acres, which accounts for about 47% of the insured lands (8,948.8 acres total). A total of 77 insured parcels include roads, habitat parcels and development parcels. Some of the insured parcels are owned by Monterey County's Successor Agency, so both entities need to consider this matter.

Starting back in July 2013, FORA staff initiated discussions with stakeholders to begin thinking about who may want to participate in an extension/new policy and under what conditions. On January 9, 2014, there was a meeting at FORA offices with a presentation from FORA special counsel and FORA's insurance broker. A memorandum dated January 9, 2014 from Michael Houlemard, FORA Executive Officer, is attached summarizing conditions related to this matter (**Exhibit A**) and a copy of the PowerPoint presentation by FORA's special counsel and insurance broker is attached (**Exhibit B**). This information was also presented to the FORA Board on January 10, 2014.

The presentation includes background (Slides 1-4) slides along with conceptual considerations (Slide 5) and issues to be addressed (Slide 6) for carriers preparing proposals, and a tentative schedule (Slide 7). Early on, County staff has expressed initial interest to participate as additionally insured under an extended/new PLL policy, subject to costs and how the policy is written. Staff also encourages pursuing a 10-year policy rather than limiting it to the sunset date

of FORA (June 30, 2020). Issues that we have identified not specifically listed in the presentation include:

1. Successor Agency is a separate entity from Monterey County.
2. County needs the ability to negotiate transfer of responsibility when lands are annexed into a City, including a proportionate cost of said coverage.
3. The County agreed to accept 1,300+ acres of habitat lands along with redevelopment lands that would help pay for managing said lands using tax increment, including costs of insurance.
4. What happens post-FORA? Who takes the lead if the policy extends past June 30, 2020? One option is we are working on a Joint Powers Authority (JPA) for implementing the Habitat Conservation Plan (HCP) that could be expanded for other duties such as this, provided it recognizes all entities participating in the HCP may opt to not participate in the insurance.

FINANCING:

The total cost of the policy, which includes the California Surplus Lines Tax, was \$6 million. FORA borrowed funds to pay the premium and then a MOA was adopted describing the distribution and cost formula summarized as follows:

PLL Insurance Financing

Policy Holder	Share of Total Coverage	Premium Cost To Finance	Annual Costs			Total Costs over Term			
			Principal ¹ and Interest	Loan Admin. ²	Total	Principal	Interest	Loan Admin.	Total
City of Monterey	5%	\$ 300,000	\$ 50,910	\$ 294	\$ 51,205	\$ 300,000	\$ 56,373	\$ 2,059	\$ 358,432
City of Seaside	10%	600,000	101,821	588	102,409	600,000	112,746	4,118	716,864
City of Marina	25%	1,500,000	254,552	1,471	256,023	1,500,000	281,865	10,294	1,792,160
County of Monterey	20%	1,200,000	203,642	1,176	204,818	1,200,000	225,492	8,235	1,433,728
City of Del Rey Oaks	25%	1,500,000	254,552	1,471	256,023	1,500,000	281,865	10,294	1,792,160
Subtotal	85%	\$5,100,000	\$ 865,477	\$ 5,000	\$ 870,477	\$ 5,100,000	\$ 958,342	\$35,000	\$ 6,093,342
FORA	15%	\$ 900,000	\$ 152,731	\$ -	\$ 152,731	\$ 900,000	169,119	\$ -	\$ 1,069,119
Total	100%	\$6,000,000	\$1,018,209	\$ 5,000	\$ 1,023,209	\$ 6,000,000	\$ 1,127,462	\$35,000	\$ 7,162,462

¹ Based on loan of \$6 million, annual rate of 4.5 percent, 7 year term with 7 annual payments beginning in July 2005.
² FORA costs for accounting, jurisdiction invoicing, loan payments, and other finance plan administration costs.

