

**From:** [Adams, Mary L.](#)  
**To:** [Sheri Damon: FORA Board](#)  
**Cc:** [Dominique Davis](#)  
**Subject:** For dissemination to FORA Board re: Transition Plan  
**Date:** Thursday, December 13, 2018 3:18:53 PM  
**Attachments:** [Adams-TP Draft-v12.12.18.docx](#)

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Dear FORA Board Members,

I hope you will take the time to read one more iteration of a Transition Plan before our meeting. With the goal that we will fulfill our statutory obligation *to approve and submit a transition plan by December 30, 2018 that assign[s] assets and liabilities, designate[s] responsible successor agencies, and provide[s] a schedule of remaining obligations*, in a manner that would be acceptable to LAFCO, I asked my staff to draft the attached document.

This plan includes elements of the FORA Staff Transition Plan, the Haffa/Garfield/Parker Plan, and the City of Marina Plan, as a workable compromise that should be palatable to all.

The plan is based on the following priorities for funding FORA liabilities post-dissolution:

1. Ensuring the CalPERS responsibility is met,
2. FORA led transportation and transit projects in construction at time of dissolution (e.g. South Boundary Road) would be funded,
3. Habitat management, and
4. Pro rata distribution to jurisdictions with reimbursement agreements.

I look forward to further discussion tomorrow.

Best,

Mary.

Mary L. Adams, *Supervisor*  
Monterey County Board of Supervisors  
Fifth District

**FORT ORD REUSE AUTHORITY  
RESOLUTION NO. 18-xx**

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY  
*Approving a Transition Plan for Submission to the Monterey County Local Agency Formation Commission*

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A.** The Fort Ord Reuse Authority (“FOR A”) was established in 1994 by state legislation (Government Code sections 67650 and following, the “FORA Act”) and when the member jurisdictions adopted resolutions favoring the establishment of the authority in accordance with Government Code section 67656. The FORA Act was amended in 2012. The FORA Act, as amended, may be accessed via Exhibit B – Reference Documents attached hereto and incorporated by this reference. The Legislature found that the reuse of Fort Ord is a matter of statewide importance and declared in Government Code section 67657(c) that FORA’s powers and duties prevail over those of any other local entity, including any city, county, or joint powers authority. Government Code section 67658 identifies FORA’s purpose as planning for, financing, and managing the transition of the property known as Fort Ord from military to civilian use. In Government Code section 67651, the Legislature declared the following goals to be the policy of the State of California: (1) To facilitate the transfer and reuse of the real and other property of the former Fort Ord with all practical speed; (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and development of the base in ways that enhance the economy and quality of life of the Monterey Bay community, and (4) maintain and protect the unique environmental resources of the area.
- B.** In order to carry out the directives of the FORA Act, FORA hired staff and entered into a contract with the California Public Employees’ Retirement System (“CalPERS”) to provide for retirement benefits for FORA employees. The contract with CalPERS as amended to date is referenced as items 1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference.
- C.** Pursuant to the requirements of Government Code section 67675, FORA certified a Final Environmental Impact Report and adopted a Fort Ord Reuse Plan (the “Reuse Plan”) on June 13, 1997 in Resolution 97-06. The Reuse Plan, its attendant environmental report, and Resolution 97-06 may be accessed via Exhibit B - Reference Documents attached hereto and incorporated by this reference.

D. As part of that approval, FORA's Board of Directors (the "Board") certified the Environmental Impact Report and adopted a Statement of Overriding Considerations after making the following findings:

- The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;
- The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside and Marina, thereby creating a housing stock with higher income families in these communities with larger disposable incomes;
- The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
- The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
- The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
- The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
- The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks, Monterey, Seaside, Marina, and the unincorporated areas of the County of Monterey in the vicinity of Fort Ord;
- The Reuse Plan will provide for additional and needed senior housing opportunities;
- The Reuse Plan will assist the communities of Seaside and Marina in the transition of their respective community images from dependent, military base extensions with transient military personnel to vital, independent, and self-actuated communities populated with permanent residents with long-term interests in the well-being of their respective communities; and
- The Reuse Plan will encourage development that will enhance the continued viability of California State University at Monterey Bay and the open space areas retained by the federal government through the Bureau of Land Management and conveyed to the California Department of Parks and Recreation.

E. As part of funding implementation of the Reuse Plan, FORA established in 2001 a Community Facilities District ("CFD"), through which special taxes on properties to be developed are collected. These special taxes (the "CFD Special Taxes") are due and payable with respect to each parcel on issuance of a building permit relating to the property. The CFD Special Taxes are subject to annual adjustment, but when FORA ceases to exist the CFD Special Taxes may no longer be collected. A variety of replacement funding mechanisms are available, including but not limited to the potential for each of the underlying land use jurisdictions to create its own Community Facilities District through which special taxes on future development may be collected. Collecting taxes or fees on developments that have already been entitled will require each jurisdiction to obtain agreements from each developer of an entitled project to pay development fees that the developer would not otherwise be obligated to pay. Those fees are estimated to be \$72

million for entitled projects, if all entitled developments are fully completed.

