



FORT ORD REUSE AUTHORITY

REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, December 14, 2018 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AMENDED AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON DECEMBER 13, 2018.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation – 1 Item, Gov. Code §54956.9(d)(4)

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

6. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

7. CONSENT AGENDA

INFORMATION/ACTION

CONSENT AGENDA consists of routine information or action items accompanied by staff recommendation. Information has been provided to the FORA Board on all Consent Agenda matters. The Consent Agenda items are normally approved by one motion unless a Board member or the public request discussion or a separate vote. Prior to a motion, any member of the public or the Board may ask a question or make comment about an agenda item and staff will provide a response. If discussion is requested, that item will be removed from the Consent Agenda and be considered separately at the end of the Consent Agenda.

- a. Approve October 12, 2018 Meeting Minutes ([p. 1](#))
Recommendation: Approve October 12, 2018 Meeting Minutes.
- b. Approve October 29, 2018 Special Meeting Minutes ([p. 5](#))
Recommendation: Approve October 29, 2018 Special Meeting Minutes.
- c. Approve November 9, 2018 Meeting Minutes ([p. 8](#))
Recommendation: Approve November 9, 2018 meeting minutes.
- d. Administrative Committee ([p. 12](#))
Recommendation: Receive a report from the Administrative Committee.
- e. 2019 Board of Directors Meeting Calendar ([p. 15](#))
Recommendation: Approve the 2019 FORA Board meeting schedule.
- f. Fiscal Year 2017-18 Audited Financial Report Audit ([p. 17](#))
Recommendation: Accept the Moss, Levy & Hartzheim, Certified Public Accountants Fort Ord Reuse Authority Fiscal Year 2017-18 audited financial report as recommended by the Finance Committee.
- g. Public Correspondence to the Board ([p. 18](#))
Recommendation: Receive Public Correspondence to the Board.

8. BUSINESS ITEMS

INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Land Use Covenants – Fiscal Year 2017-18 Report (p. 19)
Recommendation: Receive a report on Department of Toxic Substances Control (“DTSC”) Land Use Covenants (“LUC”) annual reporting for FY 17-18.
- b. Adopt a Transition Plan Resolution (p. 20)
Recommendation: 1. Find that approval of a Transition Plan Resolution is a mere organizational change and not a project subject to CEQA.
2. Approve a Transition Plan Resolution and set a special meeting, if necessary, for December 19, 2018 if the Transition Plan and its Resolution are not unanimously approved.
3. Authorize staff to take appropriate action to comply with state law requiring submittal of an approved Transition Plan to the Local Area Formation Commission (“LAFCO”) by December 2018.

9. PUBLIC COMMENT PERIOD

INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

10. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

11. ADJOURNMENT

NEXT REGULAR MEETING: January 11, 2019 AT 2:00 P.M.



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Friday, October 12, 2018 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Vice-Chair Jane Parker called the meeting to order at 2:00 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by County of Monterey Supervisor Jane Parker.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael Houlemard announced the following:

- Due to Marina Coast Water District General Manager Keith Van Der Maaten's absence; item 8b has been postponed to the November 9, 2018 Board Meeting.
- **Saturday, October 20 | HONOR OUR FALLEN RUN**
6th Annual 5k/10k Run to Remember, Fort Ord Dunes State Park, Marina.
- **Tuesday, October 23 | AMERICAS COMPETITIVENESS EXCHANGE**
The Americas Competitiveness Exchange on Innovation and Entrepreneurship (ACE) brings together 50 senior-level government, business, policy, and economic decision makers from across the Americas and beyond to experience first-hand the diverse range of projects, strategic investments, public-private partnerships, and best practices from a particular region's innovation and entrepreneurship ecosystem.
- **Saturday, October 27 | 9th ANNUAL HEROES' OPEN | Black Horse Golf Course**
This annual benefit golf tournament helps support the cemetery expansion efforts.
- **Saturday, October 27 | Fort Ord National Public Lands Day**
SAVE THE DATE: National Public Lands Day celebration at the Fort Ord National Monument.

These announcement details and more can be found at www.fora.org

4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation, Gov. Code §54956.9(d)(4)

No comments from the public on the closed session items.

Time Entered: 2:05 p.m.

Time Exited: 2:26 p.m.

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen announced there was no action to report.

6. ROLL CALL

Voting Members Present:

Supervisor Mary Adams (County of Monterey), Supervisor Jane Parker (County of Monterey), Supervisor Luis Alejo (County of Monterey), Councilmember Dave Pacheco (City of Seaside), Mayor Mary Ann Carbone (City of Sand City), Mayor Jerry Edelen (City of Del Rey Oaks), Councilmember Frank O'Connell (City of Marina), Mayor Joe Gunter (City of Salinas), Councilmember Cynthia Garfield (City of Pacific Grove), Councilmember Gail Morton (City of Marina), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Alan Haffa (City of Monterey)

Ex-officio (Non-Voting) Board Members Present:

Nicole Hollingsworth (17th State Senate), Erica Parker (29th State Assembly), Todd Muck (TAMC), Steve Matarazzo (UCSC), Andre Lewis (CSUMB), Col. Gregory Ford (US Army), Bill Collins (BRAC), Dr. Walter Tribley (MPC), Lisa Rheinheimer (MST), Dr. Thomas Moore (MCWD), Kathleen Lee (20th Congressional District) *arrived at 3:04 p.m.*

7. CONSENT AGENDA

- a. Approve September 28, 2018 Meeting Minutes
- b. Administrative Committee
- c. Veterans Issues Advisory Committee
- d. Environmental Services Cooperative Agreement Quarterly Report
- e. Building Removal Quarterly Update
- f. Transition Planning Process Update
- g. Public Correspondence to the Board

Vice-Chair Parker introduced the consent agenda items and asked Board members to make their request for any items to be pulled. Board member Morton requested to ask a question regarding item 7d – Environmental Services Cooperative Agreement Quarterly Report. Mr. Houlemard and Senior ESCA Programs Manager Stan Cook responded to questions from the Board. Board member Adams requested to pull item 7f – Transition Planning Process Update for discussion and questions. Vice-Chair

Parker advised that item 7f would be moved to the end of the Business Items. There was no public comment received on consent agenda items.

Motion: On motion by Board member Alejo second by Board member Adams and carried by the following vote, the Board moved to approve the consent agenda item 7a-7e; and 7g. Item 7f was moved to end of the Business Items.

MOTION PASSED UNANIMOUSLY

8. BUSINESS ITEM

a. Habitat Conservation Plan Update

Principal Planner Jonathan Brinkmann presented the item which provided an update to the Special workshop meeting held on September 24, 2018. At the Special workshop meeting, the Board chose to defer action and requested additional information be provided as part of the presentation. The presentation responded to the comments and requests from the September 24, 2018 workshop by providing options and alternatives for the Board to consider. There were no comments from the public. Staff responded to questions and comments from the Board.

MOTION: On motion by Board member Reimers and second by Board member Haffa and carried by the following vote, the Board moved to proceed forward with processing an HCP, continue discussions of what would be included in an independent habitat Joint Powers Authority, and include an analysis of all potential funding mechanisms.

MOTION PASSED UNANIMOUSLY

b. Presentation on the Marina Coast Water District Annexation Application Status *Item postponed until November 9, 2018 regular Board meeting.*

c. Transition Planning Process Update (formerly 7f)

Board member Adams expressed concerns with the language in the report and requested staff to amend the draft resolution in response to the comments, questions and concerns that have been brought up by the Board.

Board member Garfield asked that staff coordinate a meeting between the Jurisdictions attorneys.

Board member Morton requested a red line version of the amendments made to the Transition Plan draft resolution be included for increased transparency regarding what changes occur from meeting to meeting.

Further comments from the Board were received; including but not limited to requests and/or specific suggestions on amendments to be made to draft

documents. The Board also directed staff to reach out to each jurisdiction and arrange meetings to review resolution contents.

Staff advised the Board that a Request for Proposals/Qualifications is being drafted to obtain a facilitator to assist FORA and jurisdictions with the transition planning process.

There was no public comment. The Board deemed the item received.

9. PUBLIC COMMENT

There were no comments from the public.

10. ITEMS FROM MEMBERS

Board member Haffa announced that the City of Monterey will be submitting a resolution regarding Transition. Board member Garfield asked that decisions, meetings and study sessions hosted by other jurisdictions be shared by FORA.

This information can be found on FORA's website (www.fora.org) at the following link: <https://fora.org/TransitionProcess>

11. ADJOURNMENT at 4:02 p.m.

Minutes Prepared by:
Dominique L. Davis
Deputy Clerk

Approved by:

Michael A. Houlemard, Jr.
Executive Officer



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS SPECIAL MEETING MINUTES
2:00 p.m., Friday, October 29, 2018 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Chair Rubio called the meeting to order at 2:03 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Monterey County Supervisor John Phillips.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael Houlemard provided a verbal report on the America's Competitive Exchange tour visit to Monterey County in October 2018.

4. CLOSED SESSION

a. Conference with Legal Counsel – Potential Litigation, Gov. Code §549.56.9(d)(4)

Chair Rubio announced that the Board would not meet in closed session and Authority Counsel conferred.

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

There Board did not meet in Closed Session.

6. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Supervisor Mary Adams (County of Monterey), Mayor Jerry Edelen (City of Del Rey Oaks), Councilmember Frank O'Connell (City of Marina), Councilmember Gail Morton (City of Marina), Mayor Ralph Rubio (City of Seaside), Councilmember Jason Campbell (City of Seaside) *departed at 3:03 p.m.*, Councilmember Dennis Alexander (City of Seaside) *arrived at 3:03 p.m.*, Mayor Mary Ann Carbone (City of Sand City), Councilmember Cynthia Garfield (City of Pacific Grove), Councilmember Jan Reimers (City of Carmel-by-the-sea) *arrived at 2:09 p.m.*

Ex-officio (Non-Voting) Board Members Present:

Kathleen Lee (20th Congressional District), Senator Bill Monning (17th State Senate District), Erica Parker (29th State Assembly District), Mike Zeller (Transportation Agency)

of Monterey County), Dr. P.K. Diffenbaugh (Monterey Peninsula Unified School District), Steve Matarazzo (University of California, Santa Cruz), Larry Samuels (California State University Monterey Bay) *arrived at 2:14 p.m. & departed at 2:29 p.m.*, Andre Lewis (California State University Monterey Bay) *arrived at 2:29 p.m.*, Colonel Gregory Ford (United States Army), Dr. Thomas Moore (Marina Coast Water District) *arrived at 2:09 p.m.*

7. BUSINESS ITEM

a. Transition Planning Process Update

Chair Rubio requested that Senator Monning provide comments prior to the presentation. Senator Monning addressed the Board.

Mr. Houlemard reported on recent correspondence received providing comments to staff and Board regarding the Transition Planning process. Mr. Houlemard also informed the Board of the efforts made to respond to comments from the public, jurisdiction staff, attorneys and Board members.

Risk Manager Sheri Damon provided a presentation on the item. Chair Rubio opened public comment and there were no comments from the public. The Board provided comments and discussed several topics related to Transition Planning. Senator Monning and FORA staff responded to questions and comments.

Staff encouraged Board members and the public to send comments & questions to both planning@fora.org and board@fora.org in order to share information with the entire board to minimize the risk of violating the Brown Act.

Motion: On motion by Board member Edelen and second by Board member Haffa and carried by the following vote, the Board moved to direct staff to take appropriate action to comply with state law requiring a Transition Plan submittal to the Local Area Formation Commission (LAFCO) by December 2018; authorize the Executive Officer to execute a LAFCO Indemnification Agreement upon approval of a resolution to submit; authorize the Executive Officer to retain facilitator services in an amount not to exceed \$100,000 to assist jurisdictions and FORA in negotiating Transition Plan Implementation Agreements not later than March 2019 and to extend an open invitation with strong encouragement to LAFCO to participate and coordinate with the facilitator and; direct staff to provide a progress report in January 2019 and return in March 2019 and on a quarterly basis thereafter to update the Board on the progress of negotiations.

MOTION PASSED UNANIMOUSLY

Authority Counsel Jon Giffen responded to the Boards comments and questions regarding the Declaratory Relief process, and advised that he would work with California Environmental Quality Act specialist counsel in order to provide a written legal opinion to the Board.

Motion: On motion by Board member Parker and second by Board member Morton to direct staff to draft “a more bare bones transition plan” that lists the issues, the process to address them and a timeline; and to form an Ad-Hoc Committee of individuals that work with staff to bring further review back to the Board.

Chair Rubio called for a roll call vote.

Director Parker	Aye	Director Rubio	No
Director Phillips	No	Director Alexander	No
Director Adams	No	Director Carbone	No
Director Edelen	No	Director Gunter	No
Director O’Connell	Aye	Director Garfield	No
Director Morton	Aye	Director Reimers	No
Director Haffa	No		

MOTION FAILED

8. PUBLIC COMMENT

There were no comments from the public.

9. ITEMS FROM MEMBERS

There were no items from members.

10. ADJOURNMENT at 4:21 p.m.

Minutes Prepared by:
Dominique L. Davis
Deputy Clerk

Approved by:

Michael A. Houlemard, Jr.
Executive Officer



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Friday, November 9, 2018 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Chair Ralph Rubio called the meeting to order at 2:00 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Marina Coast Water District Representative Dr. Thomas Moore.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael Houlemard announced the following:

- California Central Coast Veterans Cemetery Veterans Day ceremony on Sunday, November 11, 2018 at 10:30 a.m.
- Veterans Transition Center Inaugural Gala on Sunday, November 11, 2018.
- FORA office will observe Veterans Day on Monday, November 12, 2018.
- Monterey Bay Economic Partnership – State of the Region Conference on Friday, November 30, 2018 at Embassy Suites Hotel in Seaside.
- City of Pacific Grove Councilmember Cynthia Garfield introduced Pacific Grove's Mayor Elect – Bill Peake

These announcement details and more can be found at www.fora.org

Mr. Houlemard requested three emergency items be added to the agenda: Resolutions of Appreciation for Board members whose term were ending.

MOTION: On motion by Board member O'Connell and second by Board member Haffa and carried by the following vote, the Board moved to allow three emergency items for Resolution of Appreciation for three Board members to be added to the agenda.

MOTION PASSED UNANIMOUSLY

Mr. Houlemard read into the record Resolutions of Appreciation for Board members Alexander, Edelen and Chair Rubio.

4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation, Gov. Code §54956.9(d)(4)

No comments from the public on the closed session items.

Time Entered: 2:23 p.m.

Time Exited: 2:40 p.m.

5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen announced there was no action to report.

6. ROLL CALL

Voting Members Present:

Supervisor Mary Adams (Monterey County), Supervisor Jane Parker (Monterey County), Supervisor John Phillips (Monterey County), Councilmember Dennis Alexander (City of Seaside), Mayor Mary Ann Carbone (City of Sand City), Mayor Jerry Edelen (City of Del Rey Oaks), Councilmember Frank O'Connell (City of Marina), Councilmember Cynthia Garfield (City of Pacific Grove), Councilmember Gail Morton (City of Marina), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Alan Haffa (City of Monterey).

Ex-officio (Non-Voting) Board Members Present:

Nicole Hollingsworth (17th State Senate), Todd Muck (TAMC), Steve Matarazzo (UCSC), Andre Lewis (CSUMB), Col. Gregory Ford (US Army), Bill Collins (BRAC), David Martin (MPC), Lisa Rheinheimer (MST), Dr. Thomas Moore (MCWD), Kathleen Lee (20th Congressional District)

7. CONSENT AGENDA

- a. Approve October 12, 2018 Meeting Minutes
- b. Administrative Committee
- c. Veterans Issues Advisory Committee
- d. Water/Wastewater Oversight Committee
- e. Prevailing Wage Status Report
- f. Building Removal Financing Update
- g. Public Correspondence to the Board

Chair Rubio introduced the consent agenda items and asked Board members to make their request for any items to be pulled. Mr. Houlemard provided an update on item 7e – Prevailing Wage Status Report. Board member Morton requested to pull item 7a – October 12, 2018 Meeting Minutes.

Motion: On motion by Board member Haffa and second by Board member Alexander and carried by the following vote, the Board moved to approve the consent agenda item 7b-7g.

MOTION PASSED UNANIMOUSLY

Board member Morton indicated a discrepancy in the motion for item 8b in the October 12, 2018 meeting minutes.

Motion: On motion by Board member O'Connell and second by Board member Haffa and carried by the following vote, the Board moved to continue item 7a – October 12, 2018 meeting minutes to the next FORA Board regular meeting and directed the Deputy Clerk to review the meeting video record and resubmit the minutes at the next regular Board meeting.

8. BUSINESS ITEM

a. Presentation on the Marina Coast Water District Annexation Application Status
Marina Coast Water District (MCWD) General Manager Keith Van Der Maaten provided a presentation on the annexation application process which began in 2010. Mr. Van Der Maaten advised the Board of the next steps in the process with a target to have Local Agency Formation Commission (LAFCO) public hearing in January 2019 and to complete the annexation by July 2019. Mr. Van Der Maaten responded to questions and comments from the Board.

Public comment was received. This item was for information only.

b. Transition Planning Process Update

Mr. Houlemard introduced the item and provided an oral report on the correspondence, comments and input received regarding the transition planning process. Risk Manager Sheri Damon provided a presentation which reviewed the request for qualifications for a transition facilitator status and alternative resolutions that have been developed since the last meeting. Staff responded to questions and comments from the Board. The Board also discussed comments and provided further refinement of the Transition Plan resolution.

Motion: On motion by Board member Edelen and second by Board member Alexander and carried by the following vote, the Board moved to consider approval of the Transition Plan Resolution (Draft), without prejudice to later make revisions as necessary or appropriate; find that approval of the Transition Plan is not a project and is exempt from CEQA as a mere organizational change and; authorize staff to take appropriate action(s) to comply with state law requiring submittal of an approved Transition Plan to the LAFCO by December 2018.

MOTION PASSED UNANIMOUSLY

9. PUBLIC COMMENT

There were no comments from the public.

10. ITEMS FROM MEMBERS

Board member Garfield requested clarification on how to submit comments and/or suggestions regarding the Transition Plan resolution to staff and the “attorneys group.” The Board was advised to contact Risk Manager Sheri Damon.

11. ADJOURNMENT at 3:34 p.m. in honor of Veterans Day and victims of the recent fires in California.

Minutes Prepared by:
Dominique L. Davis
Deputy Clerk

Approved by:

Michael A. Houlemard, Jr.
Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Administrative Committee

Meeting Date: December 14, 2018

Agenda Number: 7d

INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee held a meeting on October 31. The approved minutes for this meeting is provided as **Attachment A**.

FISCAL IMPACT:

Reviewed by the FORA Controller 

Staff time for the Administrative Committee is included in the approved annual budget.

COORDINATION:

Administrative Committee

Prepared by 
Dominique L. Davis

Approved by 
Michael A. Houlemard, Jr.



APPROVED

FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE REGULAR MEETING MINUTES
8:30 a.m., Wednesday, October 31, 2018 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Executive Officer Michael Houlemard called a meeting of the whole to order at 8:36 a.m.

The following members were present:

- | | |
|---------------------------------------|---|
| Dino Pick* (City of Del Rey Oaks) | Bill Collins (US Army) |
| Melanie Beretti* (County of Monterey) | Vicki Nakamura (Monterey Peninsula College) |
| Elizabeth Caraker* (City of Monterey) | Anya Spear (CSUMB) |
| | Steve Matarazzo (UCMBEST) |
| | Lisa Rheinheimer (Monterey Salinas Transit) |
| | Mike Zeller (TAMC) |

*Voting Member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Monterey Salinas Transit (MST) Director of Planning & Marketing Lisa Rheinheimer.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Mr. Houlemard announced there was a positive response from the America’s Competitive Exchange (often referred to as “ACE”) tour that visited Monterey. Several City leaders from around the County participated and over 40 country representatives were in attendance. A reception was held at the Monterey Bay Aquarium on October 23, 2018 and Mr. Houlemard served as the MC.

