



FORT ORD REUSE AUTHORITY

SPECIAL WORKSHOP FORT ORD REUSE AUTHORITY BOARD OF DIRECTORS

AGENDA

1:00–4:00 PM, Wednesday, May 8, 2019
Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

Administrative Committee members have been invited to be present at the workshop, and a quorum may be in attendance acting only as support to members of the Board.

- 1. CALL TO ORDER AND ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
- 4. PUBLIC COMMENT PERIOD:** Members of the audience wishing to address the Board on matters within the jurisdiction of the Authority but not on the agenda may do so during the Public Comment Period. You may speak for a maximum of three minutes on any subject. Public comments on specific agenda items will be heard at the time the matter is being considered by the Board.
- 5. BUSINESS ITEMS** **INFORMATION**
 - a. Capital Improvement Program (CIP)
 - i. Background/Purpose/Role
 - ii. Proposed/Draft Fiscal Year 2019-2020 CIP (Policy Decisions)
 - iii. Future of the CIP (Sunset/Transition Impact)
 - b. 2018 Transition Plan
 - i. Background/Purpose
 - ii. 2018 Transition Plan Implementing Agreements
 - iii. Transition Legislation
 - c. “Side-by-Side” CIP/Transition Plan Contrast/Comparison/Linkage
- 6. ADJOURNMENT**

NEXT REGULAR MEETING: May 10, 2019 AT 2:00 P.M.

Persons seeking disability related accommodations should contact the Deputy Clerk at (831) 883-3672 48 hours prior to the meeting. Agenda materials are available on the FORA website at www.fora.org.

FORA Capital Improvement History

The FORA Board has reviewed, considered and adopted annual CIP documents since 2001-02, as required by State law and the 1997 Fort Ord Base Reuse Plan (BRP). The BRP includes a Development and Resource Management Plan (DRMP) (BRP Vol. 1, pgs. 194 to 203), which informs and supports the CIP. The DRMP is an identified BRP Final Environmental Impact Report mitigation for impacts on local water supplies and anticipated increased travel demand on the regional transportation system. The DRMP also includes a section about the CIP, stating: “FORA shall annually update the CIP to reflect the proposed capital projects. The extension of infrastructure shall be made on a first-come-first served basis consistent with funding capabilities and best engineering practices” (BRP Vol. 1, pg. 202). Due to the DRMP’s requirements, FORA staff presents an annual CIP to the FORA Board for its consideration. Staff presents the CIP in May for the Board to review the document and provide direction to staff on any changes to the CIP prior to adoption.

The FORA CIP matches FORA capital obligations (expenditures) with available revenue sources. FORA’s key capital obligations include: Transportation/Transit, Water Augmentation, Habitat Conservation Plan endowment set aside, and Building Removal.

https://fora.org/Board/2019/Packet/Additional/FY19-20_CIP_COMPLETE_DRAFT_050319_v1.pdf

FORT ORD REUSE AUTHORITY RESOLUTION NO. 18-11

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. In 1991, the Secretary of Defense announced the proposed downsizing of the United States Army Fort Ord Military Reservation ("Fort Ord") under the Base Realignment and Closure Act. The relocation by the United States Army (the "Army") of the 7th Infantry Division - Light resulted in the loss to the communities and populace of the Monterey Peninsula and adjoining greater Monterey Bay region of the significant economic, social, and cultural contributions that had been associated with the military presence.
- B. Over the years in which Fort Ord was an active military base, the Army entered into contracts with regional entities to address water and wastewater needs of the reservation. On or about 1981, the Army and Monterey Regional Water Pollution Control Agency ("MRWPCA") entered into Contract No. DACA 05-81-C-0021 wherein the Army participated in the construction of the Monterey Regional Wastewater Treatment Plant and such agreement was amended several times, ultimately resulting in Contract No. DAKF 03-83-C0527 wherein MRWPCA agreed to provide sanitary sewage service to the Army. A subsequent agreement was entered into between the Army, Marina Coast Water District ("MCWD"), the Fort Ord Reuse Authority ("FORA") and MRWPCA regarding wastewater treatment. That agreement (referenced as Document 136 in Exhibit A attached hereto and incorporated by this reference) provided for up to 3.30 million gallons per day of wastewater to be accepted and treated by MRWPCA.
- C. On or about September 21, 1993, the Army entered into Contract No. A-6404 with the Monterey County Water Resources Agency ("MCWRA") for annexation of the former Fort Ord lands into MCWRA Zone 2 and 2A. That Agreement (referenced as Document 93 in Exhibit A attached hereto and incorporated by this reference) is the basis for the Army's pumping limitation of 6,600 acre-feet per year ("AFY") of water from the Salinas Valley Groundwater Basin and of that, no more than 5,200 AFY from the 180 and 400-foot aquifers therein. On or about October 23, 2001, the Army quit claimed its water and wastewater infrastructure to the Fort Ord Reuse Authority and issued two easements to FORA in DACA 05-0-00-57 and DACA 05-9-00-58. The easements to FORA required, among other obligations, assumption of the obligation to provide water required by the Installation-Wide Habitat Management Plan, the Army's obligation to cooperate and coordinate with parcel recipients, MCWRA, FORA and others to ensure all owners of property at the former Fort Ord will continue to be provided an equitable supply of water at equitable rates and to cooperate and coordinate with MCWRA, MRWPCA, FORA, property recipients and others to ensure Non-Army Responsibility Mitigations required by the records of decision dated December 23, 1993 and June 8, 1997 are met and that it will meet all requirements of the Army Agreement with MCWRA approved on September 21, 1993. On October 26, 2001, FORA in turn quitclaimed water and wastewater infrastructure and assigned said easements to MCWD requiring compliance with all underlying requirements. (See Document 128)