- F.** FORA entered into a Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands (the “EDC MOA”), which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder. The EDC MOA and its attendant amendments are referenced as items 127, 129 through 134 in Exhibit A attached hereto and incorporated by this reference. The EDC MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. The land transfer was conditioned on a requirement that any proceeds from the subsequent sale or leasing of the transferred real property must be applied to the economic development of the former Fort Ord. The real property transferred pursuant to the EDC MOA may be referred to herein as the “EDC Property.” Sections 5.03 and 5.04 of the EDC MOA require a fair process to ensure an equitable supply of water is provided to grantees of former Fort Ord property and that all grantees enjoy an equitable utilization of the existing sewage treatment capacity.
- G.** In 2001, agreements were entered into between FORA on the one hand and the County of Monterey and each city receiving or anticipated to receive a portion of the EDC Property on the other hand. These agreements, as they may have been amended to date and irrespective of whether they may be so captioned, may collectively be referred to herein as the “Implementation Agreements.” The Implementation Agreements are referenced as items 17 through 22 in Exhibit A attached hereto and incorporated by this reference.
- H.** The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) applies to the closure of Fort Ord. The Army is obligated under CERCLA and other applicable federal and state law to remediate certain conditions at the former Fort Ord, including but not limited to by the removal of munitions and explosives. It was anticipated that an extensive amount of time would be needed for the Army to complete its cleanup of the former Fort Ord, based in part upon the contingent nature of Department of Defense funding and due to competing priorities for the use of available funds. Accordingly, in order for FORA to be able to receive the EDC Property early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement (referenced as item 43 and as amended in 53 and 54 in Exhibit A attached hereto and incorporated by this reference). Through a series of subsequent agreements between the Army, FORA, the U.S. Environmental Protection Agency, and the California Department of Toxic Substance Control remediation of munitions and explosives on the former Fort Ord proceeded. These agreements are referenced generally in Exhibit A as environmental services and more specifically at items 34, 43, 44, 45, 48 and 46 in Exhibit A attached hereto and incorporated by this reference. Although substantial progress has been made in the base cleanup, the remediation obligations will not be completed and all property transfers will not have occurred before the currently anticipated dissolution of FORA.

- I. Government Code section 67700(a) requires that FORA dissolve when eighty percent (80%) of the base has been developed or reused in a manner consistent with the Reuse Plan or on June 30, 2020, whichever first occurs. Government Code section 67700(b)(2) mandates as follows:

The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. **The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.** The transition plan shall be approved only by a majority vote of the board. (Emphasis added)

- J. Government Code section 67700(b)(1) provides as follows:

**The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored** and properly administered, and that all assets of the authority are appropriately transferred. (Emphasis added)

BASED ON THE FOREGOING RECITALS AND FINDINGS AND DETERMINATIONS MADE HEREIN, the Board hereby approves the following Transition Plan for submission to the Monterey County Local Agency Formation Commission ("LAFCO") on or before December 30, 2018:

## **Section 1. Obligations**

### 1.1 Base Reuse and Master Resolution:

FORA adopted a Base Reuse Plan that was designed to guide the reuse of Fort Ord in a manner that benefitted the region while addressing the resource constraints associated with redevelopment of the Base. All of the land use jurisdictions have or will have general plans which have been found consistent with the Reuse Plan. All of the property transferred from FORA is subject to a covenant running with the land that requires that the property be developed subject to the, the policies and programs of the Reuse Plan, including the Master Resolution, the applicable general plan and land use ordinances of the local governmental entity and that the properties comply with CEQA. To the extent that the Reuse Plan constitutes an obligation of FORA, the recorded covenants ensure continued compliance with the Reuse Plan and the Final Environmental Impact Report on the Reuse Plan to the extent applicable to a particular property. Based on the above, the Board finds and determines that the Transition Plan establishes continuity for the Reuse Plan policies and programs.

The FORA Master Resolution includes a jobs/housing balance policy requiring provision of a minimum of twenty percent (20%) affordable housing on former Fort Ord lands and a target of ten percent (10%) workforce housing. The Board finds and determines that the

policies contained in the Master Resolution should be continued following FORA's dissolution. In particular, the Board finds that the prevailing wage policy established in 1996 to promote equitability and fairness to all workers on the former Fort Ord should be sustained in the completion of the former Fort Ord recovery program. The Cities of Marina, Seaside, Monterey and Del Rey Oaks and the County of Monterey are encouraged to take the necessary legal steps to adopt the Master Resolution policies by December 30, 2019; however, if they have not by then done so, staff is directed to record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. Recording the Master Resolution is not intended to create any liabilities or obligations that do not already exist but instead is intended to preserve a permanent record of the policies contained in the Master Resolution. The Master Resolution may be accessed via Exhibit B - Reference Documents attached thereto and incorporated by this reference.