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

There were no public comments received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. October 17, 2018 Meeting Minutes

This item was held as quorum was yet to be established. This item was considered after a quorum was established at 8:53 a.m.

MOTION: On motion by Committee member Pick and second by Committee member Caraker and carried by the following vote, the Administrative Committee moved to approve the October 17, 2018 regular meeting minutes.

MOTION PASSED UNANIMOUSLY

6. NOVEMBER 9, 2018 DRAFT BOARD MEETING AGENDA REVIEW

INFORMATION

Principal Planner Jonathan Brinkmann reviewed the items on the draft Board agenda for November 9, 2018. Staff responded to questions and comments from the Committee regarding the Transition Plan item. Mr. Houlemard briefly reviewed the discussion that was held at the Board Special meeting on October 29, 2018. Assistant Executive Officer Steve Endsley reviewed the difference between two types of California Environmental Quality Act (CEQA) action as they pertain to the correspondence sent to the Board prior to

the Special meeting. The correspondence that was sent to the Board can be reviewed on the FORA website at <https://www.fora.org/board.html>.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Transition Plan Update

Mr. Endsley reported on the special meeting held by the Board on October 29, 2018 and reviewed the action taken by the Board and described the comments received from 17th State Senate District Senator Bill Monning (*the video from the special meeting can be accessed on FORA's YouTube channel at <https://www.youtube.com/user/FortOrdReuse?feature=mhee>*) The Committee was also informed of the Board's request to have the special counsel's CEQA opinion put in writing regarding the Transition Resolution and to have other elements of the resolution more clearly defined and provide direction as to how issues can be resolved.

City of Monterey Housing & Community Development Manager Elizabeth Caraker arrived at 8:53 a.m. establishing a quorum.

Staff responded to inquiries about the projected timeline for obtaining facilitation services and further revisions to the Transition Resolution would be released to the public and what staff at the different jurisdictions should expect in regards to providing support to the decision making.

Mr. Houlemard redirected the Committee to return to item 5a to consider approval of the October 17, 2018 Administrative Committee regular meeting minutes. *The motion and vote is listed under item 5a.*

The Committee provided further comments on the Transition Resolution formatting requests and the process/timeline for selecting a facilitator. Staff is seeking recommendations for a facilitator and/or firm; a selection panel would be formed to review proposals. Anya Spear, Melanie Beretti and Mike Zeller volunteered and agreed to serve as the Request for Qualifications (RFQ) selection panel. An item will be placed on the November 14, 2018 Administrative Committee agenda to provide the Committee with any further updates.

b. Building Removal Consultant Update

Mr. Houlemard introduced the item and reviewed the RFQ for Building Removal Financing packet that was distributed to the Committee and public at the meeting. Mr. Endsley provided the background and context of the RFQ. The Committee and public was also provided with a draft copy of a RFQ for Facilitation Services, Transition Plan Implementation Agreements.

Mr. Brinkmann also provided further information on what the RFQ is seeking from consultants which included seeking a determination on FORA's legal authority and exploring the possibilities of what can happen after FORA sunsets.

Staff responded to comments and questions from the Committee.

8. ITEMS FROM MEMBERS

There were no items from members.

9. ADJOURNMENT at 9:43 a.m.

Minutes Prepared By:
Dominique Davis
Deputy Clerk

FORT ORD REUSE AUTHORITY BOARD REPORT		
CONSENT AGENDA		
Subject:	2019 FORA Board Meeting Calendar	
Meeting Date:	December 14, 2018	ACTION
Agenda Number:	7e	

RECOMMENDATION:

Approve the 2019 FORA Board meeting schedule.

BACKGROUND/DISCUSSION:

The 2019 Board Meeting schedule is provided as **Attachment A**.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved annual budget.

COORDINATION:

Prepared by  Dominique L. Davis Approved by  Michael A. Houlemard, Jr.



FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

Attachment A to Item 7e
FORA Board Meeting 12/14/18

2019 FORA BOARD MEETING SCHEDULE

January 11

February 8

March 8

April 12

May 10

June 14

July 12

August 9

September 13

October 11

November 8

December 13

Board meetings are held on the 2nd Friday of each month at 2:00 p.m. at the Carpenter's Union Hall on the former Fort Ord (910 2nd Avenue, Marina, California), unless otherwise noticed/announced. Meeting dates and times are subject to change. Agendas and other meeting materials are posted on the FORA website www.fora.org and are available upon request.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Fiscal Year 2017-18 Audited Annual Financial Report	
Meeting Date:	December 14, 2018	ACTION
Agenda Number:	7f	

RECOMMENDATION:

Accept the Moss, Levy & Hartzheim (MLH), Certified Public Accountants Fort Ord Reuse Authority (FORA) Fiscal Year 17-18 Audited Annual Financial Report (Audit Report) as recommended by the Finance Committee. This link will take you to the full report: https://www.fora.org/Board/2018/Packet/Additional/FORA_Financial_Report_2018.pdf

BACKGROUND:

Each fall, the draft Audit Report is presented to the Finance Committee (FC) for its review and consideration before it is forwarded to the FORA Board.

DISCUSSION:

MLH issued an “unmodified” opinion with respect to the Government-Wide Financial Statements. Also, there were no findings/questionable costs in the FY 17-18 financial audit concerning the FORA internal control structure. MLH’s letter expresses the opinion that the financial statements present fairly, in all material respects, FORA’s financial position of the governmental activities and each major fund of FORA as of June 30, 2018, and the respective changes in financial position, for the fiscal year then ended, in accordance with accounting principles generally accepted in the United States of America.

The FC reviewed the Audit Report on December 5, 2018 as presented and unanimously recommended the FORA Board accept the FY 17-18 Audit Report.

FISCAL IMPACT:

Cost for the audit services is included in the approved FORA budgets.

COORDINATION:

Finance Committee, Moss, Levy & Hartzheim, Certified Public Accountants

Prepared by: 
Helen Rodriguez

Approved by: 
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT AGENDA	
Subject:	Public Correspondence to the Board
Meeting Date:	December 14, 2018
Agenda Number:	7g
	INFORMATION/ACTION

Public correspondence submitted to the Board is posted to FORA’s website on a monthly basis and is available to view at <http://www.fora.org/board.html>

Correspondence may be submitted to the Board via email to board@fora.org or mailed to the address below:

FORA Board of Directors
 920 2nd Avenue, Suite A
 Marina, CA 93933

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Land Use Covenants – Fiscal Year 17-18 Report	
Meeting Date:	December 14, 2018	INFORMATION
Agenda Number:	8a	

RECOMMENDATION:

Receive a report on Department of Toxic Substances Control (“DTSC”) Land Use Covenants (“LUC”) annual reporting for FY 17-18.

RECOMMENDATION:

On September 14, 2007, the FORA Board approved a Memorandum of Agreement (“MOA”) among DTSC, California State University Monterey Bay (“CSUMB”), University of California Monterey Bay Education, Science, and Technology Center (“UC MBEST”), Monterey Peninsula College (“MPC”), County of Monterey, the Cities of Seaside, Marina, Del Rey Oaks, and Monterey (“eight reporting entities”). The agreement specified that FORA would compile former Fort Ord annual LUC reports from each of the eight reporting entities and forward them to DTSC on an annual basis. In the MOA, the County agreed to assume FORA’s LUC annual reporting role when FORA ceases to exist. According to the MOA, FORA would also reimburse DTSC’s oversight costs (originally estimated to be \$20,000 annually) for the first two years (FY 07-08 and FY 08-09) of annual reporting through funds designated for this purpose. Also, after the first two years, FORA would reimburse DTSC for its oversight costs through dues collected from the eight reporting entities. To establish funding, FORA would collect an additional 15% administrative cost from the eight reporting entities in order to reimburse FORA staff time associated with 1) the activity of collecting and compiling annual reports, 2) submitting reports to DTSC, and 3) reimbursing DTSC for its oversight costs.

For FY 17-18, FORA has collected LUC reports from the eight reporting entities ([Attachment A](#)) and submitted them to DTSC on November 30, 2018.

FISCAL IMPACT:

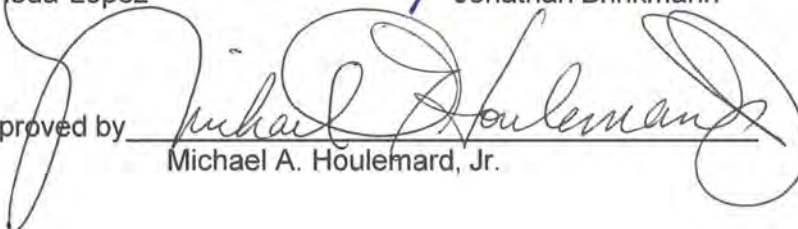
Reviewed by FORA Controller 

The fiscal impact is cost neutral. As described in the MOA, beginning in FY 09-10, FORA collected the costs associated with LUC reporting from the eight reporting entities at the same time FORA collected its annual membership dues.

COORDINATION:

Executive Committee, Administrative Committee, the eight reporting entities, and DTSC.

Prepared by  Reviewed by 
Ikuyo Yoneda-Lopez Jonathan Brinkmann

Approved by 
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Adopt a Transition Plan Resolution	
Meeting Date:	December 14, 2018	INFORMATION/ACTION
Agenda Number:	8b	

RECOMMENDATION:

1. Find that approval of a Transition Plan Resolution is a mere organizational change and not a project subject to CEQA.
2. Approve a Transition Plan Resolution and set a special meeting, if necessary, for December 19, 2018 if the Transition Plan and its Resolution are not unanimously approved.
3. Authorize staff to take appropriate action to comply with state law requiring submittal of an approved Transition Plan to the Local Area Formation Commission (“LAFCO”) by December 2018.

BACKGROUND/DISCUSSION:

On November 9, 2018, the Fort Ord Reuse Authority (“FORA”) Board reviewed and considered four Transition Plan Resolution versions, each with slightly differing approaches/content. On November 9, 2018, the Board directed that staff meet with the member jurisdiction attorneys as a group for input. The attorney group confined itself to discussing various legal issues associated with the four versions. The primary working document was entitled the “Hybrid” version, which was the Authority Counsel and staff attempt to address issues related to a version submitted by Board members Allan Haffa, Cynthia Garfield and Jane Parker. Since, that time, the attorney group met twice focusing on legal issues.

In addition, staff and Authority Counsel met with representatives from Landwatch and Keep Fort Ord Wild (“KFOW”) related to their concerns with the draft Transition Plan Resolution and their comments focused primarily on water and transportation.

Staff also attended discussions about the draft Transition Plan and related issues with the Administrative Committee. Landwatch representatives also attended the Administrative Committee workshop as did Board member Gail Morton and new Del Rey Oaks City council member John Gaglioti. Attached please find some of the notes from the Administrative Committee’s November 29, 2018 meeting. The first is a compilation of jurisdictional wants and needs. The green board is the listing of the “needs” articulated by the member jurisdictions, ex officio members and development community. The list compiled in black are some potential avenues to address the needs and wants.

On December 3, 2018, FORA staff attended the LAFCO meeting to give a brief update on the status of the Transition Plan Resolution and the meetings. At that meeting LAFCO staff expressed their intent and commitment to continue working collaboratively with FORA to address and resolve ongoing issues and make refinements to the Transition Plan, even after a submittal on December 30, 2018.

Based upon the multiple sources of input/discussions, staff is bringing forward the most recent version which tries to incorporate and/or respond to many of the issues raised. Authority Counsel

and CEQA Counsel have reviewed this most recent version and find that they meet with the spirit and intent of the Authority Act and the California Environmental Quality Act (“CEQA”).

Given that FORA is unique (unique legislation, multiple City/County jurisdictions, a superfund site, overlapping federal, state and local laws and multiple contractual issues), it was not possible eliminate all of the legal issues facing the transition plan. Those issues range from what aspects of the Implementation Agreements, Base Reuse Plan, FORA policies, programs, water allocations and contract obligation survive the FORA dissolution and repeal of the Authority Act and to what level of CEQA review might be required to single vote or two for adoption of the Transition Plan. Currently, the Plan tries to address these issues in the following ways: 1) it provides for negotiated agreements between the jurisdictions to address revenue sharing and other potentially disputed items; and 2) it provides for modification of the Transition Plan by the FORA Board should the need arise.

By way of status update, on October 29, 2018, the FORA Board authorized engaging a facilitator who can assist FORA and the jurisdictions in forming agreements that might address some or all of the outstanding issues. FORA staff issued a Request for Proposal shortly after the meeting, however, as of the close of the proposal time period, **no facilitator submitted a proposal**. FORA Executive Officer has now proceeded with individual contact for prospective facilitators and will provide further updates to the Board as soon as possible.

The Executive Committee met on December 5, 2018 and discussed the Transition Plan resolution agenda item and the vote required for adoption. In particular, they were advised that the most risk averse course of action is to take two votes on the Transition Plan Resolution in December. Accordingly, they recommended setting a special meeting for Wednesday, December 19, 2018 at 4:00 p.m., if a second vote is needed for Transition Plan adoption.

The Executive Committee also directed that multiple versions of the Transition Plan Resolution be provided to the Board.

- The first attachment is the current form of the Resolution and its supporting documents.
- The second attachment is the current form of the Resolution compared with the October 29, 2018 version and annotated with comments addressing various comments/ information review provided.
- The third attachment is the November 5, 2018 submittal revision by Board members Garfield, Haffa and Parker.
- The fourth attachment is the most recent version of the City of Marina (“Marina”) Transition Plan Resolution submitted to FORA on December 5, 2018.
- The fifth attachment is a comparison version Marina 12-5 version to 10-29-18 version.
- The sixth attachment is the October 29, 2018 version.
- The seventh attachment is the Landwatch letter suggesting language for water and transportation.

The Resolution continues to organized into the following sections: *Background/Recitals*; Section 1 *Findings and Determinations*; Section 2: *Assignment of Assets, Liabilities and Obligations*; Section 3: *Insurance*; Section 4: *Transition Plan Implementation and Resolution Adoption*. A brief summary of pertinent sections is provided.

Background and Recitals:

The Background and Recital Section has been revised to address a few issues. The member agency attorney group was split between eliminating or streamlining the recitals and providing a background and history context for the Transition Plan. In particular, the Marina approach was to eliminate most if not all of the recitals. One of their main comments was that their attorneys did not agree with how the recitals were phrased in terms of interpreting the law and/or documents. Another comment we heard from the Landwatch and KFOW group were the importance of the water agreements (in particular, the 1993 Annexation Agreement between the Army and Monterey County Water Resources Agency ("MCWRA") on Fort Ord. Accordingly, we have revised the recitals to include the water and wastewater agreements (responding to Landwatch, KFOW and others) and we have refined some of the other recital language to be responsive to the Marina issues.

Section 1: Findings and Determinations:

Section 1 has been modified to reflect that all policies, programs and mitigation measures of the Base Reuse Plan are assigned to the extent they survive dissolution of FORA. Paragraph 1.2 has been enhanced utilizing the statutory references contained in the Alan Waltner letter dated November 5, 2018. Section 1.4 has been modified to address the survivability issue and follows the encouragement to adopt policies approach offered by Board members Haffa, Garfield and Parker. We have also highlighted some of the pertinent policies contained in the Master Resolution, including affordable housing percentages and prevailing wage. Section 1.8 related to water and wastewater has been modified to include references to the 1993 Army-MCWRA Agreement and Army-FORA Economic Development Conveyance agreement.

Section 2: Assignment of Assets, Liabilities and Obligations

This section addresses FORA's assets, primary liabilities and obligations.

It clarifies that all funds available (Section 115 Trust, on-hand cash and property tax revenues now and post-2020) to FORA will be used to retire any CalPERS administrative liability so no jurisdiction or successor will have liability for the existing contract.

Section 2.1.3 Litigation Reserve Funds addresses the amounts budgeted for LAFCO indemnification and provides for the funds to be distributed if no litigation or indemnification obligation. Directs funds to an "escrow" account held by County of Monterey ("County"), to reimburse reasonable costs and managed by a panel, in accordance with Section 4.2 and 4.3.

Section 2.1.4 deals with Habitat Funds on hand and establishes the following distribution plan: First to the Habitat Conservation Plan ("HCP") Cooperative, if none, to a joint powers agency that manages habitat basewide, and if none, then FORA staff directed to bring back a new plan which allocates funds between habitat conservation and management and incidental take permits.

Section 2.1.5 directs that all Community Facilities District ("CFD") funds collected prior to 2020 be directed as follows: habitat conservation funds are protected and remaining funds directed to finish any in-progress construction projects and second, as identified in the final year Capital Improvement Program, if the agency has a Transition Plan Implementing Agreement ("TPIA"). If a jurisdiction does not have a TPIA, then funds are redistributed to those jurisdictions which have a TPIA. It should be noted, aside from in progress projects, Board priorities for the final year

Capital Improvement Program ("CIP") will set how any collected CFD funds (and other extra funds) are distributed.

Section 2.1.6 addresses "other funds". Essentially, based upon the origination of any "other funds", administrative liabilities shall be first addressed and then any remaining balance are applied to the final year CIP as outlined in Section 2.1.5.

Section 2.1.7 has clarified based upon Seaside staff comment that Seaside wishes to be the successor to FORA for the Environmental Services Contract ("ESCA"). It also clarifies comments received by the Army that these approvals are Army, federal and state regulatory approvals. Finally, revisions include the concept that any successor must be agreeable to both the successor and the Army and the regulators.

2.1.8 Disposal of FORA personal property after June 30, 2020, directs County to dispose of and to receive reimbursement of any administrative fees related to such disposal services any excess to the final year CIP.

2.1.9. Addresses two post-2020 real property issues: One with respect to the landfill parcel and one with respect to parcels in Seaside. At this point, we are recommending sufficient approvals to allow Army to direct transfer to the recipient entities or their designees. The Army may have limitations on who can be a "designee", as transfers to land use jurisdiction "designees" was accommodated by FORA through the Implementation Agreement language, which is not binding on the Army.

Approvals for real property transfer, may include Army, state and federal regulators and may even require some state legislation for appropriate state-designation as a federally recognized local reuse authority ("LRA"). The requirement for a LRA may limit who may be a receiving entity to only a public agency. These approvals will necessarily take some time to obtain, so it will be helpful to have the appropriate designations and decisions by the underlying land use jurisdictions as soon as possible.

2.1.10 Insurance Policies. This section has been clarified that policies are not terminated, but expire on their own terms. It also calls out the Pollution Legal Liability policy and makes provision for the self-insured retention fund and identifies the County as the potential First Named Insured, consistent with the County's actions on this matter.

As compared to the Marina version, the difference, extra funds are diverted only to the habitat program, instead of the Capital Improvement Program.

Section 2.2 identifies liabilities and obligations.

Section 2.2.1 related to the CalPERS liability requires FORA staff to seek receipt of a CalPERS actuarial valuation no less than six (6) months prior to FORA dissolution. Government Code section 20570 requires that any Notice of Termination of CalPERS contract be requested at least twelve months prior to termination. FORA staff has been speaking with CalPERS regularly about this issue and anticipates bringing something forward to the FORA Board early 2019. Additionally, this section clarifies that if cash on hand is insufficient, then FORA will seek to encumber property tax revenues, to the extent legally permissible, post 2020 to retire this administrative liability.

Sections 2.2.2, 2.2.3, and 2.2.4 all refer back to corresponding sections in 2.1.4, 2.1.5 and 2.1.7.

Section 2.2.6 related to the transportation and transit network. Identifies that lead agency projects return to lead agency. FORA lead agency projects shall be considered by the underlying jurisdictions, but in the event they are not incorporated into another jurisdiction or entity's capital improvement program, they shall be re-evaluated in concert with TAMC to identify the impact to the surrounding road network by removing those roads and that information can be used as the Board moves forward with a final year CIP. This section now calls for termination of the Reimbursement Agreements with Marina and County, unless specifically addressed in TPIAs and requests that the TPIA address any "entitled development" revenue issues with TAMC and MST. Finally, the section also clarifies that the lead agency will determine whether, how or when to fund and construct any particular road or transit project. These changes respond to comments by Landwatch, and others about home rule in moving forward on capital improvement program projects.