Sources: FORA; Muni Financial; Annetta Yee and Company

The County purchased \$20 million in coverage (20% of the policy). Total payments from the County were \$1,433,728, consisting of \$204,818 annual for 7 years, which included \$1.2 million in PLL insurance principal and the remainder in financing costs (4.5% interest loan over 7 years) and a proportionate share of the \$5,000 annual loan administration fee. FORA retained \$15 million in coverage, which was divided as follows:

- MST: \$2 million in coverage
- TAMC: \$2 million in coverage
- MCWD: \$2 million in coverage
- MPC: \$5 million in coverage
- FORA: \$4 million in coverage

Monterey County Redevelopment Agency paid for coverage of all County/Redevelopment owned parcels under the current PLL policy in 2004, excludes parcels in unincorporated area held by another agency (BLM, CSUMB, UC, MPC, State, etc).

A ballparks guesstimate for a cost of this extension/policy would be \$3-4 million for \$50 million in policy coverage. County costs will depend on how much of the policy we want for our area and how many other stakeholders elect to participate. FORA staff indicated that they have about \$1 million available to put toward this cost. Discussion of how remaining costs for an extended/new policy will need to occur once it is determined who will be participating and carriers submit proposals.

Assuming a similar participation and distribution as the current policy, Monterey County's cost for 20% of the policy would be \$600-800,000, or around \$1 million if financed similar to last time. There is no funding available from the Successor Agency to insure their parcels, so Monterey County would need to determine if general funds should be used to insure Successor Agency held lands until they are sold.

Developable lands would eventually be transferred and developed. Monterey County is assigned lands designated for habitat management, which would require on-going costs for insurance as well as other management activities such as trails, signs, roads, debris/dumping, habitat, enforcement (e.g.; rangers), etc. As lands are transferred to the County via FORA, these are new costs that need to be addressed.

Prepared by:

Approved by:

Carl P. Holm, AICP, Deputy Director
Resource Management Agency

Benny J. Young, Director
Resource Management Agency

cc FO Committee (2), County Counsel (W. Strimling, K Reimann); County Risk Management, County Parks, FORA (M. Houlemard, S. Endsley, J. Garcia), CSUMB, MPC, UC, City of Marina, City of Seaside, City of Del Rey Oaks, City of Monterey, Doug Yount

Attachments:

- A. Houlemard memo with attachments
- B. Kutak Rock PPT



FORT ORD REUSE AUTHORITY

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MEMORANDUM

TO: Potential Insurance Carriers
FROM: Michael Houlemard, Executive Officer
RE: Fort Ord Reuse Authority (FORA) Pollution Legal Liability (PLL) and Explosive Risk Insurance Coverage
DATE: January 9, 2013

Existing PLL Insurance coverage background

In 2002, due to Munitions and Explosives of Concern (MEC) and other PLL risk on former Fort Ord, FORA selected Marsh to be its broker in securing the appropriate amount of insurance. The identified need was to reduce the risk associated with developing former Fort Ord for public policy makers, municipalities, public entities, and developers & associated lenders.

After an insurance industry solicitation and review process, FORA secured a \$100 million PLL policy, which included explosive risk, from two insurance carriers, Zurich and XL. The insurance covers approximately 9,000 acres on former Fort Ord from December 31, 2004 to December 31, 2014, as identified in the official policy map (**Attachment A**) and, more recently, corresponding list of parcels (**Attachment B**). FORA purchased the policy for a total cost of approximately \$6 million. FORA is the first named insured under the policy. Additional insureds include 5 municipalities, 4 public entities, and 8 developers & associated lenders. The policy insureds have not submitted any policy claims to date.

Remediation and other measures reducing risk since December 31, 2004

In 2007, FORA negotiated an Environmental Services Cooperative Agreement (ESCA) with the U.S. Army. Under the ESCA agreements, FORA and its contractor agreed to perform MEC remediation on approximately 3,340 acres of former Army lands and the U.S. Army agreed to fund this work for approximately \$98 million. As a component of the ESCA, FORA secured Cost Cap and PLL insurance to further ensure work completion, including unforeseen cost overruns up to \$128 million. FORA's ESCA contractor has completed known field remediation activities. FORA's remediation work will be reviewed by State and Federal regulators and FORA's contractor can be ordered back into the field if warranted. As a result of these remediation activities, the explosive risk has been dramatically reduced on the ESCA's 3,340 acres, which largely overlap with the 9,000 acres covered in the original PLL policy.