- D. After the announcement but prior to the implementation of the base downsizing/closure, political leaders within the affected region formed the Fort Ord Community Task Force (the "Task Force") in order to develop recommendations for moving forward with a recovery effort. These recommendations were embodied in a 760-page June 1992 Strategy Report prepared by the Task Force (the "Strategy Report"). The Strategy Report may be accessed via Exhibit B – Reference Documents attached hereto and incorporated by this reference.
- E. Predicated upon the Strategy Report, in October 1992 the Fort Ord Reuse Group ("FORG") was organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of Fort Ord. After preparing an initial plan and subsequently refining it, the revised plan was considered and adopted by FORG in 1993. Those early planning efforts recognized the significant costs associated with the implementation of any plan to convert Fort Ord into civilian use and reinforced the validity of the regional and base-wide approaches that were inherent in the conclusions reached by the Task Force in its Strategy Report.
- F. FORA 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.
- G. 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.
- H. 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 are available on the FORA website at www.fora.org or may be accessed via Exhibit B - Reference Documents attached hereto and incorporated by this reference.
- I. 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.
- J. 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.
- K. In the Reuse Plan, FORA identified revenues generated from sales and leases of real property within the former Fort Ord, FORA's share of taxes on real property located within the former Fort Ord, and base-wide assessments or development fees, as the primary property-related sources of funding with which to implement the basewide facilities outlined in the Capital Improvement Program ("CIP").
- L. As is more fully described below, in connection with funding implementation of the Reuse Plan, FORA entered into multiple agreements with local, state, and federal entities, established a public financing mechanism, and prepared a CIP. The most current CIP is available on the FORA website at www.fora.org or may be accessed via Exhibit B - Reference Documents attached hereto and incorporated by this reference.

- M. 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.
- N. 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.
- O. 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.
- P. 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.

- Q. 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)

- R. 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, 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 Findings and Determinations:

1.1 Base-wide Facilities:

The Board hereby finds and determines that this Transition Plan assigns all assets and liabilities relating to FORA's policies, programs and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA. The Board further finds that new implementing agreements negotiated with the landholding jurisdictions (or, in the absence of such an implementing agreement with a respective jurisdiction, the other provisions of this Transition Plan) will establish a fair and equitable assignment of assets and liabilities, and provides a schedule of obligations pursuant to Government Code section 67700.

1.2 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 mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, or (d) avoiding the satisfaction and fulfillment of any of FORA's other commitments, pledges, or

promises (all of which may be collectively referred to herein as the "FORA Program"). CEQA only applies to government activities that may cause a direct or a reasonably foreseeable indirect physical change in the environment. Public Resources Code section 21065. CEQA Guidelines, Section 15378(b) also provide that certain activities are not CEQA "Projects" including (4) The creation of government funding mechanism or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; and (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

This Transition Plan does not authorize any particular development, and does not itself change any of the land use requirements applicable to projects within the geographic area of the former Fort Ord. It is not a "project" and no environmental impact report or other CEQA document is required.

To the contrary and to the extent not already so contained in their general plans, this Transition Plan calls for the Cities of Marina, Seaside, Monterey and Del Rey Oaks and the County of Monterey to follow the Reuse Plan policies and programs. After FORA's ultimate dissolution, 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.

1.3 Revenue Sharing and Financial Contribution:

The Board hereby finds and determines that the Implementation Agreements with the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County of Monterey require that each entity pay its fair and equitable share of the cost of the FORA Program (in accordance with the formulas expressed therein and subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations).

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, all assets and liabilities relating to those policies and programs are assigned to the underlying land use jurisdiction. 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 further finds and determines that the policies contained in the Master Resolution should be continued and enforced 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.

1.5 Funding of Habitat Protection:

The Board hereby finds and determines that regional, integrated base-wide habitat protection is best funded by the CFD Special Taxes or substantially similar base-wide replacement funding mechanisms. The Board has identified and set aside approximately 30.2% of collected CFD Special Taxes to be applied toward base-wide habitat management and finds that any replacement funding mechanism should be designed to generate similar levels of revenue for such purposes.

1.6 Environmental Services Cooperative Agreement:

The Board hereby finds and determines that the long term stewardship obligations and related monitoring identified by the Army for its munitions removal activities are crucial to the future success of the recovery program. The Board further finds that following the dissolution of FORA the current full time staffing of the Environmental Services Cooperative Agreement ("ESCA") should be considered for retention through the anticipated termination of the ESCA in 2028 by the agreed upon successor to FORA. That successor is identified in the ESCA contract documents as the County of Monterey, City of Seaside, City of Marina or a joint powers agency.

1.7 Transportation and Transit:

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.

1.8 Water and Wastewater:

The Board hereby finds and determines that it has made water allocations in accordance with its obligation under the EDC MOA to ensure a fair and equitable water supply to all property recipients and imposed those requirements in the Implementation Agreements. In light of the possibility of a water supply shortage that reduces the overall amount of water available for the Ord Community, MCWD staff has committed by letter dated October 29, 2018 to work with the jurisdictions to develop a plan to reduce each entity's water allocation in an equitable manner, consistent with the 1993 Army-MCWRA Agreement and the Economic Development Conveyance Agreement obligation to provide a fair and equitable water supply to all property recipients of former Fort Ord lands.

Section 2 Assignment of Assets, Liabilities, and Obligations:

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 retirement purposes. 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, FORA's reserve funds and/or 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, allocations shall be made, and the funds shall be applied or distributed at or before FORA's dissolution in accordance with the approved FORA budget for that year.

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 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. In the event that as of immediately prior to FORA's dissolution no such litigation or indemnity obligation is pending, the unexpended balance of such reserves shall be applied to capital improvement program projects in accordance with the Final 2020 Capital Improvement Program and/or distributed in accordance with Transition Plan Implementing Agreements. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA, the unexpended balance of such reserves shall be distributed to the County of Monterey, as escrow holder, in accordance with Section 4.2 hereinbelow and managed in accordance with Section 4.3 hereinbelow.

2.1.4 Habitat Funds: 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 base-wide habitat management. 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 Cooperative joint powers authority (the "HCP Cooperative") has been established, all of the habitat management funds held by FORA immediately prior to FORA's dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the base-wide Habitat Conservation Plan for Fort Ord being administered by the HCP Cooperative. If no HCP Cooperative is then in existence, but a joint powers authority has been formed for the management of Habitat Management Areas within the former Fort Ord, then a portion of the habitat management funds held by FORA immediately prior to FORA's dissolution shall be transferred to the joint powers authority for use in connection with the management of Habitat Management Areas within the former Fort Ord and the remainder in a program for incidental take permits for future development. If no HCP Cooperative 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 addressing habitat management areas (HMA) on the one hand and incidental take permits for future development on the other and distribute funds according to that program.