## 1.2 Transportation and Transit Infrastructure:

As of 2018, there are 19 transportation and transit projects identified in the capital improvement program. These projects are listed in Document 92 in Exhibit A attached hereto and incorporated by this reference. The City of Marina, County of Monterey, Transportation Agency of Monterey County (TAMC) and Monterey Salinas Transit (MST) are the identified lead agencies for 13 of 19 projects. For all of those road construction or transit projects in which FORA is not the designated lead agency and that have not been completed by the date of FORA's dissolution, the authority and discretion to generate revenues or solicit revenues from other member agencies and complete construction will rest with the lead agency. For those projects in which FORA is the lead agency and that have not been completed by the date of FORA's dissolution, authority to generate revenue and solicit revenues from other member agencies and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved and executed by the lead agency for the project. Funding for road construction and transit projects may be addressed through the Transition Plan Implementing Agreements, including offsets for a jurisdictions actual construction, participation in a regional traffic impact fee program, contribution agreements with other jurisdictions, receipt of grant funding or implementation of other funding mechanisms but nothing in this Transition Plan or a Transition Plan Implementing Agreement shall interfere with the discretion of a lead agency to determine when and if to fund or construct any particular road or transit project. With respect to the projects for which FORA is the lead agency and which no jurisdiction has addressed in its Transition Plan Implementing Agreement, FORA working in conjunction with TAMC shall prepare a regional traffic modeling analysis showing the inclusion of the FORA lead agency on-site roads as compared to the removal of the FORA lead agency roads on the remaining Fort Ord roads. In particular, off-site, regional and on-site Fort Ord local roads within or adjacent to the City of Marina, City of Seaside, City of Del Rey Oaks, and County of Monterey shall be analyzed to ascertain the impact on the Ord Community, including without limitation, California State University Monterey Bay ("CSUMB"), University of California Monterey Bay Science and Technology ("UC MBEST"), Monterey Peninsula College ("MPC"), the Veteran's Cemetery, the Army and the National Monument, and the regional network. All road and transit projects will be subject to compliance with applicable law as it exists at

the time of project approval and implementation, including compliance with CEQA. CEQA review shall be the responsibility of the lead agency.

## 1.2 Water and Wastewater:

The Army assigned a portion of its water allocation to the Marina Coast Water District ("MCWD") in the 2001 Assignment of Easements on the Former Fort Ord and Ord Military Community, County of Monterey, and Quitclaim Deeds for Water and Wastewater systems, which assignment required MCWD as Grantee to meet all requirements of the 1993 Annexation Agreement and to implement the non-Army Responsibility Mitigations in the Army's 1993 and 1997 Environmental Impact Statements for the Fort Ord Closure. FORA made water allocations in accordance with its obligations under the EDC MOA to ensure a fair and equitable water supply to all property recipients. As part of the Transition Plan, the Board recommends that MCWD use the water allocations made by FORA for each land use jurisdiction and that such allocations be documented pursuant to agreements between MCWD and the land use jurisdictions. Such agreements should address proportionate reduction or increase in any allocation in the event of a reduction or increase in the water supply resulting from MCWD complying with its obligations under the 1993 Annexation Agreement and the implementation of the Non-Army Responsibility Mitigations referenced above. Such agreements may include a process for recipients to transfer allocations subject to the conditions and requirements set forth in such agreements. In addition, the Board finds that recognizing MCWD's authority and discretion to finance planned non-potable water augmentation project, water infrastructure and wastewater infrastructure is appropriate at FORA's dissolution.

## 1.3 Building Removal:

FORA, prior to its dissolution, shall complete those building removal projects for which it has assumed responsibility and for which it has funds available. To the extent that jurisdictions wish to jointly address regional blight, revenue sharing may be addressed in Transition Plan Implementing Agreements but no jurisdiction shall be compelled to participate in such revenue sharing without its consent.

## **Section 2 Assignment of Assets and Liabilities:**

### 2.1 Assets and Disposition Thereof:

FORA's principal assets are comprised of the following:

2.1.1 Section 115 Trust: In April 2018, the Board authorized the establishment of a Section 115 trust and funded the trust with \$5,700,000 (which is currently earning returns at an average annualized rate in excess of 2%). Funds held in the trust may be used only for purposes of paying FORA's CalPERS unfunded pension liability. At or before FORA's dissolution, all funds held in the trust will be applied to the satisfaction or reduction of the unfunded pension liability under the CalPERS contract. To the extent that funds held in the trust are insufficient to fully satisfy the unfunded pension liability under the CalPERS contract, other funds available to FORA shall be applied so as to fully satisfy

the unfunded pension liability under the CalPERS contract, and thereby assure that FORA's member jurisdictions and any successor(s) to FORA are not exposed to liability for any unfunded pension liability relating to the CalPERS contract following FORA's dissolution.

2.1.2 Retirement Reserve Funds: Although not irrevocably committed to use for retirement purposes and available to meet FORA's other needs, FORA holds funds identified for retirement reserves in the current approximate aggregate amount of \$1,000,000. Those funds shall be reviewed in 2020, to the extent that the reserve funds are necessary to fund the CalPERS unfunded pension liability, the funds shall be allocated to that liability. To the extent that the funds are not necessary for the CalPERS unfunded pension liability, the funds shall be allocated first to funding completion of FORA lead transportation and transit projects under construction as of the date of FORA's dissolution; next to Habitat Protection, to the extent necessary to meet funding needs; and third to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

2.1.3 Litigation Reserve Funds: Although not irrevocably committed to use for litigation or indemnification purposes and available to meet FORA's other needs, FORA holds funds identified for indemnification of LAFCO and payment of costs related to other litigation in the current approximate aggregate amount of \$300,000. Those funds are intended to cover the cost of any litigation or indemnification obligation now or still pending immediately before FORA's dissolution. Section 4, herein below directs that FORA staff bring back information on acquisition of insurance policies to cover post-dissolution litigation costs, among other costs, and funds set aside may be used to acquire such policy (ies). If insurance policies are not obtained, immediately prior to dissolution, FORA will deposit with LAFCO the litigation reserve funds in an amount to be determined by the Board, to be held by LAFCO to cover costs related to any litigation pursuant to the LAFCO indemnification or other litigation costs that remain post dissolution. Upon expiration of the statute of limitations, as determined by LAFCO, any funds remaining in the reserve shall be allocated first to the completion of FOR A lead transportation and transit projects under construction as of the date of FORA's dissolution; third to funding Habitat Protection, to the extent necessary to meet funding needs; and finally to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis. FORA will make all efforts to resolve any pending litigation prior to its dissolution.