Section 2.2.7 related to water. Assigns FORA's right of enforcement under the Implementation Agreement. Adds in that this "assignment" does not create any new obligation to utilize groundwater to meet water needs, nor does it eliminate any duties existing at the time of this Transition Plan pursuant to state, federal law or contract requirements. The language now also confirms MCWD's commitment through its October 29, 2018 letter to work with the jurisdictions on allocations and reductions in a fair and equitable manner.

Section 2.2.8 addresses the 107 documents and directs that these are updated as we proceed through the process.

Section 2.2.9 addresses a process for assignment of items discovered after June 30, 2020.

Section 3: Insurance

Addresses researching whether Transition Plan insurance coverage will be available and how much it will cost.

Section 4: Transition Plan Implementation

Section 4.1 addresses TPIAs. This section addresses the ability of the land use jurisdictions to negotiate and address revenue generation and sharing and reduction or elimination of legal issues by agreement.

Section 4.2. Calls for an Escrow Account for the indemnification funds

Section 4.3. Litigation management now provides for management by any land use jurisdiction identified real party. This allows for a single Land use jurisdiction to go into closed session to discuss litigation strategy, an issue which would have been difficult with multiple-entity litigation management.

Section 4.4 LAFCO review.

Section 4.6 Reserved right of modification.

Exhibit A to the Transition Plan is the Contract Matrix Assignment which outlines contracts as assets/liabilities and identifies the agencies to be FORA successors in such contracts.

Exhibit B to the Transition Plan are reference documents for ease of access background documents related to this Transition Plan.

As currently drafted, the Transition Plan addresses assets, liabilities, pledges and obligations and a schedule. A fundamental difference between the Marina version and the version before the Board today is that Marina's version directs every "extra" dollar into habitat management, instead of the final year CIP. FORA staff does not believe that the FORA version is inconsistent with Marina's position because the FORA Board could certainly direct every dollar into future habitat as a part of the final year CIP. There are more recitals in the FORA version than in the Marina version. As discussed above, we have modified the language in the FORA version in response to comments raised by the Marina attorneys. We have added language suggested by Marina attorneys to address the issue of utilizing property tax revenues for any CalPERS liability shortfall. We have been responsive to comments from Landwatch and KFWO related to water and transportation, by adding reference to the background water and wastewater agreements and clarifying lead agency funding and construction schedules for transportation projects. We have incorporated Army-BRAC comments on ESCA approvals and addressed County comments on reimbursement for administrative costs. We have tried to craft a plan which is flexible and modifiable as negotiated agreements continue and additional issues arise.

A table compiling jurisdictional Transition reports/materials provided to FORA can be found at: <https://www.fora.org/Transitiontaskforce.html>. Public comment letters are on the FORA Board page.

FISCAL IMPACT:

Reviewed by FORA Controller 

COORDINATION:

County of Monterey, LAFCO, TAMC, MCWD, Cities of Seaside, Monterey, Del Rey Oaks, Pacific Grove, Marina and Salinas.

ATTACHMENTS:

- Attachment 1: Transition Plan Resolution 12-6-18 with Exhibits A and B
- Attachment 2: Comparison Transition Plan Resolution 12-6-18 to 10-29-18 version annotated
- Attachment 3: November 5, 2018 submittal by Board members Garfield, Haffa and Parker
- Attachment 4: Marina Transition Plan Resolution 12-5-18
- Attachment 5: Comparison Marina Transition Plan Resolution 12-5-18 to 10-29-18 version
- Attachment 6: October 29, 2018 version
- Attachment 7: Landwatch letter suggesting language for water and transportation
- Attachment 8: 11-29-18 Administrative Committee Meeting Notes

Prepared by 
Sheri L. Damon

Reviewed by 
Steve Endsley

Approved by 
Michael A. Houlemard, Jr.

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.** 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 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 Findings and Determinations:

1.1 Base-wide Facilities:

The Board hereby finds and determines that this Transition Plan assigns 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, liabilities, and 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 continue to 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, 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 the event of a water supply shortage that reduces the overall amount of water available for the Ord Community, MCWD has committed by letter dated October 29, 2018 to reducing 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 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, 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 97 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 10 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 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 23 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

¹ Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

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 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. 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, including without limitation, contributions or mechanisms to lead agencies TAMC and MST to replace revenues generated by the expiring CFD Special Tax. Those Reimbursement Agreements shall terminate on June 30, 2020, unless otherwise addressed in the Transition Plan Implementing Agreements. 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, 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.

2.2.9 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

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.

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

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Chair FORA Board

ATTEST:

Michael A. Houlemard, Jr., Clerk

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.

Administrative

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
1	CalPERS Contract	1997	http://b77.402.myftpupload.com/wp-content/uploads/1-CalPERS-Contract.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
2	CalPERS Contract Amendment 1	1999	http://b77.402.myftpupload.com/wp-content/uploads/2-CalPERS-Contract-Amendment-1.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
3	CalPERS Contract Amendment 2	2003	http://b77.402.myftpupload.com/wp-content/uploads/3-CalPERS-Contract-Amendment-2.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
4	LAFCO Indemnification Agreement	2018	http://b77.402.myftpupload.com/wp-content/uploads/4-Indemnification-Agreement-LAFCO-and-FORA-DRAFT-02-28-18.pdf	Liability	All Voting Members	May require a substantial contribution should LAFCO be sued on transition plan
5	General Umbrella Policy	Annual		Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
6	Commercial Property/Premises Liability	Annual	http://b77.402.myftpupload.com/wp-content/uploads/6-Commercial-Property-Premises-Liability.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
7	Worker's Compensation Policy	Annual	http://b77.402.myftpupload.com/wp-content/uploads/7-Workers-Compensation-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
8	Director's Liability Policy	Annual	http://b77.402.myftpupload.com/wp-content/uploads/8-Directors-Liability-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
9	Crime Bond Policy	2006	http://b77.402.myftpupload.com/wp-content/uploads/9-Crime-bond-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
10	FORA Organizational Chart	2016	http://b77.402.myftpupload.com/wp-content/uploads/FORA_Org_Chart_10-2016.pdf		FORA	
11	Transition Plan Memorandum Draft	2016	http://b77.402.myftpupload.com/wp-content/uploads/Transition-SunsetPlanMemo.pdf			
12	Transition Plan Timeline Draft	2016	http://b77.402.myftpupload.com/wp-content/uploads/FORA-Timeline-DRAFT-050416.pdf			
13	Transition PowerPoint Presentation Draft	2016				
14	FORA MST PLL Insurance Agreement	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MST-PLL-Insurance-Agreement.pdf			

15	FORA TAMC PLL Insurance Agreement	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-TAMC-PLL-Insurance-Agreement.pdf			
16	Del Rey Oaks Reimbursement Agreement	2014	http://b77.402.myftpupload.com/wp-content/uploads/DRO-Reimbursement-Agreement.pdf			

Financial Assets

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
17	County of Monterey Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/mttycty_ia.pdf	Asset	County of Monterey/MCWD/Habitat Cooperative/TAMC	1
18	Del Rey Oaks Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/dro_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC	1
19	City of Marina Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/marina_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/DRO/City of Monterey/Seaside	1
20	City of Marina IA - Amendment #1: Establishing Development Fee Policy Formula	2013	http://fora.org/Reports/ImplementAgreements/marina_ia_amend-9-14-13.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/DRO/City of Monterey/Seaside	1
21	City of Monterey Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/monterey_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC	1
22	City of Seaside Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/seaside-ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/Seaside	1
23	CFD-Notice of Tax Lien	2002	http://b77.402.myftpupload.com/wp-content/uploads/Notice-of-CFD.pdf	Asset	Terminates on FORA sunset unless vote and/or extension	2
24	CFD-First Amended Notice of Tax Lien	2005	http://b77.402.myftpupload.com/wp-content/uploads/First_Amended_Notice_of_Tax_Lien.pdf	Asset	Terminates on FORA sunset unless vote and/or extension	
25	Development Fee Resolution	1999	http://b77.402.myftpupload.com/wp-content/uploads/99-01.pdf	Asset	Seaside? Some areas on Base still covered by Development Fee Resolution	3
26	FORA-UCSC Agreement Concerning Funding of Habitat Management	2005	http://fora.org/Reports/TTF/101405_agreement_Habitat_UMBEST.PDF	Liability	Continues until replaced by HCP	

	Related Expenses on the Fort Ord Natural Reserve					
27	Pollution Legal Liability Reimbursement Agreement (DRO)	2015	http://b77.402.myftpupload.com/wp-content/uploads/DRO-Reimbursement-Agreement.pdf	Asset	DRO	3
28	Pollution Legal Liability Insurance Agreement (MST)	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MST-PLL-Insurance-Agreement.pdf			
29	Pollution Legal Liability Insurance Agreement (TAMC)	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-TAMC-PLL-Insurance-Agreement.pdf			
30	Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmittal-summary-policy010215.pdf		County of Monterey/Seaside/Monterey/Marina	4
<p>1. Implementation Agreements require ongoing completion of Base Reuse Plan obligations. Land sales revenues, development fees/CFD fees/ and Property tax revenues committed until CIP fully implemented. See attached legal memorandum on these issues.</p> <p>2. CFD only assignable if extended by vote and changes to state Mello Roos Act allowing transfer to JPA/Successor. If no CFD, then Jurisdictions required to replace pursuant to Implementation Agreement formula</p> <p>3. DRO owes FORA for their proportional share of the PLL Insurance Contract and some costs on the prior South boundary Road Improvement project.</p> <p>4. Pollution Legal Liability Insurance Contract provides that upon FORA sunset, jurisdictions become successor beneficiaries.</p>						

Environmental Services

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
31	FORA-City of Monterey ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/121107_MOA_FORA-ESCA_City%20of%20Monterey.PDF	Asset/Obligation	Dependent upon Property transfer	N/A
32	FORA-City of Monterey ESCA Property Management MOA-Amendment #1	2018	http://b77.402.myftpupload.com/wp-content/uploads/05092018_Executed_2007_MOA_FORA_Monterey.pdf			
33	FORA-COUNTY MOA Regarding Property Ownership and Responsibilities	2018	https://www.fora.org/Reports/TTF/2018-09-13_LO_%20MOA_amendmt_MoCo_ESCA_Cleanup.pdf			
34	US EPA-Army-State of CA Federal Facility Agreement	1990	http://fora.org/Reports/TTF/111990_Federal_Facilites_Agreement_Amendm ent.pdf	Obligation/Liability		County
35	Pollution Legal Liability Insurance (PLL) - ESCA Insurance Policy Coverages A, B & C	2007	http://fora.org/Reports/TTF/ESCA_Insurance_Policy-PLL-5-15-07.pdf	Asset		

36	FORA-County ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/121807_MOA_FORA-ESCA_Monterey%20County.PDF	Asset/Obligation	Dependent upon Property transfer	
37	FORA-CSUMB ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/101507_MOA_FORA-ESCA_CSUMB.PDF	Asset/Obligation	Dependent upon Property transfer	
38	FORA-CSUMB ESCA Property Management MOA-Amendment #1	2018	https://www.fora.org/Reports/TTF/CSUMB_Amendment_No-1_to_MOA_property_hold_ESCA_cleanup_fully_executd.pdf			
39	FORA-DRO ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/112607_MOA_FORA-ESCA_Del%20Rey%20Oaks.PDF	Asset/Obligation	Dependent upon Property transfer	
40	FORA-DRO ESCA Property Management MOA-Amendment #1	2018	https://www.fora.org/Reports/TTF/2018-05-30_MOA_property_hold_ESCA_cleanup_DRO_fully_executd.pdf			
41	FORA-Seaside ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/092007_MOA_FORA-ESCA_Seaside.PDF	Asset/Obligation	Dependent upon Property transfer	
42	FORA-Seaside ESCA Property Management MOA-Amendment #1	2018	https://www.fora.org/Reports/TTF/2018-05-30_MOA_property_hold_ESCA_cleanup_SEA_fully_executd.pdf			
43	ESCA Cooperative Agreement Award (End date amended 2017)	2007	http://fora.org/Reports/TTF/033007_Coop_Agreement_Award_ESCA.pdf	Asset/Liability	2037	County***
44	FORA-LFR Fort Ord Remediation Services Agreement	2007	http://fora.org/Reports/TTF/033007_RSA_ESCA.pdf	Asset/Liability	?2019/2020?	County***
45	US EPA Administrative Order on Consent	2007	http://fora.org/Reports/TTF/ESCA-0099_AOC.pdf	Liability/Obligation		County/Seaside/Monterey/ Del Rey Oaks Marina/CSUMB/UC/MPC/MCWD
46	FORA-MPC ESCA Property Management MOA	2008	http://fora.org/Reports/TTF/121708_MOA_FORA-ESCA_MPC.PDF	Asset/Obligation	Dependent upon Property transfer	
47	FORA-MPC ESCA Property Management MOA - Amendment #1	2018	http://b77.402.myftpupload.com/wp-content/uploads/2018-07-02_MOA_hold_property_during_ESCA_cleanup_MPC_fully-executed.pdf			
48	MOA Jurisdictions and DTSC Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord	2008	http://b77.402.myftpupload.com/wp-content/uploads/16_022708moaEnviroRestricts.pdf		No End Date	County/Seaside/Monterey/Del Rey Oaks/Marina, CSUMB/UC/MPC
49	MOU Regarding Development of the Central Coast Veterans Cemetery	2009	http://b77.402.myftpupload.com/wp-content/uploads/18_050509mouVetCem.pdf	Liability/Obligation		County/Seaside
50	Remedial Design/Remedial Action, Land Use Controls Implementation, Operations and Maintenance Plan, Parker Flats MRA Phase I*	2009	http://b77.402.myftpupload.com/wp-content/uploads/21_080409PFlatsPh1LUCIPOMP.pdf		No End Date	County of Monterey
51	Pollution Legal Liability Insurance PLL ESCA Insurance Policy	2007	http://b77.402.myftpupload.com/wp-content/uploads/ESCA_Insurance_Policy-PLL-5-15-07.pdf			

52	Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmital-summary-policy010215.pdf	Asset/Liability/Obligation		
53	ESCA Cooperative Agreement Award-Amendment 1	2017	tan	Asset/Liability	2028	County***
54	ESCA Cooperative Agreement Award-Amendment 2	2017	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			
55	G1 Land Use Covenant Implementation Plan and Operations Maintenance Plan (LUCIP/OMP)	2018*	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
56	G2 LUCIP/OMP	2018*	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
57	G3 LUCIP/OMP	2018*	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
58	G4 LUCIP/OMP	2018*	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
59	FORA-Seaside ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/092007_MOA_FORA-ESCA_Seaside.PDF	Asset/Obligation	Dependent upon Property transfer	
60	FORA-Seaside ESCA Property Management MOA-Amendment #1	2018	https://www.fora.org/Reports/TTF/2018-05-30_MOA_property_hold_ESCA_cleanup_SEA_fully_executed.pdf			
61	ESCA Cooperative Agreement Award (End date amended 2017)	2007	http://fora.org/Reports/TTF/033007_Coop_Agreement_Award_ESCA.pdf	Asset/Liability	2037	County***
62	FORA-LFR Fort Ord Remediation Services Agreement	2007	http://fora.org/Reports/TTF/033007_RSA_ESCA.pdf	Asset/Liability	2019/2020	County***
63	US EPA Administrative Order on Consent	2007	http://fora.org/Reports/TTF/ESCA-0099_AOC.pdf	Liability/Obligation		County/Seaside/Monterey/ Del Rey Oaks Marina/CSUMB/UC/MPC/MCWD
64	FORA-MPC ESCA Property Management MOA	2008	http://fora.org/Reports/TTF/121708_MOA_FORA-ESCA_MPC.PDF	Asset/Obligation	Dependent upon Property transfer	
65	FORA-MPC ESCA Property Management MOA - Amendment #1	2018	http://b77.402.myftpupload.com/wp-content/uploads/2018-07-02_MOA_hold_property_during_ESCA_cleanup_MPC_fully-executed.pdf			
66	MOA Jurisdictions and DTSC Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord	2008	http://b77.402.myftpupload.com/wp-content/uploads/16_022708moaEnviroRestricts.pdf		No End Date	County/Seaside/Monterey/Del Rey Oaks/Marina, CSUMB/UC/MPC
67	MOU Regarding Development of the Central Coast Veterans Cemetery	2009	http://b77.402.myftpupload.com/wp-content/uploads/18_050509mouVetCem.pdf	Liability/Obligation		County/Seaside
68	Remedial Design/Remedial Action, Land Use Controls Implementation, Operations and Maintenance Plan, Parker Flats MRA Phase I*	2009	http://b77.402.myftpupload.com/wp-content/uploads/21_080409PFlatsPh1LUCIPOMP.pdf		No End Date	County of Monterey
69	Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmital-summary-policy010215.pdf	Asset/Liability/Obligation		
70	ESCA Cooperative Agreement Award-Amendment 1	2017	tan	Asset/Liability	2028	County***
71	ESCA Cooperative Agreement Award-Amendment 2	2017	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			
72	MPC Extension Letter -Esca Cleanup	2018	http://b77.402.myftpupload.com/wp-content/uploads/2018-07-02_MOA_hold_property_during_ESCA_cleanup_MPC_fully-executed.pdf			
73	ESCA Grant Amendment – Fully Signed	2017				
74	ESCA Amendment Modification	2017	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			

75	Amendment No. 1 MOA FORA ESCA County	2018				
76	Amendment No. 1 MOA property held for ESCA clean up	2018				
77	Amendment No. 1 MOA City of Seaside	2018				
78	Amendment No. 1 MOA County of Monterey	2018				
79	Extend 2007 MOA by FORA and City of Monterey	2018	http://b77.402.myftpupload.com/wp-content/uploads/05092018_Executed_2007_MOA_FORA_Monterey.pdf			
<p style="text-align: center;">REFERENCE MATERIALS/WEBSITES</p> <p style="text-align: center;">Kutak Rock letter dated [] Army Base Realignment And Closure Administrative Record website http://www.fortordcleanup.com/</p> <p style="text-align: center;">Notes: * Agreement will be replaced with new LUCIP Agreement/Restriction ** LUCIP/OMP agreements are expected to be finalized in 2018</p>						

Habitat

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
80	Habitat Management Plan	1997	http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1787/bw-1787.pdf	Obligation/Liability	Marina/Seaside/County/City of Monterey/MPC/CSUMB/All property recipients	
81	USFWS EG-PF Biological Assessment Concurrence Letter	2002	http://fora.org/Reports/TTF/USFWS_EG-PF_LandUseModificationAssessment_ConcurrenceLetter_2002.pdf			
82	Del Rey Oaks-FORA-Developer Endangered Species MOA	2005	http://fora.org/Reports/TTF/092705_MOA_Endangered_Species_DRO.PDF	Obligation/Liability	County/Habitat Cooperative	
83	FORA-UCSC Agreement Concerning Funding of Habitat Management Related Expenses on the Fort Ord Natural Reserve	2005	http://fora.org/Reports/TTF/101405_agreement_Habitat_UMBEST.PDF	Obligation/Liability/Asset	Habitat Cooperative/County?	This Agreement may be replaced by the basewide HCP when adopted.
84	FORA-UCSC FONR-Extension of Funding	2007	http://b77.402.myftpupload.com/wp-content/uploads/FORA-UC-FONR-Extend-Funding-signed072707.pdf	Obligation/Liability	Habitat Cooperative/County?	In effect until basewide HCP
85	Parker Flats - East Garrison biological assessment	2005	http://fora.org/Reports/TTF/EG-PF_BiologicalAssessment_BW-2180_2005.pdf			
86	County-FORA-Developer Endangered Species MOA	2005	http://fora.org/Reports/TTF/100605_MOA_Endangered_Species_East-Garrison-County.PDF	Obligation/Liability	County/Habitat Cooperative	