2.1.5 Capital Improvement Funds: Except for those CFD Special Taxes specifically identified for the habitat conservation plan, 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. Any CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall next be directed to completing other projects as identified in FORA's final year CIP. These capital improvement funds shall be transferred to the

jurisdiction assigned responsibility for completing construction of the respective project, which shall be the jurisdiction in which the majority of the project is located if that jurisdiction has an executed Transition Plan Implementing Agreement. If there is no Transition Plan Implementing Agreement, those funds shall be redistributed to those jurisdictions with Transition Plan Implementing Agreements in proportion to the priorities of each project in the final year CIP unless provided otherwise in a Transition Plan Implementing Agreement.

2.1.6 Other Funds: Except as otherwise specifically identified in this Transition Plan, all funds in FORA's other accounts, 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 2.1.5 for funds generated by the CFD Special Taxes, land sales revenues and/or property tax revenues. Except as otherwise specifically provided herein, funds related to the general administration of FORA, such as insurance refunds or other general fund revenues remaining unexpended or unallocated immediately prior to FORA's dissolution, shall be used first to address any unfunded administrative liabilities and only after the full satisfaction of such administrative liabilities shall any remaining balance of such funds be applied and distributed according to Section 2.1.5.

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. All rights under the ESCA are assigned to Seaside effective as of FORA's dissolution, 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, remaining after reimbursement to the County for its administrative costs, shall first be directed to any shortfall in funds available to satisfy liabilities or obligations unrelated to projects described in FORA's final year CIP. After the full satisfaction of all such liabilities and obligations any remaining proceeds shall next be directed toward projects described in FORA's final year CIP as outlined in Paragraph 2.1.5 hereinabove.

2.1.9 Real Property: FORA is obligated to cause certain former Fort Ord property to be transferred to the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act. Additionally, FORA is entitled to receive certain easements to enable implementation of the Reuse Plan. See item 127 in Exhibit A attached hereto and incorporated by this reference. As of the anticipated date of dissolution of FORA, not all real property interests will have transferred. Upon FORA's dissolution and the repeal of the FORA Act as of January 2021, the principal local public agent for acquisition, disposition and sale of real property transferred from the Army will need to be re-established through state legislation and/or federal designation and assignment of contractual rights. In particular, the landfill parcel currently located within

the unincorporated portion of the County of Monterey but within the sphere of influence of the City of Marina will not transfer until sometime after 2022. Currently, the County is obligated to take the landfill parcel. See item 17 in Exhibit A attached hereto and incorporated by this reference. FORA staff shall seek all necessary legislation and approvals from the state and federal governments to enable the landfill parcel to be directly transferred to the County of Monterey or its designee. Necessary legislation and approvals from the state and federal governments for direct transfer of the landfill parcel may take a substantial amount of time to receive. The County is therefore requested to identify any designee recipient of the landfill parcel at least twelve (12) months prior to FORA dissolution in order to seek and receive such approvals and/or legislation for any designee recipient. If the County fails to timely specify a designee to receive the landfill parcel, the Army shall transfer the landfill parcel directly to the County of Monterey.

Additionally, there are parcels within the City of Seaside which will not transfer prior to 2020 due to a change in the State of California clean up requirements for residential use. FORA staff is directed to work with the Army and the City of Seaside to bring resolution to potential transfer issues prior to June 30, 2020. In the event that no resolution(s) are reached, FORA shall seek all necessary legislation and approvals from the state and federal governments to enable the Seaside parcels to be directly transferred to the City of Seaside or its designee.

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 or by the terms of the insurance policy itself, FORA shall not keep any of such policies of insurance in force beyond the date of their expiration.

With respect to the Pollution Legal Liability ("PLL") policy (Item 30 in Exhibit A), FORA currently holds approximately \$267,000 in a separately identified account for the PLL insurance self-insured retention ("SIR"). These funds shall be utilized to defray the administrative costs for the successor to FORA as the First Named Insured and to defray the costs in the event of a claim requiring application of a self-insured retention amount. The County agreed to negotiate to become FORA's successor as a First Named Insured (Monterey County Board Order December 2, 2014) and to take on the First Named Insured obligations and receive the FORA self-insured retention (SIR) fund. In the event, the County does not wish to become the First Named Insured, the PLL policy, Endorsement 15 provides for a FORA designated successor. Any successor that becomes the First Named Insured shall be entitled to receive the \$267,000 SIR funds. In the event, the SIR is not utilized for any claims made, the amount in the fund shall be returned, after any administrative deduction for contract management by the successor, to the named insureds in proportion to the amounts of their insurance coverages.

2.2 Liabilities and Obligations 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 \$9,333,172.¹ 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/or encumbering future property tax revenues, to the extent legally permissible, pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired. The County shall be entitled to recover its reasonable costs of administering and distributing said property tax revenues. 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 2.1.4 hereinabove.

2.2.3 Capital Improvement Funds: See discussion in Section 2.1.5 hereinabove.

2.2.4 ESCA Reimbursement: See Section 2.1.7 hereinabove.

2.2.5 Building Removal: In the absence of a consolidated building removal program and/or legislative solution to the issue of blight, any building removal not required under the CIP shall be addressed, after FORA's dissolution, if at all, by the jurisdictions in which the remaining abandoned buildings are located after compliance with all applicable laws. 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.

2.2.6 Transportation and Transit: The Board finds that as of 2018, there are 19 transportation and transit projects identified in the capital improvement program. These projects are listed in Document 120 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. Of those 13, FORA has reimbursement agreements in place with lead agencies City of Marina and County of Monterey. The Board identifies those Agreements (Documents 114 and 115) to be addressed in the new Transition Plan Implementing Agreements as to how revenue generation and revenue sharing will occur. Those Reimbursement Agreements shall terminate on June 30, 2020, unless otherwise addressed in the Transition Plan Implementing Agreements. The new Transition Plan Implementing Agreements should also address contributions or mechanisms to lead agencies TAMC and MST to replace revenues generated by the expiring CFD Special Tax for their lead agency projects. 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

¹ Note, these amounts do not include approximately \$1.16M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

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, so as to inform the last year CIP. The schedule for implementing transportation and transit projects shall be determined by the lead agency in consultation with the jurisdictions who are collecting revenue for the project, but 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. All future projects will be subject to compliance with all applicable law as it exists at the time of project approval and implementation. Any required project-specific CEQA review or compliance shall be the responsibility of the designated lead agency.