2.1.4 Habitat Funds: The Board has identified and set-aside approximately 30.2% of collected CFD Special Taxes to be applied toward base-wide habitat management. It is estimated based on the current rate of collections and earnings that by June 30, 2020 FORA will hold approximately \$21,000,000 in funds dedicated to habitat conservation. The Board finds that habitat protection is best achieved when approached in a regionally integrated manner. As such, all such funds accumulated before FORA's dissolution shall be transferred in the following order of priority. If before FORA's dissolution a Habitat Conservation Plan (HCP) has been established, all of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred to the fund established for implementation of the base-wide Habitat Conservation Plan for Fort Ord. If no HCP is then in existence, but a joint powers



authority has been formed for the management of Habitat Management Areas within the former Fort Ord, all of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred to the fund established for implementation of the base-wide Habitat Management Plan for Fort Ord. If no HCP or other joint powers authority for the regional management of Habitat Management Areas within the former Fort Ord is in existence prior to September 2019, then FORA shall prepare a program to distribute funds as between jurisdictions responsible for long-term management of the habitat management areas (HMA). Funds provided directly to a jurisdiction or agency shall be restricted to habitat protection.

2.1.5 Capital Improvement Funds: Any CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall be allocated first to the completion FORA lead transportation and transit projects under construction as of the date of FORA's dissolution; next to funding Habitat Protection, to the extent necessary to meet funding needs; and finally, to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

2.1.6 Other Funds: All funds in FORA's other accounts including land sales revenues, property tax revenues, petty cash, un-deposited checks, and other cash equivalents held by FORA immediately prior to FORA's dissolution shall be applied and distributed according to Section 1.1.2 for funds held in Retirement Reserve Funds.

2.1.7 Environmental Services Cooperative Agreement ("ESCA") Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. All rights under the ESCA shall be assigned to Seaside, which shall be deemed the successor to FORA for the purposes of the ESCA; provided, however, that the assignment shall be subject to approval by the Army and the state and federal regulators (collectively "the regulators"). In the event that the assignment is not approved by the Army or the regulators, then whichever jurisdiction(s) is/are acceptable to the Army and the regulators and acceptable to the Army- approved jurisdiction shall become the successor(s) to FORA for the purposes of the ESCA and all rights under the ESCA shall be deemed assigned to such jurisdiction(s). The ESCA requires that such successor jurisdiction be either the County of Monterey, City of Seaside, City of Marina or a joint powers agency.

2.1.8 Miscellaneous Personal Property: Any of FORA's office furniture and equipment, supplies, and other personal property remaining as of FORA's dissolution shall be transferred to the County of Monterey in trust for prompt sale or disposition in accordance with any applicable rules or requirements for the transfer of surplus property by a California public entity. Any proceeds from such transfer, after payment of reasonable costs incurred by the County related to the sale of the property, shall first be allocated to the satisfaction or reduction of the unfunded pension liability under the CalPERS contract; next to the completion on and off-site transportation and transit projects under construction as of the date of FORA's dissolution; third to funding Habitat Protection, to the extent necessary to meet funding needs; and finally to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

2.1.9 Real Property: As of the anticipated date of dissolution of FORA, if not all real property interests owned by FORA will have transferred to the underlying land use jurisdictions, such real property interests shall be transferred to the appropriate underlying land use jurisdiction. Each of the applicable jurisdictions shall be responsible for acquiring any property still held by the Army, including compliance with any federal laws related to such disposition.

2.1.10 Insurance Policies: FORA is insured under those policies of insurance referenced in Exhibit A attached hereto and incorporated by this reference. Except to the extent specifically provided to the contrary in this Transition Plan in Section 4, FORA shall not keep any of such policies of insurance in force beyond the date of FORA's dissolution, but nor shall FORA cancel any policies that may have terms extending beyond the FORA dissolution date.

## 2.2 Liabilities and Assignment Thereof:

FORA's principal liabilities and obligations include the following:

2.2.1 Unfunded Pension Liability under CalPERS Contract: Based on the latest available communication from CalPERS, FORA's unfunded terminated agency liability is anticipated to range from \$7,793,230 to \$9,333,172.<sup>1</sup> FORA staff shall take such action as is necessary to cause CalPERS to issue an actuarial analysis of FORA's unfunded terminated agency liability not less than six (6) months prior to the anticipated dissolution of FORA. By this Transition Plan FORA commits that if there is a shortfall between the amount of the actuarial analysis and the amounts in the Section 115 Trust to retire all the liability FORA shall expend and encumber such additional funds as are necessary to fully discharge this liability, including without limitation by applying monies on hand in the FORA accounts (and thereby assure that FORA's member jurisdictions and any successor(s) to FORA are not exposed to liability for any unfunded pension liability relating to the CalPERS contract following FORA's dissolution). If FORA determines that funds on hand are insufficient and that FORA needs to encumber future property tax revenues pursuant to Health and Safety Code Section 33492.71 to fund the liability, FORA shall at least six (6) months prior to its dissolution prepare and provide to the member jurisdictions a financing plan for the use of the property tax revenues which plan has been approved by the County of Monterey Auditor-Controller in order to provide assurances to the member jurisdictions that the property tax revenues will be available and disbursed for the purpose of funding the CalPERS unfunded pension liability. CalPERS is able to enter into a payment plan not to exceed five (5) years to satisfy such liability.

