

Attachment B

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FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: Pollution and Legal Liability Insurance Policy	
Meeting Date: October 10, 2014	INFORMATION/ACTION
Agenda Number: 8a	

RECOMMENDATION(S):

- i. Receive Pollution and Legal Liability (PLL) Insurance Policy Procurement Process Update.
- ii. Authorize the Executive Officer to Select a PLL Policy Provider and bind coverage upon the Joint/ Coordinated Concurrence of FORA Special Counsel/ Insurance Broker.

BACKGROUND/DISCUSSION:

In June 2000, the Fort Ord Reuse Authority (FORA) entered into an Economic Development Conveyance Agreement with the United States Army (Army) for the transfer of former Fort Ord land. In 2001, FORA entered into property transfer agreements with underlying jurisdictions. Under the terms of these Implementation Agreements, with a few exceptions, FORA is obligated to transfer former Army property to individual jurisdictions, and those jurisdictions are required to accept title to this property from FORA (or direct FORA to transfer to their designee) once regulatory approval of environmental conditions remediation is achieved. The affected jurisdiction then owns former Fort Ord land within their jurisdictional boundary to transfer for private development or to maintain for public purposes. Since both FORA and the underlying jurisdictions are in the chain of title for these former military lands, environmental liability concerns exist for pre-existing conditions and new conditions. Board members expressed concern that associated environmental risk might expose their general funds to claims and asked FORA staff to provide options for environmental insurance coverage, which would be cheaper and more efficient if acquired collectively. In 2002, after research and industry inquiries, FORA staff determined that only limited environmental risk coverage was available for former military owned land. Subsequently, after consultation with FORA special counsel Barry Steinberg, it was concluded that coverage could be obtained, but at significant cost.

In 2004, after noting changes in the financial markets and upon receipt of information from the Association of Defense Communities, staff reported on options for coverage for PLL insurance. That year, the Board authorized purchase of a ten-year policy to provide PLL insurance coverage to FORA, its member land use jurisdictions, and their developers. That insurance policy coverage will expire at the end of calendar year 2014. No formal claims against the policy have been made over the years it has been in place. While the existing Cost-Cap policy addresses FORA's obligations under the Environmental Services Cooperative Agreement (ESCA) with the Army, that coverage terminates upon completion of remedial work. The current cost-cap policy does not adequately address many of the risks associated with the day-to-day operations and activities that will occur over the next 5 to 10 years.

In Spring 2005, the Army and FORA entered negotiations for an Army-funded ESCA for removal of remnant Munitions and Explosives of Concern (MEC) on the former Fort Ord. Under the terms of this ESCA contract, FORA accepted transfer of 3,340 former Fort Ord acres prior to regulatory environmental sign-off. In early 2007, the Army awarded FORA approximately \$98 million to perform the ESCA parcels MEC cleanup. FORA also entered into an Administrative Order on Consent (AOC) with the U.S. Environmental Protection

Agency and the California Department of Toxic Substance Control defining conditions under which FORA performs these contractual Army remediation obligations.

In order to complete the AOC defined work, after a competitive selection process, FORA entered into a Remediation Services Agreement with LFR Inc. (now ARCADIS) to provide MEC remediation services and executed a Cost-Cap insurance policy for this remediation work through American International Insurance Group. The Army ESCA Grant also provided FORA with \$916,056 toward the purchase of PLL insurance coverage similar to what the FORA Board purchased in 2004.

Through FORA's ESCA contract and the Army's other work under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), most of the remaining lands transferring through FORA have completed significant risk "characterization." In other words, much more is known today about the pollution conditions on the 6,000 acres than was known ten years ago.

In January 2014, the Board authorized insurance broker Marsh, Inc. and Special Counsel Barry Steinberg to proceed with an insurance carrier selection and negotiation process for a PLL insurance policy spanning the next ten years. Insurance carriers participating in the selection process submitted revised policy quotes at the end of September 2014, which are being reviewed by Marsh and Special Counsel Barry Steinberg.

Special Counsel Barry Steinberg will attend the October 10, 2014 meeting to provide a brief presentation outlining details of the selection and negotiation process as well as next steps. In order to secure insurance coverage before the existing policy expires on December 31, 2014, FORA staff will present the new PLL insurance policy terms to the Board for consideration at its November 14, 2014 meeting.

FISCAL IMPACT:

Reviewed by FORA Controller 

New insurance policy fiscal impacts will be presented to the FORA Board at its November 14, 2014 meeting. Staff time for this item is included in the approved FORA budget.

COORDINATION:

FORA land use jurisdictions and other agencies receiving property and/or accessing insurance coverage include: City of Marina, City of Seaside, City of Monterey, City of Del Rey Oaks, County of Monterey, Monterey Peninsula College, Marina Coast Water District, Transportation Agency for Monterey County, California State University Monterey Bay, University of California Santa Cruz, and Monterey-Salinas Transit.

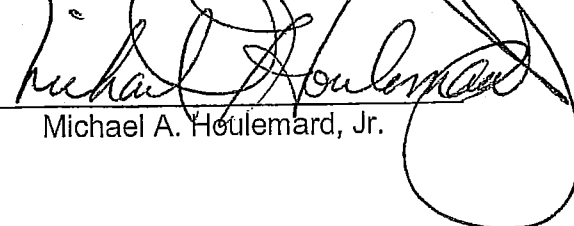
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Pollution Legal Liability Insurance Premium Financing Cost Table

Pollution Legal Liability Insurance Premium Financing – 4.5% and 7 year term

PLL Insurance Financing

Policy Holder	Share of Total Coverage	Premium Cost To Finance	Annual Costs			Total Costs over Term			
			Principal ¹ and Interest	Loan Admn. ²	Total	Principal	Interest	Loan Admn.	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	\$ 6,000	\$ 870,477	\$ 5,100,000	\$ 958,342	\$35,000	\$ 6,093,342
FORA (4%)	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 4.6 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; Annette Yee and Company

2% 2% 2% 5%
For MST, TAMC, MCWD, and MPC, the cost will vary depending on the amount of coverage they purchase:

PLL Insurance Financing

Amount of Coverage	Share of Total Coverage	Premium Cost To Finance	Annual Costs			Total Costs over Term			
			Principal ¹ and Interest	Loan Admn. ²	Total	Principal	Interest	Loan Admn.	Total
\$1,000,000	1%	\$ 60,000	\$ 10,182	\$ 294	\$ 10,476	\$ 60,000	\$ 11,275	\$ 2,058	\$ 73,333
\$2,000,000	2%	\$ 120,000	\$ 20,364	\$ 294	\$ 20,658	\$ 120,000	\$ 22,549	\$ 2,058	\$ 144,607
\$3,000,000	3%	\$ 180,000	\$ 30,546	\$ 294	\$ 30,840	\$ 180,000	\$ 33,824	\$ 2,058	\$ 215,882
\$4,000,000	4%	\$ 240,000	\$ 40,728	\$ 294	\$ 41,022	\$ 240,000	\$ 45,098	\$ 2,058	\$ 287,156
\$6,000,000	5%	\$ 300,000	\$ 50,910	\$ 294	\$ 51,204	\$ 300,000	\$ 56,373	\$ 2,058	\$ 358,431

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; Annette Yee and Company