FORA limits and controls public access to the ESCA properties during its program responsibilities. Approximately a third of the ESCA properties are habitat reserves, which will continue to have limited access to designated trails, further reducing risk. Another component of remediation on Fort Ord is that three Land Use Covenants (LUCs) types (Soil, Landfill, and Groundwater) are recorded with property deeds corresponding with remediation sites (**Attachment C**) that follow the

land in any future transfer. In addition, local jurisdictions have ordinances that require soil management plans and coordination with the California Department of Toxic Substances Control (DTSC) before displacement of 10 cubic yards or more on properties with soil LUCs. These measures further reduce risk by ensuring special practices are followed during ground-disturbing activities on former MEC remediation sites.

Insurance need after December 31, 2014

FORA and the additional insureds' existing PLL and explosive risk insurance policy will expire after Dec. 31, 2014. FORA, municipalities, public agencies, and developers & associated lenders seek PLL and explosive risk insurance after Dec. 31, 2014. The specific details of the desired insurance include:

Coverage amount: \$100M? \$75M? \$50M?

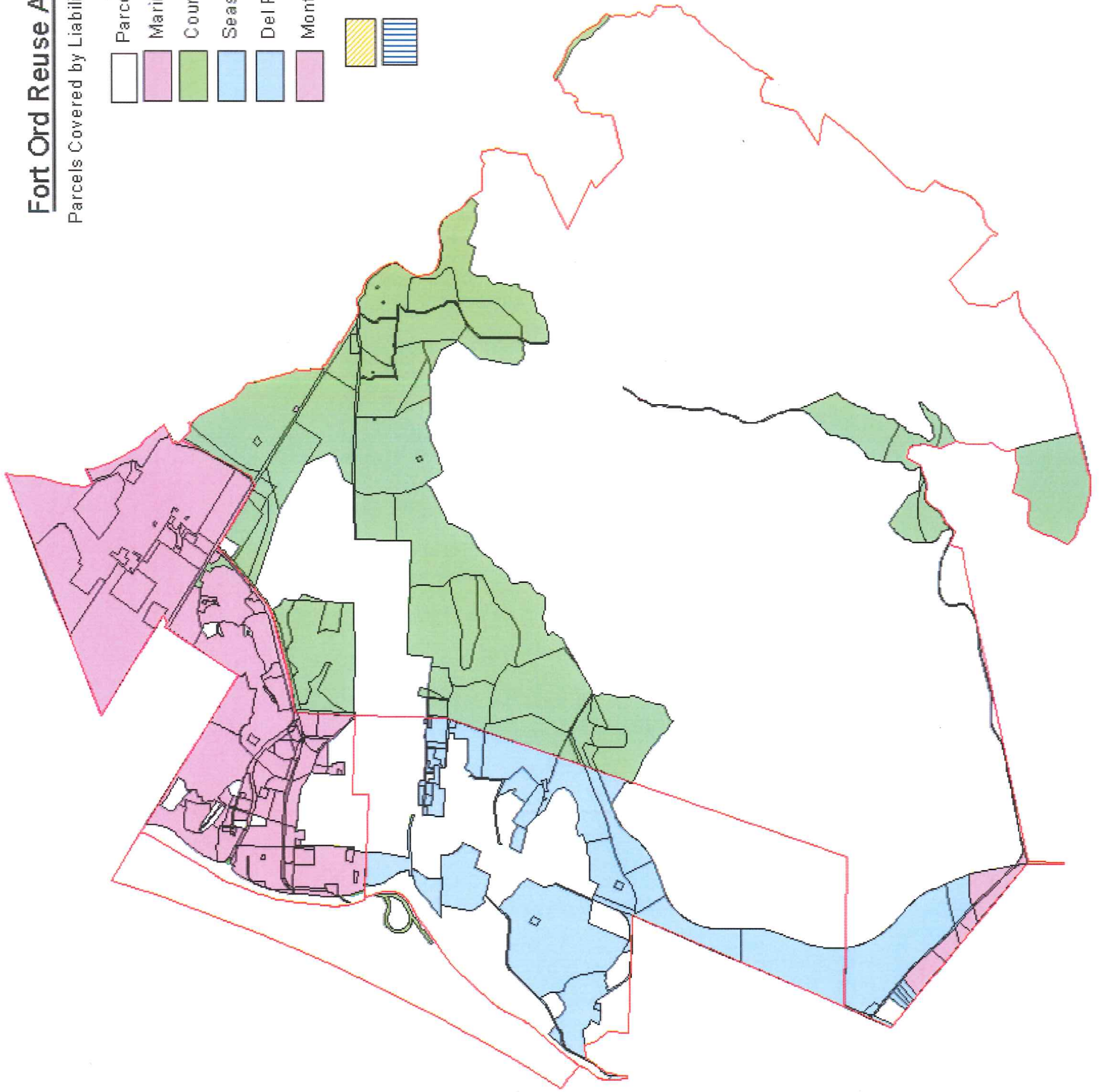
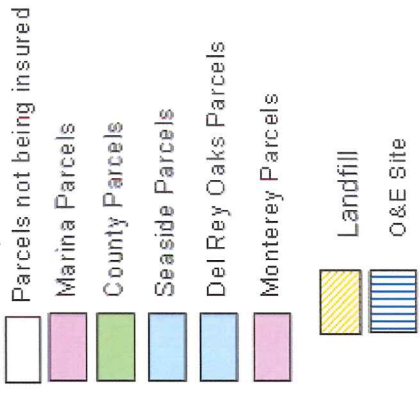
Term: 6 years? 10 years?

