



Monterey County

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Board Report

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Take the following actions in connection with future Pollution Legal Liability (PLL) insurance coverage for property within the former Fort Ord:

- a. Renew Pollution Legal Liability (PLL) insurance coverage for the County of Monterey through participation in FORA's Pollution Legal Liability insurance policy for the former Fort Ord area for the ten year period from January 1, 2015 through December 31, 2024;
- b. Authorize the County Risk Manager to bind coverage for the County of Monterey as part of \$20 million of joint shared coverage for the County of Monterey and Successor Agency to the Redevelopment Agency of the County of Monterey for the ten year period at a projected estimated total cost of \$400,000;
- c. Authorize use of General Liability Internal Service Fund (ISF) Enterprise Liability Fund to fund the obligation, subject to contribution to the premium by the Successor Agency if allowed by the Successor Agency;
- d. Authorize the Risk Manager to finalize coverage terms and enter into a payment plan with FORA and to provide UCP East Garrison LLC an option to purchase a portion of County's coverage as an additional insured; and
- e. Direct staff to negotiate with FORA staff and return to the Board with a recommendation within the next 30 days as to whether and under what terms County would consider succeeding FORA as the first-named insured for the remainder of the term of the PLL policy following dissolution of FORA.

RECOMMENDATION:

Staff recommends that the Board of Supervisors take the following actions in connection with future Pollution Legal Liability insurance coverage for property within the former Fort Ord:

- a. Renew Pollution Legal Liability (PLL) insurance coverage for the County of Monterey through participation in FORA's Pollution Legal Liability insurance policy for the former Fort Ord area for the ten year period from January 1, 2015 through December 31, 2024;
- b. Authorize the County Risk Manager to bind coverage for the County of Monterey as part of \$20 million of joint shared coverage for the County of Monterey and Successor Agency to the Redevelopment Agency of the County of Monterey for the ten year period at a projected estimated total cost of \$400,000;
- c. Authorize use of General Liability Internal Service Fund (ISF) Enterprise Liability Fund to fund the obligation, subject to contribution to the premium by the Successor Agency if allowed by the Successor Agency;
- d. Authorize the Risk Manager to finalize coverage terms and enter into a payment plan with FORA and to provide UCP East Garrison LLC an option to purchase a portion of County's coverage as an additional insured; and

- e. Direct staff to negotiate with FORA staff and return to the Board with a recommendation within the next 30 days as to whether and under what terms County would consider succeeding FORA as the first-named insured for the remainder of the term of the PLL policy following dissolution of FORA.

SUMMARY:

On January 27, 2014, staff reported to the Board of Supervisors' Fort Ord Committee on the Fort Ord Reuse Authority (FORA) Pollution Legal Liability (PLL) insurance program and asked the Committee to consider recommendations on parameters for coverage for the next ten years. A copy of that report is attached for reference. County staff indicated an interest to participate and identified issues for the bid process. FORA staff released a request for proposals (RFP) to provide a \$50 million policy over a ten- year period that applies base wide.

Five firms attended a bidders' conference and three firms (Chubb, Zurich, Excel) submitted proposals. FORA staff with special counsel identified Chubb as the top ranked proposal and held a meeting with the carrier on October 8, 2014. FORA staff met with member agency representatives and the FORA Board on October 10 to present the proposal (FORA Board report attached). The PLL policy would provide up to \$50 million in coverage, divided among FORA and participating agencies, for the ten year period January 1, 2015 through December 31, 2024.

FORA staff is seeking a determination from agencies with property in the former Fort Ord as to whether and how much coverage they want under the proposed PLL policy. The current PLL policy expires on December 31, 2014, so FORA staff have said they need agencies to make a commitment prior to the next FORA Board meeting on November 14, 2014, the last scheduled FORA Board meeting in 2014. Questions staff has identified for consideration by the Monterey County Board of Supervisors include:

- a. How much coverage does County want?
 - 1. How much coverage, if any, for Successor Agency?
 - 2. Would County be asking developers (e.g., UCP East Garrison LLC) for contribution to premium cost?
- b. Should County succeed FORA as the first-named insured after FORA terminates?