87	Proposed East Garrison-Parker Flats Land Use Modification MOU	2005	http://fora.org/Reports/TTF/EG-PF_LandUse_Modification_MOU_BW-2180A-1_2005.pdf			
88	County-FORA-EG Partners LLC Funding Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/MOA_MoCo-FORA-EG-Partners-LLC_Basewide-Funding-Obligations-signed2.28.06.pdf			
89	FORA-MPC Reimbursement Agreement		http://b77.402.myftpupload.com/wp-content/uploads/FORA-MCP-LLC-Reimbursement-Agmt_signed-01-26-2006.pdf			
90	FORA-UC Habitat Funding Agreement	2005	http://b77.402.myftpupload.com/wp-content/uploads/FORA-UC-Habitat-UMBEST-signed10-14-2005.pdf			
91	County, MPC, FORA Public Safety Officer Training Facilities Agreement	2002	http://b77.402.myftpupload.com/wp-content/uploads/102202_agreement_Public-Safety-Officer.pdf			
92	Writ of Mandate	2007	http://d77.495.myftpupload.com/wp-content/uploads/2016/09/FORA_MARINA_v_CSU_WRIT_5-02-07.pdf			
93	MOA Dept of Toxic Substances Control	2008	http://b77.402.myftpupload.com/wp-content/uploads/16_022708moaEnviroRestricts.pdf			
94	FORA UC FONR Extend Funding	2007	http://b77.402.myftpupload.com/wp-content/uploads/FORA-UC-FONR-Extend-Funding-signed072707.pdf			

Miscellaneous

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
95	Marina Redevelopment Agency, Marina Community Partners and FORA MOA on University Villages Building Removal	2005	http://fora.org/Reports/TTF/FORA-MRDA-MCP-building-removal-MOA-082905.pdf	Asset/Liability	Marina Successor Agency	
96	Marina Community Partners and FORA Reimbursement Agreement on University Villages Building Removal	2006	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MCP-LLC-Reimbursement-Agmt_signed-01-26-2006.pdf	Liability	Marina	
97	County-FORA-EG Partners LLC Funding Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/MOA_MoCo-FORA-EG-Partners-LLC_Basewide-Funding-Obligations-signed2.28.06.pdf	Liability/Asset	County/Marina	Security Parcel for any debt obligation
98	FORA-Seaside-County-Cemetery Foundation	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812-MOU-VetsCem-signed.pdf	Liability	County/Seaside/Foundation	
99	Army-FORA Memorandum of Agreement - Amendment #6	2014	http://b77.402.myftpupload.com/wp-content/uploads/072914_MOA_Army_FORA_Amend_6.pdf			

100	Army-FORA Water Quitclaim Deed- Veteran's Cemetery		http://b77.402.myftpupload.com/wp-content/uploads/Army-FORA_VTC_Water_Agreement-Recorded.pdf			
101	FORA-City of Marina Quitclaim Deed		http://b77.402.myftpupload.com/wp-content/uploads/FORA-Marina_Water_Agreement022318.pdf			
102	Stipulation to Discharge Peremptory Writ of Mandate (CSUMB)	2009	http://fora.org/Reports/TTF/091409_Report_Stipulation-to-Discharge.pdf	Asset	All voting members/MCWD/TAMC/HCP Cooperative	Enforcement obligations as to ongoing habitat and contributions toward road and other infrastructure
103	Settlement Agreement and Mutual Release (Sierra Club)	1998	http://www.fora.org/Planning/113098_SierraClub_Agreement.PDF	Liability	Marina/Seaside/County/City of Monterey/Del Rey Oaks	Deed Restrictions/Resource Constraints
104	PENDING LAWSUITS					
105	MCP v. FORA, Monterey County Superior Court	2017	N/A	Asset/Liability		
106	KFOW v. FORA, Monterey Superior Court	2017	N/A	Asset/Liability		
107	County, FORA, East Garrison Partners MOA on Basewide Funding Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MCRDA-EastGarrison_Obligations_MOA_022806.pdf			
108	FORA-Seaside-County-VCF Cemetery Land Sale Agreement	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812_MOU_VeteransCemetery_Land_Sale.pdf			
109	FORA-Seaside-County-VCF Cemetery Land Sale Agreement: Exhibit 1	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812_MOU_VeteransCemetery_Land_SaleExhibit1.pdf			
110	FORA-Seaside-County-VCF Cemetery Land Sale Agreement: Exhibit 2	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812_MOU_VeteransCemetery_Land_SaleExhibit2.pdf			
111	FORA MCP LLC Reimbursement Agreement	2006	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			
112	MOA Concerning Base-wide Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/MOA_MoCo-FORA-EG-Partners-LLC_Basewide-Funding-Obligations-signed2.28.06.pdf			
113	MOU County, Seaside CCVC Foundation on CCCVC Planning	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812-MOU-VetsCem-signed.pdf			

Transportation

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
114	FORA-City of Marina reimbursement agreement for Abrams, Crescent, 8th Street, and Salinas Roads	2007	http://fora.org/Reports/TTF/040307_Reimbursement_Agreement_FORA-Marina.pdf	Liability/Obligation:	City of Marina: Obligation Other Cities Liability:	[1]

115	FORA-County of Monterey reimbursement agreement for Davis Road Improvements	2005	http://fora.org/Reports/TTF/101905_Agreement_Reimbursment_FORA_MoCo.PDF	Liability/Obligation:	County	[3]
116	FORA-TAMC Reimbursement Agreement Concerning Hwy 68 Operational Improvements	2014	http://fora.org/Reports/TTF/051614_FORA-TAMC_Hwy68_operational_improvements.pdf	Liability/Obligation:		
117	FORA-Monterey Bay Charter School Traffic MOU	2015	http://fora.org/Reports/TTF/FORA_MBCS_Traffic_MOU_signed_111315.pdf	Asset		
118	MST - TAMC-Marina-FORA MOU	2007	http://fora.org/Reports/TTF/FORA-MST-TAMC-Marina_MOU_050107.pdf			
119	Whitson Engineers (Master Services)	2017	https://www.fora.org/Reports/2017_Contract_FC-2017117-Executed-Whitson.pdf	Asset		
120	Capital Improvement Program Transportation Assignments	TBD	ATTACHED	Liability/Obligation	As Assigned.	
121	FORA-City of Marina Shea Homes Fee Credit Agreement concerning 8th Street	2014	http://b77.402.myftpupload.com/wp-content/uploads/111414_FORA-Marina_Reimbursement_Amendment.pdf			

NOTES:

[1] Contract deals with Four Streets: 8th Street: 4,871,433; Crescent: 1,018,004 (Already completed pd. Approx. \$400,000 remainder reallocated to other projects); Abrams Drive: 852,578; Salinas Road: \$3,410,313
[2] Contract is City of Marina assigning a portion of the above reimbursement Agreement to Dunes for building a portion of 8th Street.

Water/Wastewater

	CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES	Notes
122	US-MCWRA Agreement	1993	http://fora.org/Reports/1993-Agrmt-US_MCWRA.pdf	Asset	County of Monterey/City of Monterey/City of Seaside/City of Del Rey Oaks/CSUMB/MPC/UC/MCWD		1
123	FORA-MCWD Water/Waste Water Facilities Agreement	1998	http://fora.org/Reports/CIP/031398%20 Water Wastewater Facilities Agreement.pdf		MCWD	A. Agreement Terminates. MCWD/unsewered areas on Fort Ord only served by new contracts; subsequent annexation by MCWD/LAFC O issues	1
124	Water/Wastewater Facilities Agreement Exhibits	1998	http://fora.org/Reports/CIP/031398%20 Water Wastewater Facilities Agreement.pdf				
125	FORA-MCWD Water/Waste Water Facilities Agreement - Amendment 1	2001	http://www.fora.org/Reports/CIP/Water-Wastewater-FAamend1.pdf		MCWD		
126	FORA-MCWD Water/Waste Water Facilities Agreement - Amendment 2	2007	http://www.fora.org/Reports/CIP/Water-Wastewater-FAamend2.pdf		MCWD		
127	Army-FORA MOA for Sale of Portions of the Former Fort Ord	2000	http://fora.org/Reports/TTF/062000_MOA_Army-FORA_EDC-Agreement.PDF	Asset/Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD?	B. Each entity must be designated as a Local Reuse Authority by OEA in Federal Govt. and State Government to receive water/waste water rights; Issue as to prioritization and access;	2, 3

128	FORA, MCWD Quitclaim Deed Ord infrastructure	2001	http://fora.org/Reports/TTF/110701_FORA-MCWD_Quitclaim_Deed_Ord_Infrastructure.pdf	Obligation	City of DRO/City of Monterey/City of Seaside/County of Monterey/MPC/CSUMB (as to Enforcement of Provisions only) NOTHING TO ASSIGN TO MCWD: TRANSFER COMPLETE	Enforcement of obligations contained in Quitclaim as to water/waste water service obligations	4
129	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 1	2002	http://fora.org/Reports/TTF/102301_MOA_Army-FORA_Amend_1.PDF				5
130	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 2	2006	http://b77.402.myftpupload.com/wp-content/uploads/121406_MOA_Army-FORA_Amend_2.pdf				
131	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 3	2008	http://b77.402.myftpupload.com/wp-content/uploads/082808_MOA_Army-FORA_Amend_3.pdf				
132	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 4	2009	http://b77.402.myftpupload.com/wp-content/uploads/031709_MOA_Army-FORA_Amend_4.pdf				
133	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 5	2011	http://b77.402.myftpupload.com/wp-content/uploads/110310_MOA_Army_FORA_Amend_5.pdf				
134	Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 6	2014	http://b77.402.myftpupload.com/wp-content/uploads/072914_MOA_Army_FORA_Amend_6.pdf				
135	MCWD-FORA Quitclaim deed L35.1 & L35.2	2004	http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed090304.pdf				
136	Army- FORA, MRWPCA, and MCWD MOA	2005	http://fora.org/Reports/110205_MOA_Army_MRWPCA-FORA-MCWD.pdf	Asset	Seaside/DRO/City of Monterey		
137	MCWD-FORA Quitclaim deed L35.5	1997	http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed020806.pdf	Enforcement	City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD		
138	FORA Recycled Water allocations to jurisdictions	2007	http://fora.org/Reports/TTF/RecycledWater_allocation_to_Jurisdictions--051107.PDF		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (See Section 3)	6
139	FORA Potable Water allocation to jurisdictions	2007	http://fora.org/Reports/TTF/PotableWater_allocation_to_Jurisdictions-011207.pdf		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (Section 3)	7
140	Army-FORA VTC Water Agreement	2018	http://b77.402.myftpupload.com/wp-content/uploads/Army-FORA_VTC_Water_Agreement-Recorded.pdf				
141	FORA to City of Marina Water Agreement	2018	http://b77.402.myftpupload.com/wp-content/uploads/FORA-Marina_Water_Agreement022318.pdf		Marina		
142	Army-Seaside AYH Water Deed	2008	http://fora.org/Reports/TTF/082808_AYH_Water_Deed.pdf		Seaside		8
143	MOU Water Augmentation and 3 Party Agreement	2015	http://fora.org/Reports/2015-MOU-Three-Party_Final.pdf	Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/City of		9

					Monterey/County of Monterey	
144	FORA-MCWD Pipeline Reimbursement Agreement	2016	http://fora.org/Reports/2016-Rmbrs_Agrmt_FORA-MCWD_Pipeline_Executed_08-25-16.pdf	Liability	City of Seaside/City of Del Rey Oaks/County of Monterey/City of Monterey/County of Monterey	10
145	Reimbursement Agreement for AWT Phase I RUWAP Recycled Project	2016	http://b77.402.myftpupload.com/wp-content/uploads/2016_Rmbrs_Agrmt_FORA-MCWD_Pipeline_Executed_08-25-16.pdf			
<p>Notes:</p> <ol style="list-style-type: none"> 1. This Agreement was quitclaimed to MCWD. However, replacement supplies are to the benefit of all properties on Fort Ord. 1. Agreement terminates on FORA sunset. Annexation does not automatically terminate agreement. Oversight continues until agreement terminates. 2. Article 5, provides FORA first right of refusal to excess water and waste water Rights. Successor must be consented to by Army and designated as Local Reuse Authority (Federal and State Law) 3. Article 5 requires fair and equitable water allocation to enable the effective base reuse. 4. Quitclaim Deed requires compliance with underlying obligations including but not limited to a fair and equitable allocation of water to the jurisdictions; JPA/Successor to enforce 5. Changes MCWD Public Benefit Conveyance to an EDC conveyance 6. Allocates 1427 afy reclaimed water to jurisdictions (fair and Equitable share); MCWD/JPA/Successor to enforce 7. Potable water allocations to jurisdictions (Fair and Equitable share); MCWD/JPA/Successor to enforce 8. 109 AFY water to Seaside (Stillwell Kidney) 9. Planning agreement to analyze alternatives for augmented water supply options 10. Six Million dollar liability to build infrastructure pipeline for delivery of reclaimed/augmented water supply to Ord Community 						

Transition Planning Update
Exhibit B - Reference Documents

1	Authority Act	http://b77.402.myftpupload.com/wp-content/uploads/AuthorityAct.pdf
2	Base Reuse Plan	http://b77.402.myftpupload.com/library/reuse-plan/
3	Public Facilities Improvement Plan	https://www.fora.org/Reports/BRP/BRP_v3_AppendixB-Business-Operation-Plan.pdf
4	Capital Improvement Program	https://www.fora.org/Reports/CIP/CIPReports/CIP2018-19.pdf
5	Master Resolution	http://b77.402.myftpupload.com/wp-content/uploads/MasterResolution.pdf
6	Ft Ord Community Task Force – Strategy Report	https://www.fora.org/Reports/1992-06-19_Ft_Ord_Comm_TF_Strategy.pdf
7	Resolution 97-06	https://www.fora.org/Reports/Resolutions/1997/061397%20resol%20_Resolution%20No.%2097-6_.PDF
8	SB 899 FORA Act	http://b77.402.myftpupload.com/wp-content/uploads/AuthorityAct.pdf
9	FORA Community Facilities District (CFD) Notice of Special Tax Lien	http://b77.402.myftpupload.com/wp-content/uploads/052202_CFD_notice_special_tax_lien.pdf
10	PG&E Army Public Easement	http://b77.402.myftpupload.com/wp-content/uploads/PGE_PUE_Ft_Ord_1997-04-17.pdf

**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. 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") ~~moved~~ of the 7th Infantry Division - Light ~~to Fort Lewis Washington over the following two years, resulting~~ 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.

Commented [SD1]: Inserted to address Landwatch and complete background documents discussed by attorney group.

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)

Commented [SD2]: Inserted to address Landwatch/KFOW comments and complete background recitals discussed by attorney group.

B.D. After the announcement but prior to the implementation of the base downsizing/closure, political leaders ~~from~~ 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.](#)

C.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.

D.F. ~~The Fort Ord Reuse Authority (“FORA”)~~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 ~~tasked FORA with~~ ~~declared~~ the following ~~primary directives~~ ~~goals to be the policy of the State of California:~~ (1) ~~plan~~ ~~To facilitate~~ ~~and manage~~ the transfer of and reuse of the real and other property of the former Fort Ord ~~property from the Army to local jurisdictions or their designee(s) with all practical speed;~~ (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and ~~redevelopment~~ ~~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.

Commented [SD3]: Paragraph amended to address a Marina attorney comment that this was not a technically correct recitation of the Authority Act.

E.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. ~~A copy of the~~ ~~The~~ contract with CalPERS as amended to date is referenced as ~~Contract #~~ ~~items~~ 1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference. ~~As is the situation facing many local public entities today, FORA’s liability for pension obligations under the CalPERS contract is not at present fully funded and any potential shortfall must be addressed in the transition planning process.~~

Commented [SD4]: No longer necessary.

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, ~~which identified (1) environmental actions required to mitigate development and reuse of the former Fort Ord (the “Base wide Mitigation Measures”) and (2)~~

Commented [SD5]: Paragraph revised to address a Marina concern that the recital was not technically correct. Paragraph now references the Resolution of adoption which speaks for itself.

~~infrastructure and related costs necessary to accommodate development and reuse of the former Fort Ord (the “Base-wide Costs”), each consistent with the fulfillment of FORA’s primary directives. A copy of the in Resolution 97-06. The Reuse Plan and, its attendant environmental report is, and Resolution 97-06 are available on the FORA website at www.fora.org or for your convenience link 2 on may be accessed via Exhibit B - Reference documents is Documents attached to hereto and incorporated by this report. A reference.~~

F-I. As part of that approval, FORA’s Board of Directors (the “Board”) certified ~~an~~ 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.

G-J. FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act (“CEQA”) to implement ~~the Base-wide Mitigation Measures and incur the Base-wide Costs, a program addressing policies, programs and mitigation measures of the Reuse Plan, including a capital improvement program and finance program addressing basewide facilities.~~

Commented [SD6]: Removing the Basewide Costs and Basewide Mitigation Measure language that is in the Implementation Agreements and instead utilizes the Marina concept of policies/programs/and mitigation measures of the Reuse Plan.

H.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 Base-wide Mitigation Measures and to pay the Base-wide Costs, base-wide facilities outlined in the Capital Improvement Program ("CIP").

H.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 Capital Improvement Program ("CIP"). ~~The Reuse Plan carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan ("PFIP") adopted in 2001. The PFIP can be accessed on the FORA webpage at www.fora.org or for your convenience link 3 on Exhibit B Reference documents is attached to this report. The PFIP served as the baseline CIP for the Reuse Plan. The CIP is reviewed on an annual basis and it is estimated that, of the expenses identified in the 2018-19 CIP, approximately \$194,500,000 will remain as obligations to be satisfied or otherwise appropriately addressed after FORA's currently anticipated sunset in mid-2020. The most current CIP is available on the FOR A webpage at www.fora.org or for your convenience link 4 on Exhibit B Reference documents is attached to this report.~~ 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.

Commented [SD7]: Removes extraneous language and only references the background document.

J.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 ~~(unless as a result of legislative changes the authority to collect the existing CFD Special Taxes is extended). If (a) FORA's sunset date is not extended or (b) the ability to extend collection of the CFD Special Taxes by one or more successor(s) to FORA is not provided (in each instance through the adoption of appropriate legislative changes) one of the costs to the region will be the inability to collect an estimated approximately \$72,000,000 that would otherwise be generated through continuation of the CFD Special Taxes imposed on already entitled development.~~ 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.

K.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 97, 99

~~and 78127, 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." ~~The Army also required that water available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of 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.~~

L.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, ~~which agreements provided the basis for the orderly transfer of the EDC Property to the respective jurisdictions, the allocation of a fair and equitable share of the Base-wide Costs and the Base-wide Mitigation Measures to each of the recipients, and the allocation of available water to the recipients in a fair and equitable manner.~~ 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 ~~4017~~ through ~~4522~~ in Exhibit A attached hereto and incorporated by this reference. ~~The Implementation Agreements form the starting point from which the Transition Plan Agreements contemplated to be entered into with the recipients of the EDC Property and discussed more fully below (the "Transition Plan Agreements") shall be negotiated and developed for the mutual benefit of all recipients of the EDC Property and FORA's successor(s), if any.~~

M.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 ~~3643~~ 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 ~~27, 36, 38, 41, 34, 43, 44,~~ 45, and 48 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 ~~and all property transfers will not have occurred~~.