Self-Insured Retention: \$500K? \$1M?

DRAFT

Fort Ord Reuse Authority

Parcels Covered by Liability Coverage



Fort Ord Reuse Authority

Parcels Covered by Liability Coverage

COE Parcel	Area in Acreage	Jurisdiction
L5.1.3	0.1	Marina
L5.1.7	0.2	Marina
L1.2	0.6	Marina
L12.3	0.8	Marina
L23.4	0.9	Marina
F7.2	1.2	Marina
E3b.2.5	1.5	Marina
L12.1	2.3	Marina
E5b	3.2	Marina
L5.5.1	3.5	Marina
E4.5	3.8	Marina
L5.8.2	4.9	Marina
L23.1.2	5.6	Marina
E2b.1.2	6.1	Marina
L5.1.4	6.2	Marina
E2e.1	6.2	Marina
L5.1.8	6.3	Marina
L23.1.4	6.7	Marina
L5.8.1	7.1	Marina
L20.11.2	7.7	Marina
E4.3.2.2	7.9	Marina
L20.17.1	8.1	Marina
L20.17.2	8.3	Marina
L5.10.1	8.5	Marina
L5.6.2	8.5	Marina
E2c.3.2	9.3	Marina
E4.1.2.1	9.6	Marina
E2c.4.1.1	10.1	Marina
E2c.3.1	11.4	Marina
S2.1.4.1	11.9	Marina
E2c.1	13.3	Marina
L5.4.2	13.4	Marina
S2.1.3	14.5	Marina
E5a.2	15.4	Marina
S2.5.1.1	15.6	Marina
E2d.3.2	21.5	Marina
L5.6.1	22.5	Marina
E2d.3.1	25.1	Marina
E4.6.1	25.1	Marina
E2b.1.1.1	25.3	Marina
S2.5.2.1	25.4	Marina
E4.1.2.2	26.2	Marina
E5a.1	30.6	Marina

E2c.3.3	31.3 Marina
S2.1.1	34.3 Marina
E2b.1.3	34.7 Marina
E4.3.2.1	42.3 Marina
L5.1.12	43.1 Marina
S2.1.2	46.3 Marina
E2a	63.1 Marina
E4.2	65.5 Marina
S2.1.6	67.9 Marina
E2b.2.1	71.4 Marina
L5.1.1	72.1 Marina
E4.4	98.4 Marina
E2b.3.1.1	107.9 Marina
L5.1.11	130.3 Marina
E4.1.1	153.5 Marina
E4.3.1.1	178.2 Marina
S2.1.5	343.5 Marina
L5.1	575.8 Marina
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	2602 Sum