2.2.7 Water/Wastewater: This Transition Plan hereby assigns to MCWD, effective as of the dissolution of FORA, FORA's rights of enforcement under the Implementation Agreements, to the extent they survive post-dissolution, regarding water allocations. In the event that any jurisdiction's approved developments exceed the jurisdiction's approved water allocation, MCWD may decline to issue any further water connection permits until the offending jurisdiction brings its water allocation into compliance or MCWD develops or obtains access to an augmented water supply sufficient to cover any excess. In the event of a ground water shortage, any resulting reductions in the amount of water supplies shall be applied fairly and equitably across all jurisdictions. MCWD and the jurisdictions shall work together as to how to apply a fair and equitable reduction of water supply amongst the underlying land holding jurisdictions. Nothing in this assignment creates any new obligation to utilize groundwater to meet the water service needs of the jurisdictions, but neither does this assignment reduce or eliminate any water service obligation already established by federal or state law or contract. 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. In its October 29, 2018 letter MCWD has confirmed its commitment to working with the jurisdictions on water supply needs in a fair and equitable manner. Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement, jurisdictions may alter their relative water allocations, as identified in the Implementation Agreements² only by written agreement with other jurisdictions. To the extent possible, the jurisdictions may also agree among themselves as to what fair and equitable reduction in water allocation would be applied in the instance of a mandated water shortage in a written agreement and with concurrence of MCWD. As part of the MCWD ongoing commitment to work with the jurisdictions they are requested to honor any alternate water allocations as agreed between two or more jurisdictions as though the new agreed upon allocation had been set forth in the Implementation Agreements.

2.2.8 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.

² 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.

2.2.9 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 assigned as follows: If the obligation is related to the use of real property, it shall be assigned to the underlying land use jurisdiction unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. If the liability or obligation is unrelated to the use of real property, either FORA or LAFCO shall notify the appropriate insuring entity or the County, and/or shall expend and encumber such additional funds as are necessary to fully discharge any liability, including without limitation by applying monies on hand in the FORA accounts and/or encumbering future property tax revenues pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired.

Section 3 Insurance:

3.1 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.

3.2 Tail Coverage:

FORA staff is directed to explore the availability and cost of an endorsement, rider, or policy of general liability insurance extending the reporting period and coverage of such 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 4 Transition Plan Implementation:

4.1 Transition Plan Implementing Agreements:

In order to continue to foster regional cooperation and completion of the FORA program, the Board requests that each affected entity and/or land holding member jurisdiction enter into a Transition Plan Implementing Agreement addressing how the respective entity or jurisdiction will generate revenues to meet its obligations as assigned in this Transition Plan or as agreed upon in the Transition Plan Implementing Agreements and include revenue sharing provisions between those that will generate revenues and those implementing CIP projects, and such other matters as may be required to implement this Transition Plan, together with a schedule of regular meetings to assess and update habitat, transportation, transit and water augmentation needs in Fort Ord. Notwithstanding that this Transition Plan requests that each member jurisdiction establish, adopt or participate in one or more replacement funding mechanism(s) and revenue sharing agreements that address all parts of FORA's final year CIP, this Transition Plan does not specify any specific funding mechanism. 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 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).

4.2 Escrow:

In the event that as of immediately prior to FORA's dissolution, there are litigation or indemnity obligations pending, the unexpended balance of the litigation reserves set forth in Section 2.1.3 shall fund an escrow account for the LAFCO Indemnification Agreement for the purpose of paying outstanding legal costs, court judgments, settlements, or other litigation costs that are not covered by insurance and are unable to be paid by FORA due to its dissolution. The initial escrow account holder shall be the County of Monterey, who shall be entitled to reimbursement for reasonable administrative costs of such administration. The escrow account shall be managed by a panel of not less than five (5) representatives, one from each land holding jurisdiction, and all approved by a majority of the member jurisdictions. The escrow account shall be maintained for three (3) years, after which any remaining money in the account shall be used to pay for a CIP project expense, including but not limited to habitat management, as determined by the panel.

4.3 Litigation Management:

In the absence of either (a) FORA approved Transition Plan Implementing Agreements entered into with each of the land holding jurisdictions identifying a successor or successors in interest to FORA relative to post FORA litigation or (b) an agreement entered into by all of the land holding jurisdictions that post FORA litigation may be managed by any one or more, but less than all, of the land holding jurisdictions, any post FORA litigation shall be managed by any land use jurisdiction that is an identified real party(ies) in interest for such pending litigation.

4.4 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).

4.5 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:

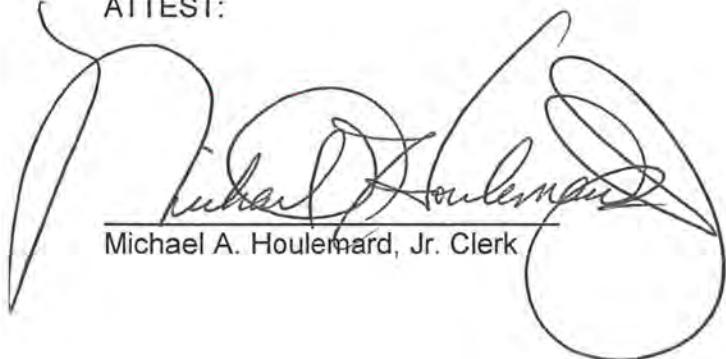
1. As outlined above, this Resolution and its provisions constitute the Transition Plan required by Government Code section 67700(b); and shall be updated by December 30, 2019; and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b);
3. The Board hereby finds 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 Gunter seconded by Board member Phillips the foregoing Resolution was passed on this 19th day of December, 2018, by the following vote:

AYES: PARKER, PHILLIPS, ADAMS, OGLESBY, WIZARD, EDELEN, CARBONE,
GARFIELD, GUNTER
NOES: O'CONNELL
ABSTENTIONS: NONE
ABSENT: MORTON, HAFFA, REIMERS

ATTEST:



Michael A. Houlemaard, Jr. Clerk



Frank O'Connell, Immediate Past Chair

GLOSSARY

"Army" means the United States Army.

"Board" means the governing board of the Fort Ord Reuse Authority, as specified in Government Code section 67660.

"CalPERS" means the California Public Employees' Retirement System.

"CEQA" means the California Environmental Quality Act, as amended to date (Public Resources Code section 21000 and following).

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly known as Superfund, as amended to date (42 U.S. Code Chapter 103 and following).

"CFD" means a Community Facilities District within the former Fort Ord formed pursuant to the Mello-Roos Community Facilities Act of 1982, as amended to date (Government Code section 53321 and following).