~~On December 7, 2016, a majority of FORA's Board members voted in support of seeking legislative extension of FORA's sunset date as the best way to carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner, as called for by Government Code section 67652. On November 17, 2017, a majority of FORA's Board members voted that (in the event that legislative extension of FORA's sunset date could not be obtained) the next best way to satisfy and fulfill the Base-wide Mitigation Measures and other obligations and commitments of FORA would be to provide for a single entity successor (such as a joint powers authority exercising regional oversight) complete the Reuse Plan. The Board noted that in order for such a successor entity to be able to continue collection of the CFD Special Taxes that are a significant element of the financing necessary to complete the Reuse Plan, legislative changes would be necessary and that in the absence of such legislation, ongoing contributions would need to be made in accordance with the approach embodied in the Implementation Agreements.~~

Commented [SD8]: Removed to conform with Garfield/Haffa/Parker suggestions

N.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)

O.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 AND ~~THE~~ 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 Preliminary Findings and Determinations:

1.1 ~~Base-wide Costs and Base-wide Mitigation Measures~~ **Facilities:**

The Board hereby finds and determines that ~~the agreements, contracts and other items referred to in Exhibit A attached hereto and incorporated by this reference, together with each and all this Transition Plan assigns policies, programs and mitigation measures of the projects identified in the Reuse Plan and contained in to the extent they survive the dissolution of FORA. The Board further finds that new implementing agreements negotiated with the CIP, constitute Base-wide Costs and landholding jurisdictions (or Base-wide Mitigation Measures and are required to be addressed by, in the absence of such an implementing agreement with a respective jurisdiction, the other provisions of this Transition Plan as) will establish a fair and equitable assignment of assets, liabilities, ~~or~~ and obligations pursuant to Government Code section 67700.~~

Commented [SD9]: Revised to respond to Marina, attorneys and others about Basewide Costs and Mitigation Measures and the concept that the Reuse Policies/programs/and mitigations are assigned if they survive.

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 ~~Base-wide Mitigation Measures or any other~~ mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, ~~(d) eliminating any Base-wide Costs or elements of the CIP,~~ 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"). ~~Nothing in this Transition Plan is intended~~ CEQA only applies to government activities that may cause a direct or a reasonably foreseeable indirect physical change any part 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 the FORA Program that would have 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.

Commented [SD10]: Added at suggestion by the attorney group and based upon the Waltner letter.

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 ~~requires each jurisdiction to include all mitigations in its Capital Improvement Program (subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations). Following~~ 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 ~~FORA Program~~ 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. ~~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.~~

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 ~~of such entities~~ entity continue to 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) ~~until all Base-wide Costs and Base-wide Mitigation Measures have been fully paid and satisfied.~~

1.4 Reuse Plan and Master Resolution:

~~The Board hereby finds and determines that all the underlying land use jurisdictions have or will have general plans which have been found consistent with the Reuse Plan and therefore there is no need to record the Reuse Plan or its policies. 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 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 and, in order to preserve a permanent record of those policies, directs staff to record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an 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.~~

Commented [SD11]: This Paragraph modified to conform to suggestions by Board members Garfield, Haffa and Parker as refined by Authority Counsel and CEQA Counsel.

Commented [SD12]: This section reflects Board members Garfield, Haffa and Parker's suggestions encouraging adoption by the Cities and recordation as a last resort. Also includes comments about notice and not creating any new liabilities or obligations simply to preserve a record an issue raised in the attorney group.

1.5 Funding of Habitat Protection:

The Board hereby finds and determines that a 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 ~~continued and sustained~~ considered for retention through the anticipated termination of the ESCA in 2028 ~~either by the agreed upon successor to FORA. That successor is identified in the ESCA contract documents as the County of Monterey or the City of Seaside as single successor to FORA for the purposes, City of the ESCA or by assignment of the ESCA to Marina or a joint powers authority formed by both of them.~~ agency.

Commented [SD13]: This paragraph revised to address Board members concern and County comment that Marina should be added back as the ESCA contract technically allows for Marina. (NOTE: Both Marina attorneys, and staff indicated that they did not want to be the successor to the ESCA)

1.7 Building Removal, Transportation and Transit:

The Board hereby finds and determines that ~~former implementation of the on-site Fort Ord remnant, non-historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the success of the overall recovery transportation network and reuse program.~~ transit policies and ~~a nuisance to quiet enjoyment of the region's assets. The Board~~

Commented [SD14]: Now only refers to Reuse Plan transportation network and policies and programs essential to recovery of the reuse. Removes the CFD and other revenue sharing statements.

further finds that an extension of the FORA Act to sustain resources such as land sales revenue and property tax revenues that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, recommends consideration by the Legislature of an extension of the FORA Act to meet this blight eradication need.

1.8 Transportation and Transit:

The Board hereby finds and determines that completion of the on-base Fort Ord Transportation Network and Transit projects that have been identified in the CIP programs are essential to the long term success of the economic recovery of the reuse. The Board further finds that extension of the CFD Special Taxes or the implementation of substantially similar replacement funding mechanisms for the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues to fund the transportation network for the on-site, off-site and regional projects because a replacement regional transportation fee may not be imposed on already approved development projects in the absence of written consent by the developers to do so.

1.98 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. The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction's approved developments exceed the jurisdiction's approved water allocation. In addition, the Board finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District ("MCWD") to implement the Reuse Plan is appropriate at FORA's dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that continuation of the CFD Special Taxes (or implementation of a substantially similar replacement source of revenue) allows for funds to reduce connection and other costs imposed by MCWD. In the event of a water supply shortage that reduces the overall amount of water available for the Ord Community, MCWD has committed by letter dated October 29, 2018 to reducing 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.

Commented [SD15]: Removes the CFD and instead focuses on water allocations as fair and equitable and references MCWD commitment (both contractually and in writing to continue to work with each entity in this regard) Also consistent with the water and wastewater quitclaim to meet such obligations in perpetuity-an issue raised by Landwatch.

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. ~~Section 3, herein below directs that FORA staff bring back information on acquisition of insurance policies to cover Transition Plan litigation costs, among other costs, and funds set aside may be used to acquire such policy (ies).~~ 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 ~~but the County of Monterey is not an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed to the County of Monterey in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be applied to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA but the County of Monterey is an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed as directed by the Presiding Judge of the Superior Court of the County of Monterey to be held in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be returned to the County to apply to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities.~~ 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.

Commented [SD16]: Section clarified to reduce ambiguity and potential inconsistency that these funds are deposited into an Escrow account and managed.

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 conservation 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 conservation 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 conservation 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 ~~to distribute funds as between long term management of the~~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.

Commented [SD17]: Added to address County staff comments.

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 ~~related to~~generated by the CFD Special Taxes, land sales revenues and/or property tax revenues. ~~For receipt of~~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 to all the member jurisdictions in proportion according to their voting percentages in FORA as set forth in Section 2.1.9 below.

Commented [SD18]: Revised for internal consistency. Paragraph tracks with the source of funds and ability to utilize only certain funds for certain expenses.

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. ~~Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all~~All rights under the ESCA shall be assigned to ~~the County~~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.

Commented [SD19]: Revised to reflect Seaside staff assertion (and County staff concurrence) that Seaside is ready, willing and able to be FORA successor to ESCA. Includes a "back-up plan" should that situation change or if they are not approved.

Commented [SD20]: Added in response to Army BRAC oral comments

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 ~~for which FORA was serving as the lead. Any proceeds remaining thereafter shall next be directed to other projects described in FORA's final year CIP. If any proceeds remain after the completion of all projects described in FORA's final year CIP, such proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below as outlined in Paragraph 2.1.5 hereinabove.~~

Commented [SD21]: Revised to address County comments on reimbursement of costs.

~~2.1.9 Proportional Distributions: Where this Transition Plan provides that assets or proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA, such distributions shall be made in the following percentages.~~

Commented [SD22]: Paragraph delete to conform with Garfield/Haffa/Parker suggestions

City of Carmel by the Sea	—7.69%
City of Del Rey Oaks	—7.69%
City of Marina	—15.38%
City of Monterey	—7.69%
City of Pacific Grove	—7.69%
City of Salinas	—7.69%
City of Sand City	—7.69%
City of Seaside	—15.38%
County of Monterey	—23.1%
	100%

~~2.1.10 Condition to Entitlement to Proportional Distributions: Notwithstanding any provisions of this Transition Plan calling for any distribution of assets or proceeds to all the member jurisdictions in proportion to their voting percentages in FORA, no jurisdiction having land use jurisdiction over or holding property within any portion of the former Fort Ord shall be entitled to receive any portion of any proportional distribution of assets or proceeds unless such jurisdiction has entered into a Transition Plan Implementing Agreement approved by FORA.~~

~~2.1.11~~ 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 97 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 10 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. ~~Except as Necessary legislation and approvals from the state and federal governments for direct transfer of the landfill parcel may be provided intake a Transition Plan Implementing Agreement approved by FORA, the substantial amount of time to receive. The County shall make such designation not less than~~ is therefore requested identify any designee recipient of the landfill parcel at least twelve (12) months prior to ~~the anticipated date of FORA's~~ FORA dissolution, in order to allow sufficient time for all necessary legislation and approvals from the state and federal governments to be obtained before FORA's dissolution 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.~~

Commented [SD23]: Expands property which may not transfer, based upon the clean up standards currently in effect and Seaside's plan.

2.1.4210 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 ~~FORA's dissolution; their expiration.~~

~~With respect to the Pollution Legal Liability ("PLL") policy (Item 23 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~~

Commented [SD24]: Addresses a County comment about the PLL and First Named Insured. FORA's portion of this policy is \$11M.

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

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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.

Commented [SD25]: Addresses a comment by Marina's attorneys' in this regard. Also provides for cost reimbursement to the County to hold funds and send check to CalPERS.

2.2.2 Habitat Funds: See Section 2.1.4 hereinabove.

2.2.3 Capital Improvement Funds: See discussion in Section 2.1.5~~7~~ hereinabove.

~~2.2.4 ESCA Reimbursement: In order to obtain reimbursement under the ESCA, the work described therein must be performed. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all liabilities and obligations under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army shall become the successor(s) to FORA for the purposes of the ESCA and all liabilities and obligations under the ESCA shall be deemed assigned to such jurisdiction(s).~~

Commented [SD26]: Duplication.

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 ~~be addressed~~, if at all, by the jurisdictions in which the ~~offending 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: For all of those Fort Ord Transportation Network and 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 responsibility to generate and/or collect revenues from the 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, responsibility to generate and/or collect revenues and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the majority of the project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. FORA's 2018-19 CIP~~

¹ Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

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projects that \$132,346,818 will remain to be funded for FORA's share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. This Transition Plan assigns funding responsibility in the following manner based on projected CFD Special Taxes to be collected on the former Fort Ord: \$59,026,681 (44.6% of the cost) to the City of Marina, \$28,983,953 (21.9%) to City of Seaside, \$22,234,265 (16.8%) to City of Del Rey Oaks, \$13,234,682 (10%) to County of Monterey, \$8,602,543 (6.5%) to University of California, and \$264,694 (0.2%) to City of Monterey. Funding responsibilities may be adjusted or offset based upon a jurisdiction's actual construction of a transportation project, participation in a regional traffic impact fee funding program, contribution agreements with other jurisdictions, receipt of inter-governmental grant funding and/or implementation of other funding mechanisms that fully replace the funding responsibility as outlined above. The schedule for implementing these obligations shall be as outlined in the jurisdiction's Capital Improvement Program or as otherwise provided in a Transition Plan Implementing Agreement approved by FORA, or if not so addressed, then as provided in FORA's final year CIP. 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 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. 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, including without limitation, contributions or mechanisms to lead agencies TAMC and MST to replace revenues generated by the expiring CFD Special Tax. Those Reimbursement Agreements shall terminate on June 30, 2020, unless otherwise addressed in the Transition Plan Implementing Agreements. 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, 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

Commented [SD27]: Substantially revised to re-evaluate any FORA lead agency projects that the jurisdictions do not want or do not address in the TPIA. Responds to multiple comments on the transportation network and call for autonomy. Now plans for re-evaluation (after TPIA/negotiation period) by FORA and TAMC of impacts of removing the roads from the transportation network. Board and jurisdictions can then re-evaluate based upon technical studies, so all can make a decisions about these roads in the final year CIP (keep in or remove or other action).

Commented [SD28]: Added at Landwatch, attorney and jurisdictional comment about autonomy about when and how to proceed.

Commented [SD29]: Also captures Garfield/Haffa/Parker suggestions about consultation between lead agencies and funding entities.

Commented [SD30]: Attorney comment about survivability.

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. ~~This Transition Plan assigns the funding responsibility for such improvements in the following manner based on projected CFD Special Taxes to be collected on former Fort Ord property: \$7,626,014 (44.6% of the cost) to the City of Marina, \$3,744,612 (21.9%) to City of Seaside, \$2,872,579 (16.8%) to City of Del Rey Oaks, \$1,709,869 (10%) to County of Monterey, \$1,111,415 (6.5%) to University of California, and \$34,197 (0.2%) to City of Monterey. The above funding responsibility shall be equitably reallocated in the event that~~In its October 29, 2018 letter MCWD ~~is unable to serve augmented~~ has confirmed its commitment to working with the jurisdictions on water in the amounts necessary to implement the any jurisdiction's planned development due to pumping or other limitations supply needs in a fair and equitable manner. Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement ~~approved by FORA~~, jurisdictions may alter their relative water allocations, as identified in the Implementation Agreements² only by written agreement with other jurisdictions. ~~Upon its receipt of such an~~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 altering the 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, MCWD shall honor the agreement as though it was the new agreed upon allocation had been set forth in the Implementation Agreements.

Commented [SD31]: Addresses Admin comments about jurisdictions trying to agree on alternative reductions in the event of a water shortage, not necessarily an "across the Board" based upon allocation.

Commented [SD32]: Addresses Landwatch comment that the TP does not create any new obligations for MCWD as to water service.

Commented [SD33]: Reiterates and references MCWD letter confirmation of working with the jurisdictions.

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~~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 ~~contractual~~ obligations reflected on Exhibit A are hereby assigned as set forth in Exhibit A.

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

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.
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use jurisdiction unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. ~~If the obligation is unrelated to the use of real property, it shall be proportionately assigned to the member jurisdictions in conformity with their voting percentages in FORA as set forth in Section 2.1.9 above.~~

~~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.~~

Commented [SD34]: Outlines a process for how to address an undiscovered debt or make claim.

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 ~~Implementation~~ ~~Agreements~~ ~~and~~ ~~Transition~~ ~~Plan~~ ~~Agreements:Implementation:~~

4.1 ~~Projects in the CIP:~~

~~Pursuant to the authority granted by the Legislature in Government Code 67700(b)(2), the Board hereby designates all projects identified in the CIP as obligations required to be assigned by this Transition Plan in accordance with the formulas set forth in the Implementation Agreements as they may be modified by Transition Plan Implementing Agreements. The preferred method of evidencing such assignment is by the entry into Transition Plan Implementing Agreements, which can allow the jurisdictions choice and flexibility in exactly how the assigned obligations will be funded and carried out.~~

Commented [SD35]: Removed the assignment by CIP deferring instead to the Transition Plan Implementing Agreements.

4.2 ~~Transition Plan 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 byin 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

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as may be required to implement this Transition Plan, together with a schedule of ~~when the jurisdiction will complete said actions 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 ~~mechanism. Rather, it only recommends that any replacement mechanism be collected on a pay as you go basis and that all FORA CIP projects located within a jurisdiction be included in the jurisdiction's Capital Improvement Program. If any jurisdiction chooses not to perform, include, or address any such project, such jurisdiction shall comply with the requirements of all applicable laws, including but not limited to by making such analysis and taking such action as CEQA may require in connection with such change 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).

4.32 Escrow:

~~In the absence of a FORA approved Transition Plan Implementing Agreement, all revenues required to be contributed by a jurisdiction pursuant to its Implementation Agreement shall be paid into an escrow account established for the purpose of sharing revenues and 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.~~

~~4.4 Power to Assign:~~

~~If by the time of FORA's dissolution Transition Plan Implementing Agreements have not been entered into by all of the relevant jurisdictions or have not been approved by FORA, the assignments of assets, liabilities and obligations described in this Transition Plan shall be imposed pursuant to Government Code 67700 and LAFCO shall handle such assignments as though they were conditions of special district dissolution imposed pursuant to Government Code section 56886 and use all of LAFCO's powers to enforce such assignments, including but not limited to by using enforcement powers under Government Code sections 56122 or 67700 as to the member jurisdictions. If a final judgment of a court having jurisdiction over the matter results in a determination that the FORA Act, including but not limited to Government Code 67700(b)(2), does not provide FORA with the requisite authority to make the assignments set forth in this Transition Plan, then LAFCO "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~~

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Commented [SD36]: Removed in response to LAFCO's comments.

~~transferred” as required by Government Code 67700(b)(1) through the exercise of LAFCO’s powers under the FORA Act, the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000, and LAFCO’s other relevant powers. If LAFCO refuses to agree impose such assignments as conditions to the dissolution of FORA and the transfer of its assets in accordance with this Transition Plan, then FORA shall seek such judicial clarification and/or legislative amendments as may be necessary to (a) clarify or establish FORA’s and/or LAFCO’s ability and/or duty to impose such assignments in connection with the dissolution of FORA or (b) extend the date of FORA’s sunset so as to allow fulfillment of the mitigations, satisfaction of the obligations, and the completion of the elements of FORA Program which have not effectively been assigned to or accepted by the objecting jurisdictions.~~

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.~~

Commented [SD37]: Revised to address County and attorney concerns about management by multiple jurisdictions.

4.4-5 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).

4.65 Reserved Right of Modification:

~~This Transition Plan includes the opportunity for continued regional cooperation by all affected jurisdictions to enter into a Transition Plan Implementing Agreement, subject to FORA approval, to implement this Transition Plan. This Transition Plan may be modified by the Board upon the receipt of an executed Transition Plan Implementing Agreement approved by FORA, if the Board finds a revision to this Transition Plan necessary and appropriate. The Board also reserves the right to make modifications based upon receipt of regional agreements which address matters such as future financing mechanisms to support completion of the FORA Program, additional factual information or refinements provided by FORA staff during quarterly updates, regional revenue sharing arrangements, or plans for coordinated completion of CIP elements or projects, in each instance approved by FORA. Such modifications of this Transition Plan shall be transmitted forthwith to LAFCO for its processing.~~

Commented [SD38]: Included at request of Authority Counsel, substantially streamlined. Necessary to allow the Board to make modifications as necessary

The Board hereby reserves its right to augment, clarify or modify this Transition Plan as law, facts, circumstances, or agreements may require.

NOW ~~THEREFOR~~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) ~~by approving this~~;

~~2.3. The Board hereby finds that as adopted herein, the Transition Plan and intends that those assignments be implemented preferably through Transition Plan Agreements but in the absence of executed Transition Plan Agreements approved by FORA then as assignments and conditions of dissolution, as though they were imposed pursuant to not a project subject to Government Code sections 56886 and 67700(b); CEQA; and~~

~~3.4. The Board hereby~~ 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

~~4. The Board further directs the Executive Officer, or his designee, to hire a facilitator consultant to assist the jurisdictions in creating and negotiating Transition Plan Agreements or other inter-agency regional agreements to implement the requirements of this Transition Plan. The facilitator consultant may also assist FORA in agreements for the disposition of its obligations to named entities or implementing the terms and conditions of this Transition Plan. The Executive Officer is directed to report progress on or before January 1, 2019 and to complete all negotiations and documents not later than March 2019. The Executive Officer shall compile a list of such additional actions necessary to implement this Transition Plan.~~

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.

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

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Mayor Ralph Rubio, Chair FORA Board

ATTEST:

Michael A. Houlemard, Jr., Clerk

GLOSSARY

“Army” means the United States Army.

~~“Base-wide Costs” means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan and included in the current FORA Capital Improvement Program.~~

~~“Base-wide Mitigation Measures” means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water line and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1 (f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.~~

~~“Base 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.~~

“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 12-14-18 Item 8b Attachment 2 Compare 12-6 and 10-29 annotated _____

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.*

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

“FORA” means the Fort Ord Reuse Authority.

~~“FORA Act” means the Fort Ord Reuse Authority Act, as amended to date (Government Code section 67650 and following).~~

“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. “Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended. For your convenience link 5 on Exhibit B, is the most recent Master Resolution.~~

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“MCWD” means the Marina ~~Cost~~Coast Water District.

