



Section 2.3 of the Agreement requires that FORA, and after FORA ceases to exist, the County, submit an Annual Report to the Department by no later than September 1 of each year. The proposed action before the Board is to approve a Modification to the Agreement to move the due date for submitting the Annual Report to the Department from “no later than September 1” to “no later than December 1” of each year and substitute “County of Monterey” for “FORA” as the entity responsible to provide the report. As described by the letter from DTSC proposing the modification, “the additional time will allow the jurisdictions to acquire and compile the information required by the Agreement and by the various Land Use Controls Implementation Plans/Operation and Maintenance Plans (LUCIP/OMP), and to consolidate and present the information in one Annual Report.” The proposed Modification is attached to the staff report as Attachment A. DTSC is requesting that each signatory to the Agreement approve the Modification.

#### DISCUSSION:

##### **Background**

FORA, the County, the cities of Seaside, Monterey, Del Rey Oaks, and Marina, California State University Monterey Bay, University of California Santa Cruz, and Monterey Peninsula College entered into a Memorandum of Agreement with the Department of Toxic Substances Control (“Department” or “DTSC”) concerning monitoring and reporting on environmental restrictions on the Former Fort Ord. (The Agreement is attached to this staff report as Attachment B.) The Chair of the Board of Supervisors signed the Agreement on behalf of the County on October 16, 2007. The December 10, 2019 letter from DTSC, attached to this staff report as Exhibit C, provides the full background of the Agreement.

By way of summary, the Agreement requires the specified jurisdictions to monitor compliance with land use controls which were required by state law to be placed on properties transferred from the federal government in the former Fort Ord due to the presence of remnant hazardous materials. As FORA completes remediation under the federal law known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on each Munitions Response Area (MRA), various land use controls (LUCs) are required. The LUCs are documented in Land Use Controls Implementation Plans/Operation and Maintenance Plans (LUCIP/OMPs). Each jurisdiction has annual obligations to monitor and report on compliance with the LUCs, and FORA had the obligation to compile the jurisdictions’ information and submit an annual report to DTSC.

The annual report covers the twelve-month period starting from July 1 to June 30 of the following year. Per Section 2.3 of the Agreement, the annual reporting obligation is required to shift to the County with FORA dissolution. The first two sentences of Section 2.3 of the Agreement provide as follows:

"No later than September 1 of each year, FORA agrees to submit a report to the Department describing compliance with each of the prohibited activities and uses listed in the covenants. The County agrees to submit this report when FORA ceases to exist."

Section 4.7.2 of the LUCIP/OMPs expands the annual reporting content, as follows:

" ... The existing MOA with DTSC Annual LUC Report Outline has been expanded to include and fulfill the requirements in this LUCIP/OMP (Appendix J). Annual LUC monitoring reports cover the period from July 1 to June 30 of each year. [The applicable jurisdictions] will submit annual LUC monitoring reports to FORA by September 1 of each year (within 60 days). FORA will compile the annual LUC monitoring reports and submit them to the Army, EPA, and DTSC in annual LUC status reports within 90 days following receipt of reports from [the applicable jurisdiction(s)]."

“Beginning with the 2019 Annual Report, the County is responsible for compiling and submitting the Annual LUC monitoring reports to the EPA and DTSC. The County is also responsible for preparation and submittal of

annual MEC (Munitions and Explosives of Concern) letter reports to the EPA and the Department summarizing any MEC found and changes in site conditions that could increase the possibility of encountering MEC; the submittal of the annual LUC status report satisfies this requirement. The annual LUC status reports will also be provided to the Army for inclusion in the five-year reviews.” - *December 10, 2019 letter from DTSC.*

**Agreement Modification**

The LUCIP/OMPs expand the annual report outline to include reporting requirements of institutional controls listed in the LUCIP/OMPs. The additional requirements take additional time to acquire and compile. To accommodate the processing of the annual report, DTSC proposes modification of Section 2.3 of the Agreement to change the due date of the annual report from “no later than September 1” to “no later than December 1,” and replaces “FORA” with “County of Monterey.” The Modification would amend the first sentence of Section 2.3 to provide as follows:

"No later than December 1 of each year, the County of Monterey agrees to submit a report to the Department describing compliance with each of the prohibited activities and uses listed in the covenants."

The Agreement may be modified only by a written agreement of all of the parties to the Agreement. (Section 3.12 of the Agreement.) Accordingly, DTSC is requesting each of the signatories to the Agreement to approve and sign the proposed Modification document. Therefore, staff requests the Board to approve the Modification and authorize the Chair of the Board of Supervisors to execute the Modification.

OTHER AGENCY INVOLVEMENT:

DTSC prepared the Modification form and is requesting all of the signatories to the Agreement to approve the Modification. County Counsel has reviewed the Modification.

CEQA

This modification to the Agreement is not a project under section 15378(b)(5) of the California Environmental Quality Act Guidelines because the modification is only changing a reporting date and acknowledging the shift in reporting responsibility from FORA to County, which was already part of the Agreement. Accordingly, the action is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

While this work is not directly in support of a Health Department Strategic Initiative, it is in support of one or more of the ten essential public health services, specifically; 4. Mobilize community partnerships and action to identify and solve health problems.

FINANCING:

There is no financial impact to the General Fund resulting from this request.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Robin Kimball, Management Analyst II, 755-1297

Approved by:

Date: \_\_\_\_\_

Elsa Jimenez, Director of Health, 755-4526

Attachments:

Attachment A Modification to DTSC MOA

Attachment B DTSC MOA February 27, 2008

Attachment C DTSC Letter December 10, 2019