2.2.2 Habitat Funds: See Section 1.1.4 hereinabove.

2.2.3 ESCA Reimbursement: See Section 1.1.7 hereinabove.

2.2.4 Other Contracts and Agreements: Attached as Exhibit A to this Transition Plan are references to a compilation of contracts and other documents and/or commitments relevant to the FORA Program and the dissolution of FORA. Some of these contracts, documents or commitments may be completed, revised, replaced, or superseded prior to the dissolution of FORA and additional contracts, documents or commitments may be entered into before FORA dissolves. FORA staff shall endeavor to keep Exhibit A current and shall provide quarterly updates to the Board regarding any changes. FORA's outstanding obligations reflected on Exhibit A are hereby assigned as set forth in Exhibit A. To the extent that FORA has assets available, prior to dissolution, FORA shall satisfy the monetary obligations created by those contracts listed on Exhibit B which include monetary liabilities. If there are ongoing non-monetary obligations under any of the contracts listed in Exhibit B or if there are monetary obligations that cannot be met prior to FORA's dissolution, FORA will work with the contracting parties to discharge the obligations, terminate the contracts or identify an appropriate assignee and negotiate the terms of an assignment of the obligations. FORA, as of the date of the approval of this Transition Plan, shall refrain from entering into new contractual obligations unless such obligations can be fully completed within the remaining term of FORA's existence and with funds that FORA currently has on hand or that FORA can with a reasonable certainty determine will be available prior to FORA's dissolution.

2.2.5 Late Discovered Items: To the extent that any contractual obligation is discovered during the LAFCO review and/or implementation of this Transition Plan or a Transition Plan Implementing Agreement, those contractual obligations shall be addressed in accordance with the procedures set forth in Section 1.2.2 above.

### **Section 3 CEQA:**

3.1 California Environmental Quality Act: The Board hereby finds and determines that in adopting this Transition Plan as required by Government Code section 67700 FORA is addressing the allocation of FORA's assets, liabilities and obligations in advance of FORA's ultimate dissolution without (a) amending any contemplated or approved land uses within the former Fort Ord, (b) abandoning or altering any CEQA Mitigations required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, (all of which may be collectively referred to herein as the "FORA Program"). Adoption of this Transition Plan is exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the adoption of the Transition Plan may have a significant effect on the environment. The activities authorized by this Transition Plan do not involve the physical design, development, or construction of residential or nonresidential structures or any modification of land. Accordingly, the adoption of the Transition Plan would result in no physical change to the environment. Nothing in this Transition Plan is intended to change any part of the FORA Program that would have any impact on the environment. Following FORA's ultimate dissolution, any changes to the FORA policies and programs or any part thereof will be made by the respective land use jurisdiction(s) and any successor(s) to FOR A, which entities retain full discretion with respect to approvals for any changes to the FORA policies and programs and which entities will be responsible for compliance with all applicable laws, including but not limited to CEQA. Accordingly, the Board hereby finds and determines that this Transition Plan is not a project under CEQA and/or is

exempt as a mere change in the organization of governmental agencies which does not change the geographical area in which previously existing powers were exercised.

#### **Section 4. Insurance**

- 4.1 Transition Plan Insurance: FORA staff is directed to explore the availability and cost of a policy of insurance providing coverage for litigation that may arise against FORA, FORA's member jurisdictions, and/or LAFCO in connection with this Transition Plan, the assignments made pursuant hereto, the dissolution of FORA, or the designation of one or more entities as successor(s) to FORA and to report the results of such investigation to the Board no later than March 2019. The Board reserves the right to obtain such an insurance policy if it provides appropriate coverage and is not cost prohibitive in the judgment of the Board.
- 4.2 Tail Coverage: FORA staff is directed to explore the availability and cost of an endorsement, rider, or policy of insurance extending the reporting period and coverage of existing insurance policies, including general liability, workers compensation and premises liability insurance for the benefit of FORA's member jurisdictions and any successor(s) to FORA and to report the results of such investigation to the Board no later than March 2019. The Board reserves the right to obtain such an insurance policy if it provides appropriate coverage and is not cost prohibitive in the judgment of the Board.

#### **Section 5. Transition Plan Implementation:**

- 5.1 Transition Plan Implementing Agreements: In order to continue to foster regional cooperation and completion of the FORA program, the Board recommends that the land use jurisdictions may enter into one or more Transition Plan Implementing Agreement addressing funding for regional impacts and infrastructure related to completion of the redevelopment of the Base which agreements may include revenue sharing and allocation of resources for the benefit of the region. The Board strongly encourages all underlying jurisdictions with future prospective development to form Community Facilities Districts (or adopt substantially similar replacement funding mechanisms) to replace the revenues which would have been raised by the FORA adopted CFD Special Taxes. Additionally, the Board encourages member jurisdictions to include in documents about future projects language which will obligate future development projects to pay a CFD Special Tax (or substantially equivalent replacement fees). The Board also recommends that all land use jurisdictions, prior to FORA's dissolution, adopt the Regional Urban Design Guidelines as applicable to developments at the Base.
- 5.2 LAFCO Review: If LAFCO finds that this Transition Plan does not provide adequate guidance to LAFCO regarding assignment of FORA's assets and liabilities, designation of responsible successor agencies, or identification of remaining obligations in keeping with the requirements of Government Code section 67700, the Board requests that LAFCO return the Transition Plan with LAFCO's identified deficiencies at the earliest possible time (to enable possible further consideration and action by the Board).