"CFD Special Taxes" means the special taxes collected through the Community Facilities District on properties to be developed within the former Fort Ord.

"CIP" means a Capital Improvement Program adopted by the Fort Ord Reuse Authority.

"EDC MOA" means the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

"EDC Property" means the real property transferred pursuant to the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

"ESCA" means the Environmental Services Cooperative Agreement entered into between the United States Army and the Fort Ord Reuse Authority, as amended to date.

"FORA Act" means, collectively, SB 899 and AB 1600 adopted in 1994 and amended in 2012, as codified at (i) Government Code Title 7.85, Chapters 1 through 7, commencing with Section 67650, and (ii) selected provisions of the California Redevelopment Law, including Health and Safety Code Sections 33492 *et seq.* and 33492.70 *et seq.*

"FORA" means the Fort Ord Reuse Authority.

"FORA Program" has the meaning given in Section 1.2.

“FORG” means the Fort Ord Reuse Group organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of the former Fort Ord.

“Fort Ord,” including references to the territory or area of Fort Ord or the former Fort Ord, means the geographical area described in the document entitled “Description of the Fort Ord Military Reservation Including Portion of the Monterey City Lands Tract No. 1, the Saucito, Laguna Seca, El Chamisal, El Toro and Noche Buena Ranchos, the James Bardin Partition of 1880 and Townships 14 South, Ranges 1 and 2 East and Townships 15 South, Ranges 2 and 3 East, M.D.B. and M. Monterey County, California,” prepared by Bestor Engineers, Inc., and delivered to the Sacramento District Corps of Engineers on April 11, 1994 or the military base formerly located on such land, as the context requires.

“HCP Cooperative” means a joint powers authority contemplated to be established to administer a habitat conservation program at the former Fort Ord.

“Implementation Agreements” means agreements entered into beginning in 2001 between the Fort Ord Reuse Authority 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, as such agreements may have been amended to date.

“LAFCO” means the Monterey County Local Agency Formation Commission.

“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended.

“MCWD” means the Marina Coast Water District.

“MCWRA” means the Monterey County Water Resources Agency.

“MRWPCA” means the Monterey Regional Water Pollution Control Agency.

“Reuse Plan” means the Fort Ord Base Reuse Plan and its accompanying environmental impact report adopted and certified by the FORA Board in June 1997 to guide the reuse of the former Fort Ord, all as amended from time to time.

“Strategy Report” means the June 1992 report prepared by the Fort Ord Community Task Force in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

“Task Force” means the Fort Ord Community Task Force formed in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

“Transition Plan Implementing Agreements” means the agreements contemplated to be entered into with the land use jurisdictions to implement the provisions of the Transition Plan.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

| | | |
|----------------------|---|--------------------|
| Subject: | 2018 Transition Plan Progress Report and Legislative Update | |
| Meeting Date: | April 12, 2019 | INFORMATION |
| Agenda | 8b.i | |
| Number: | | |

RECOMMENDATION:

- 1) Receive Status Update on Pending Legislation
- 2) Receive Fort Ord Reuse Authority ("FORA") 2018 Transition Plan Progress Report

BACKGROUND:

At the March 22, 2019 Board meeting the FORA Board directed that draft legislation be submitted to the Legislative offices. Accordingly, those items were transmitted to our legislative offices. This report provides an update on legislation that will affect the transition.

STATUS UPDATE – PENDING LEGISLATION

Senator Monning introduced two bills related to the FORA Act. Senate Bill (SB) 189 and SB533. SB 189, as currently drafted, among other things, extends FORA and the community facilities district by two (2) years, creates a re-comprised 5-member board of the underlying land use jurisdictions, property tax revenues, revision of the community facilities district ("CFD") boundaries and a California Environmental Quality Act ("CEQA") exemption. SB533 addresses prevailing wages, making all projects on Fort Ord public works projects. Each of those bills is making its way through the committees. As a part of the committee hearings and even afterwards, the language of the bills may change in form and/or substance. We anticipate SB189 to be heard in both the Senate Governance Committee and the Environmental Quality Committee. We expect SB533 to be referred to the Rules Committee for potential future committee hearing referral. Attached please find copies of SB189 and SB533 in their available form as of April 2, 2019. We can make updates available as we receive them from the legislative offices. Staff has been informed of transmittals and comments by local stakeholders and member jurisdictions to Senator Monning's office and we do expect that during the committee hearings and even perhaps on the floor, the language of the bills may change in form and/or substance.

As currently drafted, Senate Bill 189, incorporates several Board recommended items from the legislative language and intent forwarded to the Senator's office. However, it differs in some significant ways:

- A. It removes CSU Monterey Bay from the FORA recommended Successor Board language, leaving a 5-member board comprised of a representative from the underlying cities and County;
- B. It imposes a 2-year end date through 2022;
- C. It sustains the FORA CFD through 2022 and provides the ability for the boundaries to be modified by filing a revised boundary map;
- D. It dissolves property tax revenues beyond 2022, unless it is for debt issued by FORA prior to 2022;
- E. It retains the 50-50 land sales revenues split in place until 2022;
- F. It restructures the limited purpose and jurisdiction form of Board; and
- G. It includes a CEQA exemption for the reorganization, noting CEQA is still required to be performed by the jurisdictions for individual projects.

As currently drafted, SB 533 would deem as **public works** any work performed within the territory of Fort Ord if the contractor or subcontractor is required to pay prevailing wages pursuant to a resolution of the Fort Ord board, deed restriction, or covenant. The bill would authorize the Labor Commissioner, for the purpose of enforcing compliance with specified prevailing wage and payroll record provisions, to issue civil wage and assessment penalties to a contractor or subcontractor that performed work subject to the provisions of the bill. The bill would apply these provisions to work performed before the effective date of these provisions.

We anticipate that there are other pieces of legislation that will impact the transition and the jurisdictions' ability to take on components of the FORA work program, such as ACA-1, introduced by Assembly person Aguiar-Curry, which would create exceptions to the limitation on ad valorem taxes for the purposes of addressing public infrastructure and affordable housing. Likewise, other proposals include an expansion of the State's Housing Tax Credit, revisions to the Enhanced Infrastructure Financing Districts ("EIFD") removing the 55% voting requirement to issue debt and pairing them with federal Opportunity Zones program and short term and long-term planning and production grants for affordable housing and enhanced enforcement power to Housing and Community Development (HCD) and revisions to the regional housing needs assessment process. Our legislative consultants will be compiling other potential bills for Legislative Committee and subsequent Board review.