E11b.4	0.1 County
L35.8	0.1 County
L35.7	0.1 County
L35.6	0.1 County
E18.2.2	0.1 County
S2.3.1.3	0.5 County
L20.19.2	0.5 County
L20.5.4	0.5 County
L35.5	0.9 County
L35.4	1.1 County
F7.1	1.5 County
L20.20	2.3 County
L20.22	2.4 County
L20.12	2.5 County
L20.21.1	2.6 County
E8a.1.3	2.7 County
L2.4.1	2.8 County
L32.1	2.9 County
S2.3.2.3	3 County
L20.14.2	3.2 County
L20.19.1.2	3.3 County
E8a.2	3.8 County
L32.4.2	4 County
L20.7.5	4.3 County
L20.10.2	5.2 County
E11b.3	6.2 County
L20.19.1.1	6.4 County

L20.18	7.2 County
L20.7.2	7.2 County
E11a.1	7.3 County
L20.8	7.3 County
L20.14.1.2	7.8 County
L20.14.1.1	8.4 County
E11b.6.3	8.4 County
S2.3.1.4	8.8 County
E41	9.1 County
L20.10.1.2	9.2 County
L20.5.3	9.7 County
L23.2	10.6 County
S2.4	11 County
S2.3.1.2	11.5 County
E42	12.8 County
L2.4.2	13.2 County
E4.6.2	16.4 County
L20.10.1.1	17 County
E11b.6.2	17.9 County
L20.9	18.9 County
L20.15	20 County
E8a.1.2	21.2 County
E8a.1.5	21.5 County
L2.3	24.2 County
E11b.1	24.5 County
E40	25.3 County
L20.2.3.1	29 County
E8a.1.4	30.3 County
L20.11.1	31.2 County
L23.3.3.2	31.6 County
E21b.3	31.6 County
L20.3.2	35.5 County
S2.3.2.1	36.8 County
S2.3.1.1	37.4 County
E11b.2	41.6 County
L20.3.1	43.6 County
E11b.6.1	47.8 County
L23.3.1	54.4 County
L20.5.2	54.5 County
L23.3.3.1	57.6 County
E11b.7.1.2	63.2 County
L23.3.2.2	63.7 County
E11b.8	67.7 County
E19a.1	71.4 County
E19a.2	72.5 County
L5.7	73.4 County
E18.1.2	77.9 County

E8a.1.1.2	85.3 County
L23.3.2.1	85.3 County
S2.3.2.4	90.3 County
L20.2.2	115.7 County
E11b.7.1.1	129.9 County
L20.5.1	131.4 County
E8a.1.1.1	143 County
E11a	148.4 County
E39	161.7 County
E19a.5	226.6 County
L20.6	247.2 County
L20.2.1	252.7 County
S2.2.1	269.7 County
E19a.3	302.6 County
E19a.4	372.3 County
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	4234.3 Sum

L7.9	0.3 Seaside
L7.8	0.3 Seaside
E20c.1.2	0.3 Seaside
L19.3	1.2 Seaside
L2.4.3.1	1.5 Seaside
L34	1.7 Seaside
L36	2 Seaside
L25	2.1 Seaside
L19.1	2.1 Seaside
F2.7.2	2.2 Seaside
E37	2.3 Seaside
E20c.2.2	2.3 Seaside
F2.7.3	3.1 Seaside
L1.1	3.2 Seaside
L23.6	3.5 Seaside
L19.2	3.8 Seaside
E18.2.1	4.1 Seaside
L37	4.2 Seaside
L30	5.2 Seaside
E18.3	6.2 Seaside
L19.4	7.4 Seaside
L13.1	8.6 Seaside
E20c.1.3	10.3 Seaside
L31	11.7 Seaside
L23.5.2	14.5 Seaside
L13.2	14.7 Seaside
L23.5.1	15.2 Seaside
L32.4.1.2	16.2 Seaside
E38	17.7 Seaside
E20c.2.1	25.4 Seaside

E15.2	28.7 Seaside
E20c.2	33.2 Seaside
L32.4.1.1	37.5 Seaside
E18.1.3	40 Seaside
E23.1	48.9 Seaside
E15.1	49.2 Seaside
E20c.1	70.3 Seaside
E23.2	78.5 Seaside
E20C.1.1.1	80.4 Seaside
E34	97.1 Seaside
E18.1.1	99.9 Seaside
E20b	101.8 Seaside
L29	107 Seaside
E24	198.2 Seaside
F2.7.1	373 Seaside
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	1637 Sum