5.3 Reserved Right of Modification: The Board hereby reserves its right to augment, clarify or modify this Transition Plan as law, facts, circumstances, or agreements may require.

**NOW THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:**

1. As outlined above, this Resolution and its provisions constitute the Transition Plan required by Government Code section 67700(b); and shall be updated by December 30, 2019; and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b);
3. The Board hereby finds that as adopted herein, the Transition Plan is not a project subject to CEQA; and
4. The Board directs the Executive Officer to submit this Transition Plan to LAFCO and execute all LAFCO required documents and pay all LAFCO required processing fees; and
5. The Board further directs staff to provide regular monthly progress reports on the implementation of this Transition Plan, including without limitation, bringing forth future implementing actions, status of Transition Plan Implementing Agreements, any LAFCO information or requests, and any subsequent information that might affect this Transition Plan.

Upon motion by Board member ---- seconded by Board member ---- the foregoing Resolution was passed on this \_\_\_\_ day of December, 2018, by the following vote:

AYE:  
NOE:  
ABSTENTIOS:  
ABSENT:

ATTEST:

\_\_\_\_\_  
Chair FORA Board

\_\_\_\_\_  
Michael A.  
Houlemard, Jr.,  
Clerk

DRAFT

**From:** [Molly Erickson](#)  
**To:** [FORA Board](#); [Dominique Davis](#); [Michael Houlemard](#); [Jon Giffen](#)  
**Cc:** [Supervisor Adams](#); [100-District 4 \(831\) 883-7570](#)  
**Subject:** KFOR comments for FORA board meeting of December 14, 2018 -- transition plan item  
**Date:** Thursday, December 13, 2018 5:00:51 PM  
**Attachments:** [18.12.13.SE.Itr.to.FORA.BOD.p.pdf](#)

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Chair Parker and members of the FORA Board: Please see attached letter.

Ms. Davis and Mr. Houlemard: Please forward this letter promptly to the board and tell me when that has been done. Thank you.

Molly Erickson  
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December 13, 2018

Via email to board@fora.org

Jane Parker, Chair  
Board of Directors  
Fort Ord Reuse Authority

Re: Proposed FORA transition plans

Dear Chair Parker and members of the board:

Keep Fort Ord Wild appreciates the opportunity to comment on the various proposed transition plans.

The staff-proposed plan's Section 1.1 claims that the plan "assigns policies, programs, and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA." FORA has not stated which policies, programs and mitigation measures survive the dissolution of FORA, and as a result this section and similar sections on this topic are vague and unclear. KFOR is concerned because to the extent that policies, programs, and mitigation measures of the Reuse Plan do not "survive," the transition plan would not comply with CEQA. Similarly, section 1.4 of the plan provides that "[t]o the extent the policies and programs of the Reuse Plan and Master Resolution survive the dissolution of FORA, those policies and programs are assigned to the underlying land use jurisdiction."

The draft plan goes beyond, and at the same time falls short of, what the FORA board is authorized to do by the FORA Act as amended. Subdivision (b)(2) of Government Code section 67700 states this in pertinent part:

The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.

(Gov. Code, § 67700, subd. (b)(2).) Thus, "assets and liabilities" shall be assigned, "responsible successor agencies" shall be designated, and a "schedule of remaining obligations" shall be provided. Instead of complying with the statute, the proposed plans purport to assign obligations, which is not authorized, not appropriate, and not legal.. (E.g., § 1.1 [plan "will establish a fair and equitable assignment of . . . obligations"]; § 1.2 [in "this Transition Plan . . . FORA is addressing the allocation of FORA's . . . obligations"]; § 2 ["Assignment of Assets, Liabilities, and Obligations"]; § 2.2 ["Liabilities and Obligations and Assignment Thereof: [¶] FORA's principal liabilities and obligations include the following: . . ."].) The plan fails to include the mandated schedule of remaining obligations. The proposed plans abandon at least some and possibly all of the Reuse Plan policies, programs and mitigations, which is not authorized and not appropriate. The plan purports to assign to Marina Coast Water



District “FORA’s rights of enforcement under the Implementation Agreements, to the extent they survive post-dissolution, regarding water allocations.” This appears to be an obligation, instead of an asset or a liability. The lack of definition of the term “ground water shortage” is problematic: “shortage” as determined by whom, on what basis, does it include inadequate water rights, does it include pumping more than recharge. It is not disputed that the current groundwater pumping is not sustainable because the groundwater source, the Deep Aquifer, is not being recharged. The plan says nothing meaningful or effective to address known water supply issues.

The staff-proposed plan refers to “any water service obligation already established by federal or state law or contract” but the plan fails to provide a schedule of any such obligation(s) and none exist. In October 2018, when KFWO counsel asked Mr. Houlemard for evidence of obligation to serve water, he responded by saying:

I am not sure what past comments you are referring to in your question, but Marina Coast Water District’s obligations are detailed in our services agreement that has been amended from time to time.