TRANSITION PLAN PROGRESS REPORT.

A recap of prior status reports note that: During prior Board deliberation, leading to the December 2018 adoption of the 2018 Transition Plan, multiple issues and concerns arose - some of which required legislation. The current status of legislation is noted above. An often-debated concern noted during the 2018 Transition Plan adoption process was sustaining or replacing resources and revenue sharing mechanisms to address basewide community facilities, such as habitat, transportation, water augmentation and transit shortfalls. The existing FORA CFD currently provides such a financing mechanism, but requires legislation to extend beyond June 30, 2020. Major concerns were also expressed to ensure there were financial mechanisms in place to address "contingent" liabilities, such as the California Public Employees Retirement System ("CalPERS") shortfalls or litigation liabilities that continue post June 30, 2020. Steps have been taken by the Board to address this issue and new information about the liabilities will be available soon from CalPERS. Additional issues were raised about the nature and extent of the applicability of CEQA to the Transition Plan, the survivability and applicability of the Base Reuse Plan, the Master Resolution, and in particular, the prevailing wage and affordable housing policies. These issues are addressed by Senator Monning's legislation. Finally, issues related to the respective roles of Monterey County Local Area Formation Commission ("LAFCO") and FORA in crafting and enforcing the 2018 Transition Plan were left to be addressed by 2018 Transition Plan Implementing Agreements (TPIA), legislation or litigation.

Since the March 8, 2019 report, the facilitators continue to meet with the various stakeholders and are compiling background information. They met with the Administrative Committee on March 20, 2019 and April 3, 2019 to discuss transportation, transit, water, and other related Implementing Agreement issues. They have begun discussion on transferring FORA's regional transportation obligations and offsite transportation reimbursement agreements to TAMC and the holdover jurisdictions, to be financed by impact fees created or in place at those agencies. They also are discussing Implementing Agreement language to transfer of certain FORA rights and obligations to MCWD relative to water supply and allocation, and provisions for the region to continue cooperation on regional housing solutions.

The facilitation team has not yet completed all of their subject discussions with the member agencies and staff. FORA Staff recommends that a timeline for presentation of initial "Interim Transition Plan Implementing Agreements" be presented by the facilitator prior to requests for changes to FORA Board policy so the Board is able to deliberate with relevant information in hand. Included in this information would be regional housing efforts, regional transportation impact fees expected to be in place, water supply and related agreements between the jurisdictions and MCWD, and the status of any replacement financing districts. Finally, a comprehensive list of all Implementing Agreements and their status should be provided by the facilitator on a regular basis.

FORA Staff note the three-dimensional aspect of the current transition process. To underline the most salient issues: The FORA Board has met the statutory requirement to provide an approved Transition Plan to LAFCO as the 2018 Transition Plan has been accepted by LAFCO at its January meeting. The Board has also honored the desire of the holdover FORA jurisdictions to continue negotiations among themselves regarding post-FORA activities. To this end FORA engaged a Facilitator to work with the jurisdictions to help them craft such agreements which we are referring to as 2018 Transition Plan Implementing Agreements, and hired Economic, Financing, Human Resources, and Habitat Conservation consultants that can assist in this effort. There is no formal requirement or need to amend the 2018 Transition Plan for these agreements to take effect. And the third piece of the puzzle, Senator Monning's office has formally submitted legislation into the State legislative hopper that follows, but differs from the language endorsed by the FORA Board. Should legislation be approved by the State Legislature and signed by the Governor, staff is confident that all three of these elements can be harmonized to ensure a smooth transition.

Staff does note that the next several of months will be critical months: final year budget, final year Capital Improvement Program, habitat conservation plan publication, and property transfers as the environmental services program completes its work. The transition staffing program recommendations will be considered by the Executive Officer in the next months. The CalPERS actuarial analysis for terminated agency liability is anticipated on or around April 22, 2019 and will provide additional information for purposes of planning and budgeting.

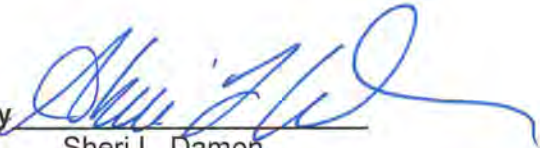
ATTACHMENTS

Attachment A: SB 189

Attachment B: SB 533

Attachment C: Facilitation Team Update current status of 2018 Transition Plan Implementing Agreements and proposed Timeline for further discussion and completion

Prepared by


Sheri L. Damon

Prepared by


D. Steven Endsley

Approved by


Michael A. Houlemard, Jr.



SB-189 Fort Ord Reuse Authority: member agencies: land use and zoning: dissolution. (2019-2020)

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Date Published: 04/11/2019 09:00 PM

AMENDED IN SENATE APRIL 11, 2019

AMENDED IN SENATE APRIL 01, 2019

CALIFORNIA LEGISLATURE—2019–2020 REGULAR SESSION

SENATE BILL

No. 189

Introduced by Senator Monning
(Coauthors: Assembly Members Robert Rivas and Mark Stone)

January 30, 2019

An act to amend Sections 67652, 67655, 67660, and 67700 of, to add Section 67701 to, and to repeal Sections 67661, 67662, 67673, 67675.2, 67675.3, 67675.4, 67675.5, 67675.6, 67675.7, 67675.8, 67675.9, and 67690 of, the Government Code, and to add Section 33492.79 to the Health and Safety Code, relating to military base reuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 189, as amended, Monning. Fort Ord Reuse Authority: member agencies: land use and zoning: dissolution.

(1) Existing law, the Fort Ord Reuse Authority Act, establishes the Fort Ord Reuse Authority (the authority) to prepare, adopt, finance, and implement a plan for the use and development of the territory previously occupied by the Fort Ord military base in the County of Monterey. The act provides that the authority is governed by a board comprised of 13 members representing the County of Monterey and specified cities within the county, which the act designates as "member agencies."

This bill would reduce the size of the board from 13 members to 5 members and eliminate representation for certain cities. The bill would require the vote of a majority of the total membership of the board to pass or act upon any matter properly before the board.

(2) Existing law authorizes representatives of certain entities to serve as ex officio, nonvoting members of the board and authorizes the board to appoint or remove additional ex officio members at its pleasure. Existing law authorizes the board to appoint advisory committees to provide it with options, critique, analysis, and other information as it finds useful.