“~~PFIPMCWRA~~” means the ~~Public Facilities Implementation Plan adopted by Monterey County Water Resources Agency.~~

“~~MRWPCA~~” means the ~~Fort Ord Reuse Authority in 2004~~Monterey Regional Water Pollution Control Agency.

“Reuse Plan” means the ~~plan for the future use~~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 ~~adopted pursuant to Government Code section 67675, all as amended from time to date.~~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 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.** 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 United States Army (the “Army”) moved the 7th Infantry Division - Light to Fort Lewis Washington over the following two years, resulting 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.** After the announcement but prior to the implementation of the base downsizing/closure, political leaders from 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”).
- C.** 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.
- D.** The Fort Ord Reuse Authority (“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 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 tasked FORA with the following primary directives (1) plan, facilitate, and manage the transfer of former Fort Ord property from the Army to local jurisdictions or their designee(s), (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and redevelopment 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.
- E.** 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. A copy of the contract with CalPERS as amended to date is referenced as Contract #1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference. As is the situation facing many local public entities today,

FORA's liability for pension obligations under the CalPERS contract is not at present fully funded and any potential shortfall must be addressed in the transition planning process.

- F.** Pursuant to the requirements of Government Code section 67675, FORA adopted a Fort Ord Reuse Plan (the "Reuse Plan") on June 13, 1997, which identified (1) environmental actions required to mitigate development and reuse of the former Fort Ord (the "Base-wide Mitigation Measures") and (2) infrastructure and related costs necessary to accommodate development and reuse of the former Fort Ord (the "Base-wide Costs"), each consistent with the fulfillment of FORA's primary directives. A copy of the Reuse Plan and its attendant environmental report is available on the FORA website at www.fora.org or for your convenience link 2 on Exhibit B Reference documents is attached to this report. A part of that approval, FORA's Board of Directors (the "Board") certified an 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.
- G.** FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act ("CEQA") to implement the Base-wide Mitigation Measures and incur the Base-wide Costs.

- H. 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 Base-wide Mitigation Measures and to pay the Base-wide Costs.
- I. 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 Capital Improvement Program ("CIP"). ~~The Reuse Plan carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan ("PFIP") adopted in 2001. The PFIP can be accessed on the FORA webpage at www.fora.org or for your convenience link 3 on Exhibit B Reference documents is attached to this report. The PFIP served as the baseline CIP for the Reuse Plan. The CIP is reviewed on an annual basis and it is estimated that, of the expenses identified in the 2018-19 CIP, approximately \$194,500,000 will remain as obligations to be satisfied or otherwise appropriately addressed after FORA's currently anticipated sunset in mid-2020. The most current CIP is available on the FOR A webpage at www.fora.org or for your convenience link 4 on Exhibit B Reference documents is attached to this report.~~
- J. 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 ~~(unless as a result of legislative changes the authority to collect the existing CFD Special Taxes is extended). If (a) FORA's sunset date is not extended or (b) the ability to extend collection of the CFD Special Taxes by one or more successor(s) to FORA is not provided (in each instance through the adoption of appropriate legislative changes) one of the costs to the region will be the inability to collect an estimated approximately \$72,000,000 that would otherwise be generated through continuation of the CFD Special Taxes imposed on already entitled development.~~ 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 on developments that have already been entitled will require each jurisdiction to create agreements with each developer for an entitled project to continue to pay a development fee: Those fees are estimated to be \$72 million for entitled projects, if all entitled developments are fully completed and development fees are equal to the current FORA CFD.
- K. 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 97, 99 and 78 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." The Army also required that water

available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of the EDC Property.

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, which ~~agreements provided the basis for the orderly transfer of the EDC Property to the respective jurisdictions, the allocation of a fair and equitable share of the Base wide Costs and the Base wide Mitigation Measures to each of the recipients, and the allocation of available water to the recipients in a fair and equitable manner. 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 10 through 15 in Exhibit A attached hereto and incorporated by this reference. The Implementation Agreements form the starting point from which the Transition Plan Agreements contemplated to be entered into with the recipients of the EDC Property and discussed more fully below (the "Transition Plan Agreements") shall be negotiated and developed for the mutual benefit of all recipients of the EDC Property and FORA's successor(s), if any. There is an ongoing discussion about what aspects of the Implementation Agreements may survive FORA's dissolution. The FORA Board voted on October 29, 2018 to direct staff to hire a facilitator who can assist FORA members with outstanding issues in the Transition process.~~

L. 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 36 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 27, 36, 38, 41, 45, 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 before the currently anticipated dissolution of FORA and all property transfers will not have occurred.

M. ~~On December 7, 2016, a majority of FORA's Board members voted in support of seeking legislative extension of FORA's sunset date as the best way to carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner, as called for by Government Code section 67652. On November 17, 2017, a majority of FORA's Board members voted that (in the event that legislative extension of FORA's sunset date could not be obtained) the next best way to satisfy and fulfill the Base wide Mitigation Measures and other obligations and commitments of FORA would be to provide for a single entity successor (such as a joint powers authority exercising regional oversight) complete the Reuse Plan. The Board noted that in order for such a successor entity to be able to continue collection of the CFD Special Taxes that are a significant element of the financing necessary to complete the Reuse Plan, legislative changes would be necessary and that~~

~~in the absence of such legislation, ongoing contributions would need to be made in accordance with the approach embodied in the Implementation Agreements.~~

- N. 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*)

- O. 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 THE 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 Preliminary Findings and Determinations:

1.1 Base-wide Costs and Base-wide Mitigation Measures:

The Board hereby finds and determines that the Transition Plan establishes continuity for the Base Reuse Plan policies and programs. Implementing Agreements negotiated by landholding jurisdictions will establish a fair and equitable assignment of agreements, contracts and other items referred to in Exhibit A attached hereto and incorporated by this reference, together with each and all of the projects identified in the Reuse Plan and contained in the CIP, constitute Base-wide Costs and/or Base-wide Mitigation Measures and are required to be addressed by this Transition Plan as assets, liabilities, or 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 Base-wide Mitigation Measures or any other mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, (d) eliminating any Base-wide Costs or elements of the CIP, 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”). Nothing in this Transition Plan is intended to change any part of the FORA Program that would have any impact on the environment. To the contrary and to the extent not already so contained,

this Transition Plan ~~recognizes~~ requires each jurisdiction the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County of Monterey are expected to follow the base reuse plan policies and programs. ~~to include all mitigations in its Capital Improvement Program (subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations).~~ Following FORA's ultimate dissolution, any changes to the FORA policies and programs ~~Program~~ 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. 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.

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 of such entities continue to 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), but there is an ongoing discussion about what aspects of the Implementation Agreements may survive FORA's dissolution. The signatories to the Implementation Agreements shall work with the facilitator retained as a result of the FORA Board vote on October 29, 2018 to negotiate and execute agreements regarding revenue sharing arrangements.

~~. until all Base-wide Costs and Base-wide Mitigation Measures have been fully paid and satisfied.~~

1.4 Reuse Plan and Master Resolution:

The Board hereby finds and determines that all the underlying land use jurisdictions have or will have general plans which have been found consistent with the Reuse Plan and therefore there is no need to record the Reuse Plan or its policies. The Board further finds and determines that the policies contained in the Master Resolution should be continued and enforced following FORA's dissolution and, in order to preserve a permanent record of those policies, directs staff to record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an equitability and fairness to all workers on the former Fort Ord should be sustained in the completion of the former Fort Ord recovery program. In the event that recordation of the Master Resolution is legally insufficient to protect the policies contained in the Master Resolution, the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County of Monterey agree to take the necessary legal steps to adopt those policies by December 30, 2019.

1.5 Funding of Habitat Protection:

The Board hereby finds and determines that a 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 staffing of the Environmental Services Cooperative Agreement (“ESCA”) should be considered for retention continued and sustained through the anticipated termination of the ESCA in 2028 either by the County of Monterey or the City of Seaside as single successor to FORA for the purposes of the ESCA or by assignment of the ESCA to a joint powers authority formed by both of them.

1.7 Building Removal:

~~The Board hereby finds and determines that former Fort Ord remnant, non-historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the success of the overall recovery and reuse program and a nuisance to quiet enjoyment of the region’s assets. The Board further finds that an extension of the FORA Act to sustain resources such as land sales revenue and property tax revenues that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, recommends consideration by the Legislature of an extension of the FORA Act to meet this blight eradication need.~~

1.8 Transportation and Transit:

The Board hereby finds and determines that completion of the on-base Fort Ord Transportation Network and Transit policies and programs ~~projects that have been identified in the CIP~~ is essential to the long term success of the economic recovery of the reuse. The Board further finds that ~~extension of the CFD Special Taxes or the implementation of substantially similar replacement funding mechanisms for the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues~~ fund aspects of the Transportation Network and Transit needs in Fort Ord that cannot be covered by fees. ~~the transportation network for the on-site, off-site and regional projects because a replacement regional transportation fee may not be imposed on already approved development projects in the absence of written consent by the developers to do so.~~ Revenue sharing for Transportation and Transit Needs will be addressed in the Implementing Agreements.

1.9 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. The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction’s approved developments exceed the jurisdiction’s approved water allocation. In addition, the Board finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District (“MCWD”) to implement the Reuse Plan is appropriate at FORA’s dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that continuation of the CFD Special Taxes (or implementation of a replacement source of revenue substantially similar to the FORA CFD) might allow for funds to reduce connection and other costs imposed by MCWD.

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. Section 3, herein below directs that FORA staff bring back information on acquisition of insurance policies to cover Transition Plan litigation costs, among other costs, and funds set aside may be used to acquire such policy (ies). 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 but the County of Monterey is not an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed to the County of Monterey in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be applied to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA but the County of Monterey is an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed as directed by the Presiding Judge of the Superior Court of the County of Monterey to be held in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be returned to the County to apply to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities.

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 habitat conservation. 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 conservation 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 conservation 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 to distribute funds as between long term management of the habitat management areas (HMA) on the one hand and incidental take permits for future development.

2.1.5 Capital Improvement Funds: 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: 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 related to the CFD, land sales revenues and/or property tax revenues. ~~For receipt of funds related to administrative liabilities distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below.~~

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all rights under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army and is 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).

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 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 for which FORA was serving as the lead. Any proceeds remaining thereafter shall next be directed to other projects described in FORA’s final year CIP. ~~If any proceeds remain after the completion of all projects described in FORA’s final year CIP, such proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below.~~

~~2.1.9 Proportional Distributions: Where this Transition Plan provides that assets or proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA, such distributions shall be made in the following percentages.~~

City of Carmel by the Sea	— 7.69%
City of Del Rey Oaks	— 7.69%
City of Marina	— 15.38%
City of Monterey	— 7.69%
City of Pacific Grove	— 7.69%
City of Salinas	— 7.69%
City of Sand City	— 7.69%
City of Seaside	— 15.38%
County of Monterey	— 23.1%
	100%

~~2.1.10 Condition to Entitlement to Proportional Distributions: Notwithstanding any provisions of this Transition Plan calling for any distribution of assets or proceeds to all the member jurisdictions in proportion to their voting percentages in FORA, no jurisdiction having land use jurisdiction over or holding property within any portion of the former Fort Ord shall be entitled to receive any portion of any proportional distribution of assets or proceeds unless such jurisdiction has entered into a Transition Plan Implementing Agreement approved by FORA.~~

2.1.11 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 97 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, 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 10 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. Except as may be provided in a Transition Plan Implementing Agreement approved by FORA, the County shall make such designation not less than twelve (12) months prior to the anticipated date of FORA’s dissolution, in order to allow

sufficient time for all necessary legislation and approvals from the state and federal governments to be obtained before FORA's dissolution. 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.

2.1.12 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, FORA shall not keep any of such policies of insurance in force beyond the date of FORA's dissolution.

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 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. 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: In order to obtain reimbursement under the ESCA, the work described therein must be performed. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all liabilities and obligations under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army (and agreed to by the Army-approved jurisdiction) shall become the successor(s) to FORA for the purposes of the ESCA and all liabilities and obligations under the ESCA shall be deemed assigned to such jurisdiction(s).

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 after FORA's dissolution be addressed, if at all, by the jurisdictions in which the offending 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.

¹ Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

2.2.6 Transportation and Transit: For all of those Fort Ord Transportation Network and 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 responsibility to generate and/or collect revenues from the 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, responsibility to generate and/or collect revenues and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the majority of the project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. FORA's 2018-19 CIP projects that \$132,346,818 will remain to be funded for FORA's share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. ~~This Transition Plan assigns funding responsibility in the following manner based on projected CFD Special Taxes to be collected on the former Fort Ord: \$59,026,681 (44.6% of the cost) to the City of Marina, \$28,983,953 (21.9%) to City of Seaside, \$22,234,265 (16.8%) to City of Del Rey Oaks, \$13,234,682 (10%) to County of Monterey, \$8,602,543 (6.5%) to University of California, and \$264,694 (0.2%) to City of Monterey.~~ Funding responsibilities shall be addressed through a facilitated process of Implementing Agreements, to be completed by December 30, 2019 and may be adjusted or offset based upon a jurisdiction's actual construction of a transportation project, participation in a regional traffic impact fee funding program, contribution agreements with other jurisdictions, receipt of inter-governmental grant funding and/or implementation of other funding mechanisms that fully replace the funding responsibility as outlined above. The schedule for implementing transportation projects these obligations shall be determined by the lead agency in consultation with the jurisdictions who are collecting revenue for the project, as outlined in the jurisdiction's Capital Improvement Program or as otherwise provided in a Transition Plan Implementing Agreement approved by FORA, or if not so addressed, then as provided in FORA's final year CIP. 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 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. 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. ~~This Transition Plan assigns the funding responsibility for such improvements MCWD commits to working with the jurisdictions on water supply needs in a fair and equitable manner.~~ in the following manner based on projected CFD Special Taxes to be collected on former Fort Ord property: \$7,626,014 (44.6% of the cost) to the City of Marina, \$3,744,612 (21.9%) to City of Seaside, \$2,872,579 (16.8%) to City of Del Rey Oaks, \$1,709,869 (10%) to County of Monterey, \$1,111,415 (6.5%) to University of California, and \$34,197 (0.2%) to City of Monterey. The above funding responsibility shall be equitably reallocated in the event that MCWD is unable to serve augmented water in the amounts necessary to implement the any jurisdiction's planned development due to pumping or other limitations. Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement approved by FORA, jurisdictions may alter their water allocations as identified

in the Implementation Agreements only by written agreement with other jurisdictions. Upon its receipt of such an agreement altering the water allocations as between two or more jurisdictions, MCWD shall honor the agreement as though it was the allocation 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 contractual obligations reflected on Exhibit A are hereby assigned as set forth in Exhibit A.

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 obligation is unrelated to the use of real property, it shall be proportionately assigned to the member jurisdictions in conformity with their voting percentages in FORA as set forth in Section 2.1.9 above.

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 Implementation Agreements and Transition Plan Agreements:

4.1 Projects in the CIP:

~~Pursuant to the authority granted by the Legislature in Government Code 67700(b)(2), the Board hereby designates a~~All projects identified in the final year CIP ~~as obligations required to be assigned by this Transition Plan in accordance with the formulas set forth in the Implementation Agreements as they may be modified by~~ shall be addressed by Transition Plan Implementing Agreements. The preferred method of allowing discretion to the lead agency ~~evidencing such assignment is by the entry into Transition Plan Implementing Agreements, which can allow~~ the

jurisdictions choice and flexibility in exactly how transportation needs ~~the assigned obligations~~ will be funded and carried out.

4.2 Transition Plan Agreements:

In order to continue to foster regional cooperation and completion of the FORA program, the Board requests that each member jurisdiction enter into a Transition Plan Implementing Agreement addressing how the respective jurisdiction will generate revenues to meet its obligations as agreed upon in the Transition Plan Implementing Agreements and include ~~assigned by this Transition Plan~~, 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 of jurisdictions to assess and update transportation needs in Fort Ord ~~when the jurisdiction will complete said actions~~. 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 transportation needs in Fort Ord ~~all parts of FORA's final year CIP~~, this Transition Plan does not specify any specific mechanism. ~~Rather, it only recommends that any replacement mechanism be collected on a pay as you go basis and that all FORA CIP projects located within a jurisdiction be included in the jurisdiction's Capital Improvement Program. If any jurisdiction chooses not to perform, include, or address any such project, such jurisdiction shall comply with the requirements of all applicable laws, including but not limited to by making such analysis and taking such action as CEQA may require in connection with such change.~~ 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).

4.3 Escrow:

~~In the absence of a FORA approved Transition Plan Implementing Agreement, all revenues required to be contributed by a jurisdiction pursuant to its Implementation Agreement shall be paid into a~~ An escrow account shall be established for the purpose of paying outstanding legal costs, court judgements, settlements, or other litigations costs that are not covered by insurance and are unable to be paid by FORA due to its dissolution. ~~sharing revenues and~~ 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 3 years, after which any remaining money in the account shall be used to pay for a CIP project expense and/or habitat management, as determined by the panel.

4.4 Power to Assign:

~~If by the time of FORA's dissolution Transition Plan Implementing Agreements have not been entered into by all of the relevant jurisdictions or have not been approved by FORA, the assignments of assets, liabilities and obligations described in this Transition Plan shall be imposed pursuant to Government Code 67700 and LAFCO shall handle such assignments as though they were conditions of special district dissolution imposed pursuant to Government Code section 56886 and use all of LAFCO's powers to enforce such assignments, including but not limited to by using enforcement powers under Government Code sections 56122 or 67700 as to the member jurisdictions. If a final judgment of a court having jurisdiction over the matter results in a determination that the FORA Act, including but not limited to Government Code 67700(b)(2), does~~

~~not provide FORA with the requisite authority to make the assignments set forth in this Transition Plan, then LAFCO “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” as required by Government Code 67700(b)(1) through the exercise of LAFCO’s powers under the FORA Act, the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000, and LAFCO’s other relevant powers. If LAFCO refuses to agree impose such assignments as conditions to the dissolution of FORA and the transfer of its assets in accordance with this Transition Plan, then FORA shall seek such judicial clarification and/or legislative amendments as may be necessary to (a) clarify or establish FORA’s and/or LAFCO’s ability and/or duty to impose such assignments in connection with the dissolution of FORA or (b) extend the date of FORA’s sunset so as to allow fulfillment of the mitigations, satisfaction of the obligations, and the completion of the elements of FORA Program which have not effectively been assigned to or accepted by the objecting jurisdictions.~~

4.5 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).~~

4.6 Reserved Right of Modification:

~~This Transition Plan includes the opportunity for continued regional cooperation by all affected jurisdictions to enter into a Transition Plan Implementing Agreement, subject to FORA approval, to implement this Transition Plan. This Transition Plan may be modified by the Board upon the receipt of an executed Transition Plan Implementing Agreement approved by FORA, if the Board finds a revision to this Transition Plan necessary and appropriate. The Board also reserves the right to make modifications based upon receipt of regional agreements which address matters such as future financing mechanisms to support completion of the FORA Program, additional factual information or refinements provided by FORA staff during quarterly updates, regional revenue sharing arrangements, or plans for coordinated completion of CIP elements or projects, in each instance approved by FORA. Such modifications of this Transition Plan shall be transmitted forthwith to LAFCO for its processing.~~

NOW THEREFOR, 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 following completion of a facilitated process to address outstanding issues, and~~
2. ~~The Board hereby makes all assignments in accordance with Government Code section 67700(b) by approving this Transition Plan and intends that those assignments be implemented preferably through Transition Plan Agreements but in the absence of executed Transition Plan Agreements approved by FORA then as assignments and conditions of dissolution, as though they were imposed pursuant to Government Code sections 56886 and 67700(b); and~~
3. ~~The Board hereby 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~~

4. The Board further directs the Executive Officer, or his designee, to hire a facilitator consultant to assist the jurisdictions in creating and negotiating Transition Plan Agreements or other inter-agency regional agreements to implement the requirements of this Transition Plan. The facilitator consultant may also assist FORA in agreements for the disposition of its obligations to named entities or implementing the terms and conditions of this Transition Plan. The Executive Officer is directed to report progress on or before January 1, 2019 and monthly thereafter. ~~to complete all negotiations and documents not later than March 2019.~~ The Executive Officer shall compile a list of such additional actions necessary to implement this Transition Plan.