To this vague statement KFWO counsel responded as follows:

By "services agreement" are you referring to the FORA-MCWD "WATER/WASTEWATER FACILITIES AGREEMENT" as amended in March 2001, or something else? I do not see an obligation to serve future Fort Ord uses in that agreement. Please help me understand where in the document contains such an obligation? Are there any other obligations to serve other than as stated in that FORA-MCWD Facilities Agreement? I would appreciate your help in directing me. Thank you.

(See Exhibit A.) Mr. Houlemard did not respond.

Let there be no mistake: There is no enforceable obligation to serve water to Fort Ord. FORA statements that indicate otherwise are materially misleading. For example, the plan statement that “neither does this assignment reduce or eliminate any water service obligation already established by federal or state law or contract” implies that there is such an obligation, when there is not.

Footnote 2 of the staff-proposed plan states “In the event that the water allocations are found to be unenforceable or terminate upon the expiration of FORA, water services shall be in accordance with existing federal and state laws and contracts.” FORA has failed to identify what contracts exist, and these should be included in the plan or at least disclosed. FORA’s transition plan should not create a

guessing game by LAFCO, successor agencies, or the public. Unfortunately, the proposed plan creates that guessing game.

The plan states, under section “1.4 Reuse Plan and Master Resolution: To the extent the policies and programs of the Reuse Plan and Master Resolution survive the dissolution of FORA, those policies and programs are assigned to the underlying land use jurisdiction.” The Reuse Plan is not mentioned again. That is a serious omission. If the “policies and programs of the Reuse Plan and Master Resolution” are assets and/or liabilities, they should be listed as assignments so LAFCO, the jurisdictions and the public can have certainty as to what is being assigned and accepted. If the “policies and programs of the Reuse Plan and Master Resolution” are obligations then they should be listed on a schedule of obligations. Additional omissions include the failure to list the CEQA mitigations contained in and arising out of the Reuse Plan, and the failure to ensure that the mitigations will be enforced. Few mitigations have been satisfied; many mitigations have not been satisfied. They have not been implemented and FORA has not implemented them. The land use jurisdictions have not adopted many of them, and FORA has failed to assign them or list them as obligations. If the Reuse Plan goes away, then the land use designations in the plan would go away, and the land use jurisdictions would not be bound by those designations. KFOW has sent multiple letters to FORA in the past on these points – the transition plan, the viability of the Reuse Plan, and FORA’s failure to implement many of the mitigations in the Reuse Plan and the Reuse Plan EIR. If FORA needs the letters again, please let us know and we can send them. A problem with the claimed exemption(s) is that the status quo will be changed. Currently the Reuse Plan is effective, applicable, and enforceable. Under the proposals, after FORA dissolves, there would not be a Reuse Plan. That is a change to the status quo and a change to the land use policies, programs and mitigations in effect. It is a project under CEQA and it is not exempt.

The staff-proposed plan refers states that “FORA’s 2018-19 CIP projects that \$17,098,686 will remain to be funded for base-wide water augmentation improvements after June 30, 2020.” It is not clear what “\$17,098,686” refers to and which projects it would fund in whole or in part. The plan does not provide a specific citation to the CIP and KFOW cannot find support for the claim in the 2018-2019 capital improvement program. The 2018-2019 FORA CIP says water project “WA00,” described as “General CEQA mitigations” are “\$15,815,615.” All CEQA mitigations to which FORA is obligated should be on a schedule of obligations. To extent that the “base-wide water augmentation improvements” are required to comply with Reuse Plan policies, programs and/or mitigations, including them in the CIP is not a valid assignment, and it is not clear which agency would enforce or implement them.

The staff-proposed plan states that “all CFD Special Taxes collected and remaining unexpended immediately prior to FORA’s dissolution shall first be directed to completing in progress construction projects (such as South Boundary Road) as identified in FORA’s final year CIP.” The South Boundary Road project is not under

construction. The road is in litigation. In any event, FORA has admitted that FORA has no ability to proceed with FORA's approved project unless and until the California Native Plant Society agrees that the existing rare plant reserve can be destroyed by the road. The terms of the initial study are very clear on this point. FORA has not even contacted the California Native Plant Society to ask permission to build the road, and based on the Society's positions to date it is highly unlikely that FORA's request would be granted by the Society in any event.

The staff-proposed plan uses the term "base-wide facilities" that is not defined, confusing, and materially misleading because nothing in the subsequent paragraph addresses the topic. The plan refers to "FORA's ultimate dissolution" and does not distinguish or define how that is different from FORA's "dissolution" which is a term used elsewhere in the plan. KFOR continues to object to the proposed CEQA conclusions and suggested exemptions; the plans do not fit the exemptions. The draft plan proposes to abandon many or all of the Reuse Plan policies, programs and mitigations. Many of the land use jurisdictions have not adopted Reuse Plan policies, programs and mitigations. Thus, the plan's claim that "any changes to the policies and programs of the Reuse Plan or any part thereof will be made by the respective land use jurisdiction(s) and any successor(s) to FORA only after full compliance with all applicable laws, including but not limited to CEQA" is simply not true. If FORA's position is to the contrary, the plan should be corrected to make this issue clear. Ambiguity does not serve FORA or the public interest and does not comply with the law, including the Government Code and CEQA.