Coverage:

On the question of coverage, the County Risk Manager recommends that the Board authorize the Risk Manager to bind coverage of \$20 million, which would cost \$400,000 (e.g. \$40,000 per year) under the insurance bid FORA has received. Obtaining such coverage is recommended to cover the risks associated with potential damages and defense costs associated with unexploded ordnance. Participation in FORA's PLL policy reduces the County's shock loss exposure, reduces the deductible obligation and effectively insulates the County's self insured exposure.

It is recommended that the policy cover both the County and the Successor Agency to the Redevelopment Agency of the County of Monterey as separate named insureds because both hold title to land in the former Fort Ord. The policy can be written so that the coverage is shared jointly. County would seek contribution from the Successor Agency for a share of the

premium, but such contribution would require separate authorization under the procedures governing expenditures by the Successor Agency.

First-named insured:

A second issue is whether the PLL policy should identify the County as first-named insured when FORA dissolves. The role of the first-named insured is to be the primary contact with underwriters, claims examiners and generally remains responsible for overall administration of the policy. FORA is scheduled to dissolve by June 30, 2020. To date, no succession policies for these types of matters have been established, except that, per Government Code section 67700, FORA is to submit a transition plan to LAFCO by December 30, 2018. Staff recommends that any agreement by County to become first named insured be conditioned upon several prerequisites, including the following:

1. FORA's remaining four years and six months of coverage would be transferred to the County;
2. Any remaining self-insured retention retained by FORA (currently \$200,000+ in a grant FORA received from the Army) would be transferred to Monterey County, subject to the same grant restrictions;
3. FORA or participating agencies would provide funding to County to support the additional workload associated with the responsibilities of the first-named insured (e.g. Reporting claims, overseeing claims administrator, collecting deductible, communicating with underwriters on behalf of all additional named insureds, requesting certificates of insurance, etc.).

Alternatives to the County becoming the first-named insured include: waiting to resolve this question as part of the FORA dissolution process (2018/19); or creating a Joint Powers Authority (JPA) for this and other administrative matters. A JPA is currently being considered for administering the Habitat Conservation Plan, but that includes agencies that are not party to this policy. Committing at this time to take on the first-named insured role provides greater negotiation leverage with the insurer to obtain the best term and provides the County greater control in the event coverage issues or insurer's reservation of rights are asserted. Staff is seeking direction to negotiate with FORA at this time. We will evaluate pros and cons further and return with a recommendation within the next 30 days.

DISCUSSION:

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. In all, the County may ultimately own and be responsible for management of 3,028 acres in the former Fort Ord. The Successor Agency holds approximately 342 acres, approximately 11.3 percent, of this ultimate total.

In 2004, the total cost of the \$100 million policy was over \$7 million, including California Surplus Lines Tax and interest on a loan used to pay for the policy. Monterey County purchased \$20 million in coverage (20% of the policy). FORA retained \$15 million in coverage, which was divided as follows:

- Monterey-Salinas Transit (MST): \$2 million in coverage
- Transportation Agency for Monterey County (TAMC): \$2 million in coverage

Marina Coast Water District (MCWD): \$2 million in coverage
Monterey Peninsula College (MPC): \$5 million in coverage
FORA: \$4 million in coverage

The Monterey County Redevelopment Agency paid for coverage of all County/Redevelopment owned parcels under the PLL policy in 2004; however, this funding is no longer available.

Chubb's proposal totaled \$1,705,200 for \$50 million in coverage, including California Surplus Lines Tax. The proposal assumes self-insured reserve (SIR) costs of \$500,000 per occurrence. FORA staff indicated that they have reserved over \$900,000 from a grant by the Army that can be used for this cost and proposed that these funds be used to write down the premium to \$1 million. This reduces agency costs to \$20,000/\$1 million of coverage/10 years, and would retain a reserve of over \$200,000 for FORA to cover SIR (deductible) costs. County staff recommends obtaining coverage for \$20 million for the 10 year period at a cost of \$400,000.