Upon motion by Board member ---- seconded by Board member ---- the foregoing Resolution was passed on this _____ day of ~~October~~, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Mayor Ralph Rubio, Chair

ATTEST:

Michael A. Houlemard, Jr., Clerk

GLOSSARY

“Army” means the United States Army.

~~“Base-wide Costs” means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan and included in the current FORA Capital Improvement Program.~~

~~“Base-wide Mitigation Measures” means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water line and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1 (f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.~~

~~“Base 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.~~

“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.

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

“FORA” means the Fort Ord Reuse Authority.

“FORA Act” means the Fort Ord Reuse Authority Act, as amended to date (Government Code section 67650 and following).

“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.

“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended. For your convenience link 5 on Exhibit B, is the most recent Master Resolution.

“MCWD” means the Marina Cost Water District.

“PFIP” means the Public Facilities Implementation Plan adopted by the Fort Ord Reuse Authority in 2001.

“Reuse Plan” means the plan for the future use of the former Fort Ord adopted pursuant to Government Code section 67675, as amended to date.

“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.

RESOLUTION NO. 2018-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECOMMENDING THAT THE FORT ORD REUSE AUTHORITY ADOPT THE ALTERNATIVE TRANSITION PLAN FOR THE DISSOLUTION OF THE FORT ORD REUSE AUTHORITY

WHEREAS, The Fort Ord Reuse Authority was created pursuant to legislation that requires that FORA dissolve on the earlier of June 30, 2020 or when 80% of the territory of Fort Ord that is designated for development or reuse in the Reuse Plan has been developed or reused in a manner consistent with the Reuse Plan.

WHEREAS, FORA is required by Government Code Section 67700 to approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018. The transition plan is to assign assets and liabilities, designate responsible successor agencies and provide a schedule of remaining obligations.

WHEREAS, In October, a hybrid Transition Plan ("Hybrid Transition Plan") was presented by some members of the FORA Board addressing concerns arising from the FORA Transition Plan.

WHEREAS, At its meeting of November 9, 2018, the FORA Board considered the FORA Transition Plan, the Hybrid Transition Plan and the Transition Plan recommended by the City of Marina pursuant to Council Action taken on November 7, 2018 ("Marina Transition Plan").

WHEREAS, the FORA Administrative Committee met to discuss the Transition Plan on November 27. FORA is expected to consider adoption of a Transition Plan at its meeting on December 14, 2018.

WHEREAS, as a result of these meetings, LandWatch has proposed changes to the Hybrid Transition Plan. In addition, the discussions at the Administrative Committee as well as the discussions with the attorney group related to legal issues have surfaced some issues that should be addressed in the Marina Alternative Transition Plan

NOW, THEREFORE IT BE RESOLVED that the City Council of the City of Marina does hereby:

1. Approve and adopt the proposed Alternative Transition Plan set forth in the attached Exhibit A.
2. Direct that a copy of this Resolution 2018-, and the proposed Alternative Transition Plan be transmitted forthwith to the FORA Board Chair for the immediate consideration of the FORA Board of Directors.

PASSED AND ADOPTED by the City Council of the City of Marina at an Adjourned Regular City Council Meeting duly held on this 4th day of December 2018 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Deputy City Clerk

**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 (“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. 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.
- B. Pursuant to the requirements of Government Code section 67675, FORA adopted a Fort Ord Reuse Plan (the “Reuse Plan”) on June 13, 1997
- C. 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) provides as follows:

(1) 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.

(2) 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.

BASED ON THE FOREGOING RECITALS AND THE 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 Assignment of Assets and Liabilities:

1.1 Assets and Disposition Thereof:

FORA's principal assets are comprised of the following:

1.1.1 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.

1.1.2 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 Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FORA's dissolution and third to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

1.1.3 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 funding Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FORA's dissolution and third 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.

1.1.4 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 habitat conservation. 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.

1.1.5 Capital Improvement Funds: Any CFD Special Taxes not dedicated to Habitat Protection collected and remaining unexpended immediately prior to FORA's dissolution shall be allocated first to funding Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FORA's dissolution and third to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

1.1.6 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 1.1.5 for funds generated by the CFD Special Tax.

1.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work to be conducted under the ESCA. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all rights under the ESCA including any balance of ESCA funds shall be assigned to the City of Seaside or the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army 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).

1.1.8 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 directed to any shortfall in funds available to satisfy liabilities or obligations, including those related to reimbursement agreements and all remaining funds will be allocated first to funding Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FOR A's dissolution and third to satisfy

any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

1.1.9 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.

1.1.10 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.

1.2 Liabilities and Assignment Thereof:

FORA's principal liabilities and obligations include the following:

1.2.1 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 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.

1.2.2 Habitat Funds: See Section 1.1.4 hereinabove.

¹ Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

1.2.3 ESCA Reimbursement: In order to obtain reimbursement under the ESCA, the work described therein must be performed. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all liabilities and obligations under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army shall become the successor(s) to FORA for the purposes of the ESCA and all liabilities and obligations under the ESCA shall be deemed assigned to such jurisdiction(s).

1.2.4 Other Contracts and Agreements: Attached as Exhibit B to this Transition Plan are references to existing contracts to which FORA is a party that create liabilities for FORA (**contract review is still underway to determine which contracts create liabilities and which contract terminate upon FORA dissolution**). Some of these contracts, documents or commitments may be completed, revised, replaced, or superseded prior to the dissolution of FORA. FORA staff shall endeavor to keep Exhibit B current and shall provide quarterly updates to the Board regarding any changes. 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 FOR A currently has on hand or that FORA can with a reasonable certainty determine will be available prior to FORA's dissolution.

1.2.5 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 1.2.4 above.

Section 2 Obligations

2.1 Base Reuse Obligations:

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.

2.2 Transportation and Transit Infrastructure:

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. 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.

2.3 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.

2.4 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

Section 3 CEQA:

3.1 California Environmental Quality Act:

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. 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"). 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 Implementing Agreements:

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.

Section 6. 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).

NOW THEREFOR, 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 following completion of a facilitated process to address outstanding issues, and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b) and
3. The Board hereby 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

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

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Mayor Ralph Rubio, Chair

ATTEST:

Michael A. Houlemard, Jr., Clerk

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).

“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.

“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” means the Fort Ord Reuse Authority.

“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 Program” has the meaning given in Section 3.1.

“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” means Habitat Conservation Plan.

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“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended. For your convenience link 5 on Exhibit B, is the most recent Master Resolution.

“MCWD” means the Marina Cost Water District.

“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.

EXHIBIT A
FOR A LIST OF CONTRACTS

EXHIBIT B
FORA CONTRACTUAL LIABILITIES

1. FORA-UCSC Agreement Concerning Funding of Habitat Management Related Expenses on the Fort Ord Natural Reserve (Item 67) as amended by FORA UCSC FONR Extension of Funding (Item 68) – (Obligates FORA To pay \$75,000 per year to UCSC. Agreement to be assigned to party subject to the approval of UCSC if HCP not complete before FORA expiration.)
2. FORA-County-EG Partners LLC Funding Obligations – provides EG with a land sale credit for certain obligations. If credit is still operative agreement can be assigned to County with County receiving land sales proceeds and giving EG credit.
3. FORA-MCP Reimbursement Agreement (item 73)
4. Marina Redevelopment Agency, Marina Community Partners and FORA MOA on University Villages Building Removal (item 74)
5. FORA-City of Marina Reimbursement Agreement for Abrams, Crescent, 8thStreet and Salinas Road (item 86)– reimbursement of costs up to amount shown in CIP as it may be amended from time to time and only from CFD funds to the extent collected.
6. FORA-County of Monterey reimbursement agreement for Davis Road Improvements (Item 87) FORA to reimburse County of Monterey for Davis Road in the amount of \$9,242,411 but only from CFD fees collected. FORA to set aside .3669 cents of every Transit/Transportation dollar until full amount collected.
7. FORA Reimbursement Agreement Concerning Hwy 68 Operational Improvements (Item 88) – requires FOR A to reimburse TAMC for planning and design costs of \$312,205 for Highway 68. FORA's obligation contingent upon CFD fees being available.
8. FORA MCWD Pipeline Reimbursement Agreement – (Item__) FORA to reimburse MCWD up to \$6,000,000 toward the AWT Phase 1 and product Water Conveyance Facilities of the RUWAP Recycled Project. FORA has sole discretion as to source of funds. Payment schedule is
 - \$1,000,000 in 16-17
 - \$1,600,000 in 17-18
 - \$1,200,000 to \$1,900,000 in 18-19 depending upon real estate market and receipt of land sales and CFD funds
 - \$1,000,000 in 19-20

FORT ORD REUSE AUTHORITY
RESOLUTION NO. 2018-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECOMMENDING THAT THE FORT ORD REUSE AUTHORITY ADOPT THE ALTERNATIVE TRANSITION PLAN FOR THE DISSOLUTION OF THE FORT ORD REUSE AUTHORITY

WHEREAS, The Fort Ord Reuse Authority was created pursuant to legislation that requires that FORA dissolve on the earlier of June 30, 2020 or when 80% of the territory of Fort Ord that is designated for development or reuse in the Reuse Plan has been developed or reused in a manner consistent with the Reuse Plan.

WHEREAS, FORA is required by Government Code Section 67700 to approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018. The transition plan is to assign assets and liabilities, designate responsible successors and provide a schedule of remaining obligations.

WHEREAS, In October, a hybrid Transition Plan ("Hybrid Transition Plan") was presented by some members of the FORA Board addressing concerns arising from the FORA Transition Plan.

WHEREAS, At its meeting of November 9, 2018, the FORA Board considered the FORA Transition Plan, the Hybrid Transition Plan and the Transition Plan recommended by the City of Marina pursuant to Council Action taken on November 7, 2018 ("Marina Transition Plan").

WHEREAS, the FORA Administrative Committee met to discuss the Transition Plan on November 27. FORA is expected to consider adoption of a Transition Plan at its meeting on December 14, 2018.

WHEREAS, as a result of these meetings, LandWatch has proposed changes to the Hybrid Transition Plan. In addition, the discussions at the Administrative Committee as well as the discussions with the attorney group related to legal issues have surfaced some issues that should be addressed in the Marina Alternative Transition Plan

NOW, THEREFORE IT BE RESOLVED that the City Council of the City of Marina does hereby:

1. Approve and adopt the proposed Alternative Transition Plan set forth in the attached Exhibit A.
2. Direct that a copy of this Resolution 2018-, and the proposed Alternative Transition Plan be transmitted forthwith to the FORA Board Chair for the immediate consideration of the FORA Board of Directors.

PASSED AND ADOPTED by the City Council of the City of Marina at an Adjourned Regular City Council Meeting duly held on this 4th day of December 2018 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None


Bruce C. Delgado, Mayor

ATTEST:

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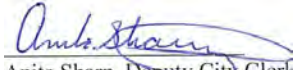
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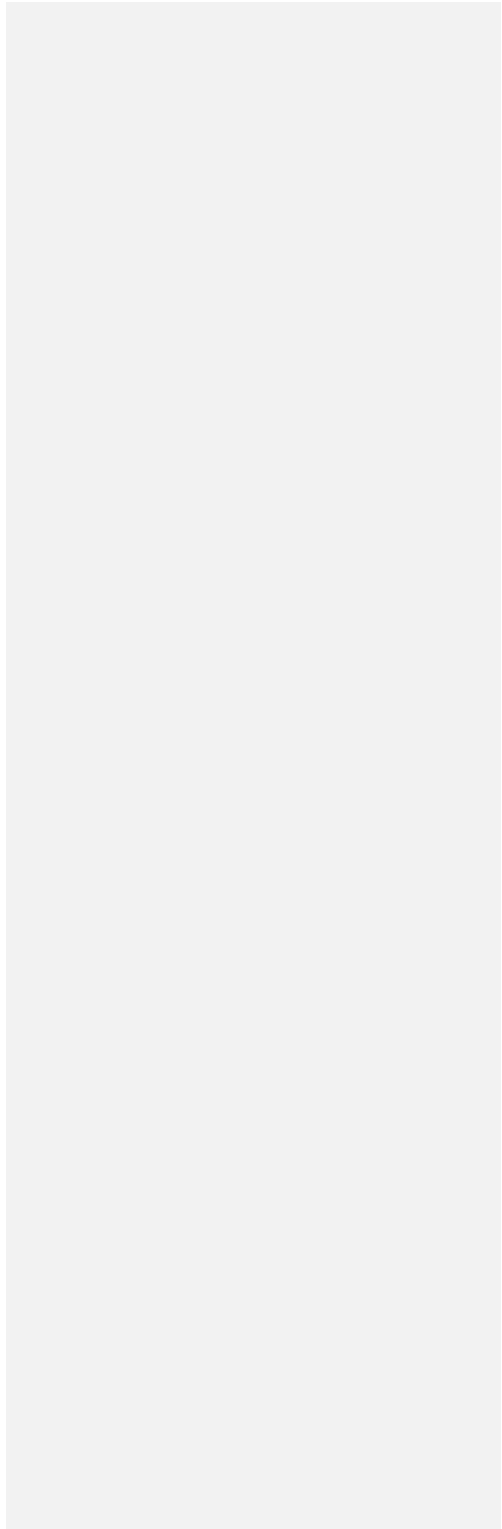
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Anita Sharp, Deputy City Clerk



**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. ~~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 United States Army (the "Army") moved the 7th Infantry Division Light to Fort Lewis Washington over the following two years, resulting 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. ~~After the announcement but prior to the implementation of the base downsizing/closure, political leaders from 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").~~

C. ~~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.~~

D.A. ~~The Fort Ord Reuse Authority ("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 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 tasked FORA with the following primary directives (1) plan, facilitate, and manage the transfer of former Fort Ord property from the Army to local jurisdictions or their designee(s), (2) minimize the economic disruption caused by the base's closure, (3) provide for reuse and redevelopment 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.~~

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~~E. 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. A copy of the contract with CalPERS as amended to date is referenced as Contract #1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference. As is the situation facing many local public entities today, FORA's liability for pension obligations under the CalPERS contract is not at present fully funded and any potential shortfall must be addressed in the transition planning process.~~

~~F. Pursuant to the requirements of Government Code section 67675, FORA adopted a Fort Ord Reuse Plan (the "Reuse Plan") on June 13, 1997, which identified (1) environmental actions required to mitigate development and reuse of the former Fort Ord (the "Base-wide Mitigation Measures") and (2) infrastructure and related costs necessary to accommodate development and reuse of the former Fort Ord (the "Base-wide Costs"), each consistent with the fulfillment of FORA's primary directives. A copy of the Reuse Plan and its attendant environmental report is available on the FORA website at www.fora.org or for your convenience link 2 on Exhibit B Reference documents is attached to this report. A part of that approval, FORA's Board of Directors (the "Board") certified an 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.

~~G. FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act (“CEQA”) to implement the Base-wide Mitigation Measures and incur the Base-wide Costs.~~

~~H. 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 Base-wide Mitigation Measures and to pay the Base-wide Costs.~~

~~I. 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 Capital Improvement Program (“CIP”). The Reuse Plan carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan (“PFIP”) adopted in 2001. The PFIP can be accessed on the FORA webpage at www.fora.org or for your convenience link 3 on Exhibit B Reference documents is attached to this report. The PFIP served as the baseline CIP for the Reuse Plan. The CIP is reviewed on an annual basis and it is estimated that, of the expenses identified in the 2018-19 CIP, approximately \$194,500,000 will remain as obligations to be satisfied or otherwise appropriately addressed after FORA’s currently anticipated sunset in mid-2020. The most current CIP is available on the FORA webpage at www.fora.org or for your convenience link 4 on Exhibit B Reference documents is attached to this report.~~

~~J. 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 (unless as a result of legislative changes the authority to collect the existing CFD Special Taxes is extended). If (a) FORA’s sunset date is not extended or (b) the ability to extend collection of the CFD Special Taxes by one or more successor(s) to FORA is not provided (in each instance through the adoption of appropriate legislative changes) one of the costs to the region will be the inability to collect an estimated approximately \$72,000,000 that would otherwise be generated through continuation of the CFD Special Taxes imposed on already entitled development. 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.~~

~~K. 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 97, 99 and 78 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." The Army also required that water available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of the EDC Property.

~~L. 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, which agreements provided the basis for the orderly transfer of the EDC Property to the respective jurisdictions, the allocation of a fair and equitable share of the Base-wide Costs and the Base-wide Mitigation Measures to each of the recipients, and the allocation of available water to the recipients in a fair and equitable manner. 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 10 through 15 in Exhibit A attached hereto and incorporated by this reference. The Implementation Agreements form the starting point from which the Transition Plan Agreements contemplated to be entered into with the recipients of the EDC Property and discussed more fully below (the "Transition Plan Agreements") shall be negotiated and developed for the mutual benefit of all recipients of the EDC Property and FORA's successor(s), if any.~~

~~M. 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 36 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 27, 36, 38, 41, 45, 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 before the currently anticipated dissolution of FORA and all property transfers will not have occurred.~~

~~N. On December 7, 2016, a majority of FORA's Board members voted in support of seeking legislative extension of FORA's sunset date as the best way to carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner, as called for by Government Code section 67652. On November 17, 2017, a majority of FORA's Board members voted that (in the event that legislative extension of FORA's sunset date could not be obtained) the next best way to satisfy and fulfill the Base-wide Mitigation Measures and other obligations and commitments of FORA would be to provide for a single entity successor (such as a joint powers authority exercising regional oversight) complete the Reuse Plan. The Board noted that in order for such a successor entity to be able to continue collection of~~

~~the CFD Special Taxes that are a significant element of the financing necessary to complete the Reuse Plan, legislative changes would be necessary and that in the absence of such legislation, ongoing contributions would need to be made in accordance with the approach embodied in the Implementation Agreements.~~

~~B. Pursuant to the requirements of Government Code section 67675, FORA adopted a Fort Ord Reuse Plan (the "Reuse Plan") on June 13, 1997~~

~~**O.C.** 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)~~

~~**P.** Government Code section 67700(b)(4) provides as follows:~~

~~(1) 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)~~

~~(2) 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.~~

~~BASED ON THE FOREGOING RECITALS AND THE 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:~~

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Section 1 **Preliminary Findings and Determinations:**

1.1 **Base-wide Costs and Base-wide Mitigation Measures:**

The Board hereby finds and determines that the agreements, contracts and other items referred to in Exhibit A attached hereto and incorporated by this reference, together with each and all of the projects identified in the Reuse Plan and contained in the CIP, constitute Base-wide Costs and/or Base-wide Mitigation Measures and are required to be addressed by this Transition Plan as assets, liabilities, or 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 Base-wide Mitigation Measures or any other mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, (d) eliminating any Base-wide Costs or elements of the CIP, 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"). Nothing in this Transition Plan is intended to change any part of the FORA Program that would have any impact on the environment. To the contrary and to the extent not already so contained, this Transition Plan requires each jurisdiction to include all mitigations in its Capital Improvement Program (subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations). Following FORA's ultimate dissolution, any changes to the FORA Program 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. 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.~~

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 of such entities continue to 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) until all Base-wide Costs and Base-wide Mitigation Measures have been fully paid and satisfied.