The proposed recital that "FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act ("CEQA") to implement a program addressing policies, programs and mitigation measures of the Reuse Plan, including a capital improvement program and finance program addressing basewide facilities" is unnecessarily confusing. It conflates mandatory acts (e.g., policies, programs, and mitigations) with voluntary and discretionary acts. Voluntary and discretionary acts include, for example, capital improvement projects that were not mentioned in the Reuse Plan and instead were added many years later, such as South Boundary Road widening and realignment, and capital improvement project that were mentioned in the Reuse Plan but were later changed in material ways such as location, origin and destination, such as the Eastside Road, which FORA later relocated and renamed the Eastside Parkway, and which FORA even later relocated and renamed the North-South Connector.

The reference in the plan to a "mandated" water supply shortage is meaningless and ineffective because the term is not defined or even explained and there is no such thing in any event. At best it is vague and ambiguous.

The staff-proposed plan "Section 1 Findings and Determinations" create inconsistencies, ambiguities and confusion. The section should be deleted. FORA was

not directed to adopt such findings and determinations. They are not helpful or merited in any event, and their effect is deleterious and compromises the plan. For example “1.7 Transportation and Transit” says this:

The Board hereby finds and determines that implementation of the on-site Fort Ord transportation network and transit policies and programs are essential to the long term success of the economic recovery of the reuse

The statement is inconsistent with statements made elsewhere in plan, including, for example, section 2.2.6 [“nothing in this Transition Plan changes the authority or the discretion of a lead agency to determine whether, how or when to fund and construct any particular road or transit project”] and creates ambiguity and uncertainty.

The numerical references in the plan to documents listed in Exhibit A are inaccurate. The cited documents are not at the numbers stated in the plan, and the plan does not provide names of the documents so there is no way for KFOR to know what document the plan purports to reference and thus KFOR is unable to comment further on those sections.

The plan is a moving target and for that reason it is impossible for KFOR and its members to adequately comment on it. There are multiple versions of the transition plan. There are versions from three or four different groups, and several different and changing iterations from the different groups. KFOR makes these comments on all plans to which each comment applies, and KFOR does not limit its comments solely to the examples referenced in the staff-proposed plan.

Thank you again for the opportunity to comment. In late November, Ms. Damon, the prevailing wage coordinator for FORA, invited Landwatch to a meeting on short notice. Landwatch invited KFOR. I and a KFOR representative attended the LandWatch meeting with Ms. Damon and FORA's legal counsel. It was not much of a meeting because Ms. Damon refused to engage in a dialogue or answer questions about the transition plan, and did not want to hear KFOR's comments about CEQA concerns. KFOR regrets the lost opportunities.

Very truly yours,

STAMP | ERICKSON

*Molly Erickson*

Molly Erickson

## Exhibit A, p. 1

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**Subject:** Re: Obligation to serve water  
**From:** Molly Erickson (erickson@stamplaw.us)  
**To:** Michael@fora.org;  
**Cc:** jgiffen@kaglaw.net;  
**Date:** Tuesday, November 6, 2018 6:56 PM

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Mr. Houlemard:

I have not seen a response from you to this question. Would you please respond, or please forward your response if I missed it? Thank you.

Molly

Molly Erickson  
**STAMP | ERICKSON**  
479 Pacific Street, Suite One  
Monterey, CA 93940  
tel: 831-373-1214, x14

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**From:** Molly Erickson <erickson@stamplaw.us>  
**To:** Michael Houlemard <Michael@fora.org>  
**Cc:** Jon Giffen <jgiffen@kaglaw.net>  
**Sent:** Wednesday, October 3, 2018 4:38 PM  
**Subject:** Re: Obligation to serve water

Mr. Houlemard:

Thank you. By "services agreement" are you referring to the FORA-MCWD "WATER/WASTEWATER FACILITIES AGREEMENT" as amended in March 2001, or something else?

I do not see an obligation to serve future Fort Ord uses in that agreement. Please help me understand where in the document contains such an obligation? Are there any other obligations to serve other than as stated in that FORA-MCWD Facilities Agreement? I would appreciate your help in directing me. Thank you.

Molly

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**From:** Michael Houlemard <Michael@fora.org>  
**To:** Molly Erickson <erickson@stamplaw.us>  
**Cc:** Jon Giffen <jgiffen@kaglaw.net>  
**Sent:** Wednesday, October 3, 2018 3:59 PM  
**Subject:** RE: Obligation to serve water

Molly,

Thank you for the question. I am not sure what past comments you are referring to in your question, but Marina Coast Water District's obligations are detailed in our services agreement that has been amended from time to time.

Michael

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**From:** Molly Erickson [mailto:erickson@stamplaw.us]  
**Sent:** Wednesday, October 03, 2018 3:22 PM  
**To:** Michael Houlemard <Michael@fora.org>  
**Subject:** Obligation to serve water

Mr. Houlemard:

## Exhibit A, p. 2

I have heard FORA officials say that the Marina Coast Water District is obligated to serve potable water to new water demanding uses on Fort Ord, or similar words. Would you please tell me whether that statement is accurate, and correct the statement as necessary? Also, please let me know what the obligation is based on -- as in, a contract, a statute, a resolution, etc. Thank you.

Regards,

Molly Erickson  
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