The agencies and FORA Board identified Monterey County as a potential entity to replace FORA as the first insured after June 30, 2020. This would require the County to administer the policy including processing claims and submitting reports. County staff has considered this idea and recommends that any agreement to take on the role of first named insured be contingent upon certain terms, including but not limited to the following:

1. FORA's portion of the premium coverage is transferred to Monterey County
2. The SIR retained by FORA (\$200,000+) is transferred to Monterey County, subject to the same grant restrictions
3. FORA or participating agencies would provide funding to County to support the additional workload associated with the responsibilities of the first-named insured.

OTHER AGENCY INVOLVEMENT:

FORA is the lead agency to negotiate the policy premium and work with local agencies to divide that premium. FORA would obtain a portion of the coverage, and five land use jurisdictions with land holdings (Del Rey Oaks, Marina, Monterey-City, Seaside, Monterey County) are afforded the ability to request a share of the coverage and pay a commensurate share of the premium. The Successor Agency to the Monterey County Redevelopment Agency, as a land holding entity separate from the County, could also be a named insured. A separate action is concurrently scheduled before the Successor Agency to consider participation. In addition, other agencies with land holdings/interests (FORA, TAMC, CSUMB, MPC, UCSC) are able to request shares of the premium. Discussion of how remaining costs for the policy will need to occur if the total amount of coverage desired by the landholding entities exceeds the \$50 million.

FINANCING:

Coverage for \$20 million would cost the County (including the Successor Agency) \$400,000 and provide coverage for a 10 year period (through December 31, 2024). Once the amount of coverage is established by participating agencies, FORA intends to pay the premium, with reimbursement by the participating agencies through a payment plan. Finance charges will be applied. An interest rate for this option has not yet been determined by FORA, but FORA staff have stated that in no case can the financing extend longer than three to four years due to the FORA sunset date.

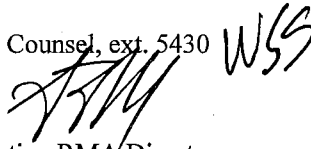
Since these costs were not known at the time the County budget was developed, they are not

included in the FY14/15 budget; however, General Liability Internal Service Fund (ISF) Enterprise Liability Fund could fund the obligation Authority for the Risk Manager to enter into a payment plan with FORA is requested. A three or four year repayment schedule affords time to recoup the cost to the ISF through appropriate allocation of this expense. The cost covered by the ISF could be recovered through annual distribution of insurance charges to all County department and agency budgets. This cost recovery could be spread over a two- or three-year period to minimize impacts to departmental budgets.

If the policy is written to cover both County and Successor Agency as named insureds, Successor Agency funds may help pay for cost of insurance for Successor Agency- held lands if such cost is approved by the state Department of Finance (DOF). A separate action is concurrently scheduled before the Board of Supervisors of the Successor Agency to consider participation in the coverage and contribution of \$40,000, ten percent of the premium, if allowed by the state Department of Finance. If the DOF disallows the charge, the Successor Agency coverage cost would have to be absorbed by the County, unless the DOF permits some other mechanism for recovery of the cost. In addition, staff is inquiring if UCP East Garrison LLC, the East Garrison developers, desire to purchase a portion of the County's coverage and be named as additional insureds.

Prepared by: Wendy Strimling, Senior Deputy County Counsel, ext. 5430

Approved by: Steve Mauck, Risk Manager, ext. 3006



This report was prepared with assistance of Carl Holm, Acting RMA Director

cc: Board of Supervisors, Nick Chiulos, County Counsel (W. Strimling, K Reimann); County Risk Management, County Parks, FORA (M. Houlemard, S. Endsley, J. Garcia), (A Spear, K Saunders), MPC (V Nakamura), UC (G Bice), City of Marina (L Long), City of Seaside (D Ingersol), City of Del Rey Oaks (D Dawson), City of Monterey (E Caraker)

The following attachments are on file with the Clerk of the Board:

Attachment A 1/27/14 Fort Ord Committee report

Attachment B 10/10/14 FORA Board report