After adoption of a reuse plan by the board, existing law requires each county or city with territory occupied by Fort Ord to submit its general plan or amended general plan that meets certain requirements, or subsequent amendments to a certified plan, to the board and requires the board, after a noticed public hearing, to certify or refuse to certify the portion of the general plan that applies the territory of Fort Ord, as provided. Existing law

similarly provides for the submission and review by the board of the county's or city's zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord. Existing law provides that development review authority, with certain exceptions, is exercised by the applicable county or city, but prohibits a local agency from permitting, approving, or otherwise allowing a development or other change of use within the area of Fort Ord that is not consistent with the reuse plan adopted by the board. Existing law authorizes the board to review actions of each member agency regarding planning, zoning, and the issuance or denial of building permits within the area of Fort Ord, subject to specified limitations.

Existing law provides specific procedures regarding the preparation of an environmental impact report on the Fort Ord Reuse Plan that apply in the event that an environmental impact statement on the closure and reuse of Fort Ord has been filed pursuant to the federal National Environmental Policy Act of 1969.

Existing law authorizes the board to receive contributions from member agencies represented on the board. Existing law requires each member agency and each public agency represented by an ex officio member to contribute specified amounts to the authority.

This bill would repeal all of these provisions.

(3) Under existing law, the Fort Ord Reuse Authority Act becomes inoperative when the board makes a specified determination regarding the development or reuse of the territory of Fort Ord or on June 30, 2020, whichever occurs first. Existing law repeals the act on January 1, 2021. Existing law requires the Monterey County Local Agency Formation Commission to provide for the orderly dissolution of the authority, as provided.

This bill would, instead, make the Fort Ord Reuse Authority Act inoperative on June 30, 2022, and repeal the act on January 1, 2023. The bill would require the authority to negotiate and secure successor agencies for all obligations under the transition plan no later than June 30, 2022. The bill would require the Monterey County Local Agency Formation Commission to provide for the orderly dissolution of the authority once an agreement with a successor agency has been finalized. The bill would require the transfer of specified revenues of the authority to the County of Monterey for disbursement to each underlying land use jurisdiction on a pro rata basis. The bill would specify that any financial obligation of the authority to which the County of Monterey succeeds as a result of the disbursement of remaining revenues or the retirement of debt does not constitute a debt or liability of the county, or any other member agency.

This bill, on and after July 1, 2020, would authorize the authority to take specified actions regarding its dissolution, including implementing the transition plan and collecting and disbursing specified revenues. The bill would authorize an underlying land use jurisdiction to adopt a substitute funding mechanism in lieu of the community facilities district established for the Fort Ord area if the jurisdiction commits to continue funding specified regional needs. The bill would also deem the transition plan to be within the scope of a specified categorical exemption from the California Environmental Quality Act.

(4) Existing law establishes procedures for the establishment and operation of all redevelopment project areas created within the area previously known as Fort Ord. Existing law, upon dissolution of the authority, requires that amounts allocated under a redevelopment plan that contains a provision for the division of taxes, if any levied upon taxable property within a redevelopment project, continue to be paid to the accounts of the authority insofar as needed to pay principal and interest or other amounts of debt incurred by the authority.

This bill would make these provisions governing the establishment and operation of redevelopment project areas created within Fort Ord inoperative as of the date of the dissolution of the Fort Ord Reuse Authority or the retirement of the authority's debt, whichever occurs later. The bill, upon dissolution of the authority or retirement of its debt, whichever occurs later, would require that any remaining property tax revenues allocated to the authority be transferred to the auditor-controller of the County of Monterey for appropriate distribution.

(5) This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Monterey.

(6) By adding to the duties of various local agencies with respect to the dissolution of the Fort Ord Reuse Authority, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 67652 of the Government Code is amended to read:

67652. The Legislature finds and declares as follows:

(a) The policy set forth in Section 67651 is most likely to be achieved if an effective governmental structure exists to plan for, finance, and carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner.

(b) The transition plan, adopted by the Fort Ord Reuse Authority, will assure that ongoing, mandated requirements continue to be funded and addressed within the region covered by the authority, which will collect and distribute revenue for the limited environmental and infrastructure mission.

SEC. 2. Section 67655 of the Government Code is amended to read:

67655. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this title.

(a) "Authority" means the Fort Ord Reuse Authority.

(b) "Base-wide facility" means a public capital facility which, in the judgment of the board, is important to the overall reuse of Fort Ord, and has significance beyond any single city or the unincorporated area of the county.

(c) "Board" means the governing board of the authority, as specified in Section 67660.

(d) "Community facilities district revenues" means the revenues collected ~~from the authority~~ by the authority pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(e) "Fort Ord Reuse Plan" means the plan for the future use of Fort Ord adopted pursuant to Section 67675.

(f) "Legislative body" means the city council of a city or the board of supervisors of a county, or the legislative body or governing board of any other public agency.

(g) "Local facility" means a public capital facility which, in the judgment of the board, is important primarily within a single city or the unincorporated area of the county.

(h) "Member agency" means the County of Monterey, the City of Del Rey Oaks, the City of Marina, the City of Monterey, or the City of Seaside.

(i) "Fort Ord," including references to the territory or area of Fort Ord, means the geographical area described in the document entitled "Description of the Fort Ord Military Reservation Including Portion of the Monterey City Lands Tract No. 1, the Saucito, Laguna Seca, El Chamisal, El Toro and Noche Buena Ranchos, the James Bardin Partition of 1880 and Townships 14 South, Ranges 1 and 2 East and Townships 15 South, Ranges 2 and 3 East, M.D.B. and M. Monterey County, California," prepared by Bestor Engineers, Inc., and delivered to the Sacramento District Corps of Engineers on April 11, 1994.

(j) "Property tax revenues" means the amount of property tax revenues allocated to the authority pursuant to Section 33492.71 of the Healthy and Safety Code.

(k) "Public capital facilities" means all public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeways, ramps, air transportation facilities and freight hauling and handling facilities, sewage and water conveyance and treatment facilities, school, library, and other educational facilities, and recreational facilities, that could most efficiently and conveniently be planned, negotiated, financed, or constructed by the authority to further the integrated future use of Fort Ord.