L20.13.1.2	0.2 Del Rey Oaks
L20.13.2	1 Del Rey Oaks
L20.13.1.1	2.9 Del Rey Oaks
L20.13.3.2	3.1 Del Rey Oaks
E31b	3.3 Del Rey Oaks
E31c	3.9 Del Rey Oaks
E29a.1	4.7 Del Rey Oaks
L20.13.3.1	4.8 Del Rey Oaks
E31a	4.9 Del Rey Oaks
E36	6.4 Del Rey Oaks
E29b.1	33.5 Del Rey Oaks
E29a	271.6 Del Rey Oaks
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	340.3 Sum

E29b.3.1	0.7 Monterey
L20.13.5	6.7 Monterey
L4.2	7 Monterey
E29e	9.4 Monterey
E29.2	11.9 Monterey
L4.1	18.1 Monterey
E29.1	22.5 Monterey
E29b.3	27.7 Monterey
E29b.2	31.2 Monterey
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	135.2 Sum

Insured Parcels

4234.3 County
340.3 Del Rey Oaks
2602 Marina
1637 Seaside

135.2 Monterey
8948.8 Total Sum

FORA: Pollution Legal Liability Insurance Coverage

Kathy Gettys, Marsh

Ed Morales, Marsh

Barry Steinberg, Kutak Rock LLP

WHY PLL COVERAGE?

CERCLA Joint Strict and Several Liability
CERCLA Warranty and the 120 kick out

Section 330 Indemnity
“to the extent of” limitation

Timing of response by Army-project delay

New conditions

Disputes over origin of contamination

Regulatory requirements

FORA's CURRENT PLL POLICY

Term-10 years (Dec. 2014 expiration)

Limits-\$100 million

Self-Insured Retention-\$1 million

Covered Parties

FORA + 5 Land Holding Jurisdictions + development entities

CONSIDERATIONS GOING FORWARD

Insurance Market considerations

Claims experience

FORA's expiration

Economies of Scale

First dollar coverage

Cross border disputes

Continuity during transition from FORA to municipalities: 10 year policy

Exclude Groundwater Coverage and MEC remediation

CONCEPTUAL CONSIDERATIONS

1. No exclusions from covered location.
2. Remediation and/or property damage for MEC?
3. \$50,000,000 limits. Possible need for excess coverage to address additional insured parties?
4. Carriers (if more than one) will follow form without exception.
5. If allocated slice entity ceases to exist, slice reverts to municipal entity with jurisdiction.
6. Covered risks are pre-existing unknowns and new conditions
7. No exclusion for breach of land use controls.
8. Insured v. insured endorsement.
9. Need a methodology for cross border issues between insured—allocation formula for whose slice of coverage it comes from and with only one SIR.
10. Additional insured developers' coverage (if not identified at time of binding) subject to underwriting. Not to be unreasonably denied.
11. Policy will be primary
12. Claims honored for covered locations subsequently entered into voluntary Clean-up Program with DTSC, provided notice is given to carrier.
13. Premium consideration: use of grant funds.
14. Allocation of premium cost amongst named and additional insured.

ISSUES TO BE ADDRESSED BY ENDORSEMENT

1. Ability to allocate sub-aggregates to governmental and development entities.
2. FORA first named insured as long as FORA exists; then designate the successor first named insured. Can we identify now?
3. Extent of MEC coverage.
4. 10 year policy, 90 day Extended Reporting Period
5. SIR = \$500,000
6. 100% earned premium at inception
7. Cancellation requires consent of all insured (named and additional) except for non-payment of premiums to be addressed within 30 days' notice to all named and additional insured, with opportunity to cure.
8. No pollution conditions excluded except (a) ground water and (b) MEC prior to regulatory certification of completion.
9. Coverage limited to participating municipalities, utility providers, and educational entities.

NEXT STEPS AND SCHEDULE

1. Prepare Request for Proposals and submit to market: 1 March 2014
2. Submission of proposals to FORA: 1 May 2014
3. Evaluation of proposals: complete by 1 June 2014
4. Notify submitters of acceptance/rejection: 15 June 2014
5. Negotiations with carriers: 1 July -30 September 2014
Cost, SIR, exclusions, endorsements, coverages
6. Presentation to FORA Board for approval: 8 November 2014
7. Bind new policy: 1 December 2014