(l) "Redevelopment authority," for purposes of the transfer of property at military bases pursuant to Title XXIX of the National Defense Authorization Act for the 1994 fiscal year, means the Fort Ord Reuse Authority, except that, with respect to property within the territory of Fort Ord that is transferred or to be transferred to the California State University or to the University of California, "redevelopment authority" solely for purposes of the transfer of property at military bases pursuant to Title XXIX of the National Defense Authorization Act for the 1994 fiscal year means the California State University or the University of California, and does not mean the Fort Ord Reuse Authority.

(m) "Transition plan" means the plan for the dissolution of the authority adopted by the board, as required by subdivision (c) of Section 67700.

(n) "Underlying land use jurisdiction" means, singularly or in the plural, the City of Monterey, the City of Del Rey Oaks, the City of Seaside, the City of Marina, or the County of ~~Monterey, or the California State University Monterey.~~

SEC. 3. Section 67660 of the Government Code is amended to read:

67660. (a) The authority shall be governed by a board of five members composed of the following:

- (1) One member appointed by the City of Del Rey Oaks.
- (2) One member appointed by the City of Marina.
- (3) One member appointed by the City of Monterey.
- (4) One member appointed by the City of Seaside.
- (5) One member appointed by Monterey County.

(b) Notwithstanding subdivision (a), any local agency that does not adopt a resolution favoring establishment of the Fort Ord Reuse Authority pursuant to Section 67656 shall not be required to appoint a voting member to the board. The failure of a local agency to appoint a voting member to the board pursuant to this subdivision shall not alter or reduce the powers and duties of the authority or the board in any manner.

(c) Each member agency may appoint one alternate for each of its positions on the board, and each alternate shall have all the rights and authority of a board member when serving in that board member's place.

(d) Each board member and each alternate shall be a member of the legislative body making the appointment, except that the alternate appointed by the Monterey County Board of Supervisors shall be a member of the board of supervisors or county staff. Board members and alternates shall serve at the pleasure of the member agency making the appointment.

(e) The vote of a majority of the total membership of the board shall be required to pass or act upon any matter properly before the board, and each member of the board shall have one vote.

SEC. 4. Section 67661 of the Government Code is repealed.

SEC. 5. Section 67662 of the Government Code is repealed.

SEC. 6. Section 67673 of the Government Code is repealed.

SEC. 7. Section 67675.2 of the Government Code is repealed.

SEC. 8. Section 67675.3 of the Government Code is repealed.

SEC. 9. Section 67675.4 of the Government Code is repealed.

SEC. 10. Section 67675.5 of the Government Code is repealed.

SEC. 11. Section 67675.6 of the Government Code is repealed.

SEC. 12. Section 67675.7 of the Government Code is repealed.

SEC. 13. Section 67675.8 of the Government Code is repealed.

SEC. 14. Section 67675.9 of the Government Code is repealed.

SEC. 15. Section 67690 of the Government Code is repealed.

SEC. 16. Section 67700 of the Government Code is amended to read:

67700. (a) (1) This title shall become inoperative on June 30, 2022.

(2) This title shall remain in effect only until January 1, 2023, and as of that date is repealed.

(b) No later than June 30, 2022, the authority shall negotiate and secure one or more successor agencies to implement all obligations under the transition plan.

(c) (1) The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority once an agreement with a successor agency has been finalized. The Monterey County Local Agency Formation Commission shall ensure 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.

(2) The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018. 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.

(d) Upon dissolution of the authority, all remaining and future community facilities district revenues shall be transferred to the County of Monterey. The County of Monterey shall disburse those community facilities district revenues to each underlying land use jurisdiction on a pro rata basis, based on the source of the revenue or another method that the County of Monterey determines is reasonable.

(e) If the authority has any remaining outstanding debt at the time of its dissolution, property tax revenues shall continue to be paid to the County of Monterey in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the dissolution of the authority or the retirement of debt as provided in this subdivision, whichever occurs later, any remaining property tax revenues shall be transferred to the auditor-controller of the County of Monterey for appropriate distribution.

(f) If the County of Monterey succeeds to any financial obligation of the authority as a result of the disbursement of remaining revenues or the retirement of debt, that obligation shall not constitute a debt or liability of the county, or any other member agency, but shall be payable solely from the remaining revenues provided for purposes of that obligation in the transition plan.

(g) The County of Monterey may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues of the authority to be disbursed.

SEC. 17. Section 67701 is added to the Government Code, to read:

67701. (a) On and after July 1, 2020, the authority may do all of the following:

- (1) Implement the transition plan.
- (2) Manage the community facilities district boundaries.
- (3) Make appropriate revisions to the boundaries of the community facilities district established by the board as replacement funding mechanisms are created by underlying land use jurisdictions pursuant to subdivision (b). Revisions to the community facilities district boundaries shall be made by filing an amended map of the community facilities district.
- (4) Collect and disburse community facilities district revenues.
- (5) Collect and disburse property tax revenues.
- (6) Disburse revenues ~~collected~~ *described in paragraphs (4) and (5)* for the purposes of the habitat conservation plan, transportation, transit, and water supply pursuant to Section 67675.
- (7) Continue as the local reuse authority for purposes of the federal government and property transfers, including receipt of federal grant funding.
- (8) Ensure that all pledges, contracts, or obligated ~~payment~~ *payments* are funded and appropriately carried out.

(b) Any underlying land use jurisdiction may adopt a substitute funding mechanism in lieu of the community facilities district established by the board, in which case the board shall adjust the boundaries of the community facilities district accordingly. An underlying land use jurisdiction that adopts a substitute funding mechanism pursuant to this subdivision shall commit, either in that substitute funding mechanism or otherwise in a written agreement, to continue funding regional needs in the former Fort Ord on a pro rata basis, to the satisfaction of the authority. For purposes of this subdivision, "regional needs" includes, but is not limited to, habitat conservation, transportation, transit, and water supply augmentation.

(c) The ~~transitional~~ *transition* plan adopted by the board for organizational changes shall be deemed to be within the scope of the Class 20 exemption provided by Section 15320 of Title 14 of the California Code of Regulations.

SEC. 18. Section 33492.79 is added to the Health and Safety Code, to read:

33492.79. This article shall become inoperative as of the date of the dissolution of the Fort Ord Reuse Authority pursuant to Section 67700 of the Government Code or the retirement of the authority's debt as provided in subdivision (e) of Section 67700 of the Government Code, whichever occurs later.

SEC. 19. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the County of Monterey relating to the dissolution of the Ford Ord Reuse Authority.

SEC. 20. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.