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~~1.4 — Reuse Plan and Master Resolution:~~

~~The Board hereby finds and determines that all the underlying land use jurisdictions have or will have general plans which have been found consistent with the Reuse Plan and therefore there is no need to record the Reuse Plan or its policies. The Board further finds and determines that the policies contained in the Master Resolution should be continued and enforced following FORA's dissolution and, in order to preserve a permanent record of those policies, directs staff to record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an equitability and fairness to all workers on the former Fort Ord should be sustained in the completion of the former Fort Ord recovery program.~~

~~1.5 — Funding of Habitat Protection:~~

~~The Board hereby finds and determines that a 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 continued and sustained through the anticipated termination of the ESCA in 2028 either by the County of Monterey or the City of Seaside as single successor to FORA for the purposes of the ESCA or by assignment of the ESCA to a joint powers authority formed by both of them.~~

~~1.7 — Building Removal:~~

~~The Board hereby finds and determines that former Fort Ord remnant, non historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the success of the overall recovery and reuse program and a nuisance to quiet enjoyment of the region's assets. The Board further finds that an extension of the FORA Act to sustain resources such as land sales revenue and property tax revenues that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, recommends consideration by the Legislature of an extension of the FORA Act to meet this blight eradication need.~~

~~1.8 — Transportation and Transit:~~

~~The Board hereby finds and determines that completion of the on-base Fort Ord Transportation Network and Transit projects that have been identified in the CIP are essential to the long term success of the economic recovery of the reuse. The Board further finds that extension of the CFD Special Taxes or the implementation of substantially similar replacement funding mechanisms for the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues to fund the transportation network for the on-site, off-site and regional projects because a replacement regional transportation fee may not be imposed on already approved development projects in the absence of written consent by the developers to do so.~~

~~2.1 — 1.9 — Water and Wastewater:~~

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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. The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction's approved developments exceed the jurisdiction's approved water allocation. In addition, the Board finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District ("MCWD") to implement the Reuse Plan is appropriate at FORA's dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that continuation of the CFD Special Taxes (or implementation of a substantially similar replacement source of revenue) allows for funds to reduce connection and other costs imposed by MCWD.

Section 2 — Assignment of Assets, and Liabilities, and Obligations;

1.1 2.1 — Assets and Disposition Thereof;

FORA's principal assets are comprised of the following:

1.1.1 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 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, 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).

1.1.2 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: \$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 Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FORA's dissolution and third to satisfy any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

1.1.3 Litigation Reserve Funds: Although not irrevocably committed to use for litigation or

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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 34, herein below directs that FORA staff bring back information on acquisition of insurance policies to cover Transition Plan post-dissolution litigation costs, among other costs, and funds set aside may be used to acquire such policy (ies). 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 but the County of Monterey is not an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed to the County of Monterey in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be applied to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA but the County of Monterey is an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed as directed by the Presiding Judge of the Superior Court of the County of Monterey to be held in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be returned to the County to apply to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities. 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 funding Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under construction as of the date of FORA's dissolution and third 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.

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2.1.4

1.1.4 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 habitat conservation. All such funds accumulated before FORA's dissolution shall be transferred in the following order of priority. If before FORA's dissolution a Habitat

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~~Conservation Plan Cooperative joint powers authority (the "HCP Cooperative") has been established, all of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred in their entirety to the HCP Cooperative fund established for use in connection with implementation of 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 all of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred to the joint powers authority fund established for use in connection with implementation of the management of base-wide Habitat Management Areas within the former Plan for 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 to distribute funds as between jurisdictions responsible for long-term management of the habitat management areas (HMA) on the one hand and incidental take permits for future development. Funds provided directly to a jurisdiction or agency shall be restricted to habitat protection.~~

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~~1.1.5 2.1.5 Capital Improvement Funds: All Any CFD Special Taxes not dedicated to Habitat Protection collected and remaining unexpended immediately prior to FORA's dissolution shall first be directed to completing in progress be allocated first to funding Habitat Protection, to the extent necessary to meet funding needs, next to the completion of transportation and transit projects under 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 of the date of 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 and third to satisfy any reimbursement obligations FORA has an executed Transition Plan Agreement. If there is no Transition Plan Implementing Agreement, those funds shall be redistributed to those to the land use jurisdictions with Transition Plan Implementing Agreements in proportion to the priorities of each project in the final year CIP unless provided otherwise in on a Transition Plan Implementing Agreement. pro rata basis.~~

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~~1.1.6 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 2.1.5 for funds related to the CFD, land sales revenues and/or property tax revenues. For receipt of funds related to administrative liabilities distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below 1.1.5 for funds generated by the CFD Special Tax.~~

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~~1.1.7 2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work to be conducted under the ESCA. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all rights under the ESCA~~

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~~including any balance of ESCA funds shall be assigned to the City of Seaside or the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army 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).~~

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~~1.1.8 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 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, including those related to reimbursement agreements and obligations any all remaining proceeds shall funds will be allocated first to funding Habitat Protection, to the extent necessary to meet funding needs, next be directed toward projects described in FORA's final year CIP for which FORA was serving as the lead. Any proceeds remaining thereafter shall next be directed to other projects described in FORA's final year CIP. If any proceeds remain after to the completion of all projects described in FORA's final year CIP, such proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below-transportation and transit projects under construction as of the date of FOR A's dissolution and third to satisfy~~

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~~2.1.9 Proportional Distributions: Where this Transition Plan provides that assets or proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA, such distributions shall be made in the following percentages:~~

City of Carmel-by-the-Sea	—7.69%
City of Del Rey Oaks	—7.69%
City of Marina	—15.38%
City of Monterey	—7.69%
City of Pacific Grove	—7.69%
City of Salinas	—7.69%
City of Sand City	—7.69%
City of Seaside	—15.38%
County of Monterey	—23.1%
	100%

~~2.1.10 Condition to Entitlement to Proportional Distributions: Notwithstanding any provisions of this Transition Plan calling for any distribution of assets or proceeds to all the member jurisdictions in proportion to their voting percentages in FORA, no jurisdiction having land use jurisdiction over or holding property within any portion of the former Fort Ord shall be entitled to receive any portion of any proportional distribution of assets or proceeds unless such jurisdiction has entered into a Transition Plan Implementing Agreement approved by FORA.~~

~~2.1.11 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 97 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, 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 10 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. Except as may be provided in a Transition Plan Implementing Agreement approved by FORA, the County shall make such designation not less than twelve (12) months prior to the anticipated date of FORA’s dissolution, in order to allow sufficient time for all necessary legislation and approvals from the state and federal governments to be obtained before FORA’s dissolution. 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.~~

~~2.1.12~~

any reimbursement obligations FORA has to the land use jurisdictions on a pro rata basis.

1.1.9 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.

1.1.10 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.

1.2 2.2 Liabilities and Obligations and Assignment Thereof:

FORA's principal liabilities and obligations include the following:

2.2.1

1.2.1 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 \$9,333,172.⁴⁻¹ 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 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. (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.

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⁴⁻¹Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

This attachment is incomplete, to view the complete document for Attachment 5 to Item 8b please access the following link: [https://www.fora.org/Board/2018/Package/Additional/121418 Item8b Attachment 5.pdf](https://www.fora.org/Board/2018/Package/Additional/121418%20Item8b%20Attachment%205.pdf)

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.** 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 United States Army (the “Army”) moved the 7th Infantry Division - Light to Fort Lewis Washington over the following two years, resulting 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.** After the announcement but prior to the implementation of the base downsizing/closure, political leaders from 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”).
- C.** 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.
- D.** The Fort Ord Reuse Authority (“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 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 tasked FORA with the following primary directives (1) plan, facilitate, and manage the transfer of former Fort Ord property from the Army to local jurisdictions or their designee(s), (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and redevelopment 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.
- E.** 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. A copy of the contract with CalPERS as amended to date is referenced as Contract #1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference. As is the situation facing many local public entities today,

FORA's liability for pension obligations under the CalPERS contract is not at present fully funded and any potential shortfall must be addressed in the transition planning process.

- F.** Pursuant to the requirements of Government Code section 67675, FORA adopted a Fort Ord Reuse Plan (the "Reuse Plan") on June 13, 1997, which identified (1) environmental actions required to mitigate development and reuse of the former Fort Ord (the "Base-wide Mitigation Measures") and (2) infrastructure and related costs necessary to accommodate development and reuse of the former Fort Ord (the "Base-wide Costs"), each consistent with the fulfillment of FORA's primary directives. A copy of the Reuse Plan and its attendant environmental report is available on the FORA website at www.fora.org or for your convenience link 2 on Exhibit B Reference documents is attached to this report. A part of that approval, FORA's Board of Directors (the "Board") certified an 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.
- G.** FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act ("CEQA") to implement the Base-wide Mitigation Measures and incur the Base-wide Costs.

- H. 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 Base-wide Mitigation Measures and to pay the Base-wide Costs.
- I. 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 Capital Improvement Program ("CIP"). The Reuse Plan carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan ("PFIP") adopted in 2001. The PFIP can be accessed on the FORA webpage at www.fora.org or for your convenience link 3 on Exhibit B Reference documents is attached to this report. The PFIP served as the baseline CIP for the Reuse Plan. The CIP is reviewed on an annual basis and it is estimated that, of the expenses identified in the 2018-19 CIP, approximately \$194,500,000 will remain as obligations to be satisfied or otherwise appropriately addressed after FORA's currently anticipated sunset in mid-2020. The most current CIP is available on the FOR A webpage at www.fora.org or for your convenience link 4 on Exhibit B Reference documents is attached to this report.
- J. 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 (unless as a result of legislative changes the authority to collect the existing CFD Special Taxes is extended). If (a) FORA's sunset date is not extended or (b) the ability to extend collection of the CFD Special Taxes by one or more successor(s) to FORA is not provided (in each instance through the adoption of appropriate legislative changes) one of the costs to the region will be the inability to collect an estimated approximately \$72,000,000 that would otherwise be generated through continuation of the CFD Special Taxes imposed on already entitled development. 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.
- K. 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 97, 99 and 78 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." The Army also required that water available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of the EDC Property.
- L. 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, which agreements provided the basis for the orderly transfer of the EDC Property to the respective jurisdictions, the allocation of a fair and equitable share of the Base-wide Costs and the Base-wide Mitigation Measures to each of the recipients, and the allocation of available water to the recipients in a fair and equitable manner. 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 10 through 15 in Exhibit A attached hereto and incorporated by this reference. The Implementation Agreements form the starting point from which the Transition Plan Agreements contemplated to be entered into with the recipients of the EDC Property and discussed more fully below (the "Transition Plan Agreements") shall be negotiated and developed for the mutual benefit of all recipients of the EDC Property and FORA's successor(s), if any.

- M.** 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 36 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 27, 36, 38, 41, 45, 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 before the currently anticipated dissolution of FORA and all property transfers will not have occurred.
- N.** On December 7, 2016, a majority of FORA's Board members voted in support of seeking legislative extension of FORA's sunset date as the best way to carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner, as called for by Government Code section 67652. On November 17, 2017, a majority of FORA's Board members voted that (in the event that legislative extension of FORA's sunset date could not be obtained) the next best way to satisfy and fulfill the Base-wide Mitigation Measures and other obligations and commitments of FORA would be to provide for a single entity successor (such as a joint powers authority exercising regional oversight) complete the Reuse Plan. The Board noted that in order for such a successor entity to be able to continue collection of the CFD Special Taxes that are a significant element of the financing necessary to complete the Reuse Plan, legislative changes would be necessary and that in the absence of such legislation, ongoing contributions would need to be made in accordance with the approach embodied in the Implementation Agreements.
- O.** 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*)

P. 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 THE 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 Preliminary Findings and Determinations:

1.1 Base-wide Costs and Base-wide Mitigation Measures:

The Board hereby finds and determines that the agreements, contracts and other items referred to in Exhibit A attached hereto and incorporated by this reference, together with each and all of the projects identified in the Reuse Plan and contained in the CIP, constitute Base-wide Costs and/or Base-wide Mitigation Measures and are required to be addressed by this Transition Plan as assets, liabilities, or 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 Base-wide Mitigation Measures or any other mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, (d) eliminating any Base-wide Costs or elements of the CIP, 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”). Nothing in this Transition Plan is intended to change any part of the FORA Program that would have any impact on the environment. To the contrary and to the extent not already so contained, this Transition Plan requires each jurisdiction to include all mitigations in its Capital Improvement Program (subject to Constitutional or other limitations imposed by applicable law on such jurisdiction’s funding obligations). Following FORA’s ultimate dissolution, any changes to the FORA Program 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. 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.

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 of such entities continue to 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) until all Base-wide Costs and Base-wide Mitigation Measures have been fully paid and satisfied.

1.4 Reuse Plan and Master Resolution:

The Board hereby finds and determines that all the underlying land use jurisdictions have or will have general plans which have been found consistent with the Reuse Plan and therefore there is no need to record the Reuse Plan or its policies. The Board further finds and determines that the policies contained in the Master Resolution should be continued and enforced following FORA's dissolution and, in order to preserve a permanent record of those policies, directs staff to record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an equitability and fairness to all workers on the former Fort Ord should be sustained in the completion of the former Fort Ord recovery program.

1.5 Funding of Habitat Protection:

The Board hereby finds and determines that a 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 continued and sustained through the anticipated termination of the ESCA in 2028 either by the County of Monterey or the City of Seaside as single successor to FORA for the purposes of the ESCA or by assignment of the ESCA to a joint powers authority formed by both of them.

1.7 Building Removal:

The Board hereby finds and determines that former Fort Ord remnant, non-historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the success of the overall recovery and reuse program and a nuisance to quiet enjoyment of the region's assets. The Board further finds that an extension of the FORA Act to sustain resources such as land sales revenue and property tax revenues that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, recommends consideration by the Legislature of an extension of the FORA Act to meet this blight eradication need.

1.8 Transportation and Transit:

The Board hereby finds and determines that completion of the on-base Fort Ord Transportation Network and Transit projects that have been identified in the CIP are essential to the long term success of the economic recovery of the reuse. The Board further finds that extension of the CFD Special Taxes or the implementation of substantially similar replacement funding mechanisms for

the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues to fund the transportation network for the on-site, off-site and regional projects because a replacement regional transportation fee may not be imposed on already approved development projects in the absence of written consent by the developers to do so.

1.9 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. The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction's approved developments exceed the jurisdiction's approved water allocation. In addition, the Board finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District ("MCWD") to implement the Reuse Plan is appropriate at FORA's dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that continuation of the CFD Special Taxes (or implementation of a substantially similar replacement source of revenue) allows for funds to reduce connection and other costs imposed by MCWD.

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. Section 3, herein below directs that FORA staff bring back information on acquisition of insurance policies to cover Transition Plan litigation costs, among other costs, and funds set aside may be used to acquire such policy (ies). 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 but the County of Monterey is not an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed to the County of Monterey in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be applied to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA but the County of Monterey is an adverse party to FORA thereunder, then the unexpended balance of such reserves shall be distributed as directed by the Presiding Judge of the Superior Court of the County of Monterey to be held in trust for the satisfaction of expenses or indemnity obligations relating to such pending litigation and any unexpended balance of such reserves remaining after the conclusion of such litigation and satisfaction of such obligation shall be returned to the County to apply to capital improvement program projects in accordance with the final 2020 Capital Improvement Program priorities.

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 habitat conservation. 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 conservation 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 conservation 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 to distribute funds as between long term management of the habitat management areas (HMA) on the one hand and incidental take permits for future development.

2.1.5 Capital Improvement Funds: 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 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: 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 related to the CFD, land sales revenues and/or property tax revenues. For receipt of funds related to administrative liabilities distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below.

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all rights under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army 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).

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 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 for which FORA was serving as the lead. Any proceeds remaining thereafter shall next be directed to other projects described in FORA’s final year CIP. If any proceeds remain after the completion of all projects described in FORA’s final year CIP, such proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA as set forth in Section 2.1.9 below.

2.1.9 Proportional Distributions: Where this Transition Plan provides that assets or proceeds shall be distributed to all the member jurisdictions in proportion to their voting percentages in FORA, such distributions shall be made in the following percentages.

City of Carmel-by-the-Sea	7.69%
City of Del Rey Oaks	7.69%
City of Marina	15.38%
City of Monterey	7.69%
City of Pacific Grove	7.69%
City of Salinas	7.69%
City of Sand City	7.69%
City of Seaside	15.38%
County of Monterey	23.1%
	100%

2.1.10 Condition to Entitlement to Proportional Distributions: Notwithstanding any provisions of this Transition Plan calling for any distribution of assets or proceeds to all the member jurisdictions in proportion to their voting percentages in FORA, no jurisdiction having land use jurisdiction over or holding property within any portion of the former Fort Ord shall be entitled to receive any portion of any proportional distribution of assets or

proceeds unless such jurisdiction has entered into a Transition Plan Implementing Agreement approved by FORA.

2.1.11 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 97 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, 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 10 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. Except as may be provided in a Transition Plan Implementing Agreement approved by FORA, the County shall make such designation not less than twelve (12) months prior to the anticipated date of FORA’s dissolution, in order to allow sufficient time for all necessary legislation and approvals from the state and federal governments to be obtained before FORA’s dissolution. 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.

2.1.12 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, FORA shall not keep any of such policies of insurance in force beyond the date of FORA’s dissolution.

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 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. 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.

¹ Note, these amounts do not include approximately \$1.6M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

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

2.2.4 ESCA Reimbursement: In order to obtain reimbursement under the ESCA, the work described therein must be performed. Unless otherwise provided in Transition Plan Implementing Agreements entered into by the County of Monterey and the City of Seaside and approved by FORA, all liabilities and obligations under the ESCA shall be assigned to the County, 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. In the event that the assignment is not approved by the Army, then whichever jurisdiction(s) is/are acceptable to the Army shall become the successor(s) to FORA for the purposes of the ESCA and all liabilities and obligations under the ESCA shall be deemed assigned to such jurisdiction(s).

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 after FORA's dissolution be addressed, if at all, by the jurisdictions in which the offending 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: For all of those Fort Ord Transportation Network and 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 responsibility to generate and/or collect revenues from the 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, responsibility to generate and/or collect revenues and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the majority of the project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. FORA's 2018-19 CIP projects that \$132,346,818 will remain to be funded for FORA's share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. This Transition Plan assigns funding responsibility in the following manner based on projected CFD Special Taxes to be collected on the former Fort Ord: \$59,026,681 (44.6% of the cost) to the City of Marina, \$28,983,953 (21.9%) to City of Seaside, \$22,234,265 (16.8%) to City of Del Rey Oaks, \$13,234,682 (10%) to County of Monterey, \$8,602,543 (6.5%) to University of California, and \$264,694 (0.2%) to City of Monterey. Funding responsibilities may be adjusted or offset based upon a jurisdiction's actual construction of a transportation project, participation in a regional traffic impact fee funding program, contribution agreements with other jurisdictions, receipt of inter-governmental grant funding and/or implementation of other funding mechanisms that fully replace the funding responsibility as outlined above. The schedule for implementing these obligations shall be as outlined in the jurisdiction's Capital Improvement Program or as otherwise provided in a Transition Plan Implementing Agreement approved by FORA, or if not so addressed, then as provided in FORA's final year CIP. 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 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. 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. This Transition Plan assigns the funding responsibility for such improvements in the following manner based on projected CFD Special Taxes to be collected on former Fort Ord property: \$7,626,014 (44.6% of the cost) to the City of Marina, \$3,744,612 (21.9%) to City of Seaside, \$2,872,579 (16.8%) to City of Del Rey Oaks, \$1,709,869 (10%) to County of Monterey, \$1,111,415 (6.5%) to University of California, and \$34,197 (0.2%) to City of Monterey. The above funding responsibility shall be equitably reallocated in the event that MCWD is unable to serve augmented water in the amounts necessary to implement the any jurisdiction's planned development due to pumping or other limitations. Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement approved by FORA, jurisdictions may alter their water allocations as identified in the Implementation Agreements only by written agreement with other jurisdictions. Upon its receipt of such an agreement altering the water allocations as between two or more jurisdictions, MCWD shall honor the agreement as though it was the allocation 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 contractual obligations reflected on Exhibit A are hereby assigned as set forth in Exhibit A.

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 obligation is unrelated to the use of real property, it shall be proportionately assigned to the member jurisdictions in conformity with their voting percentages in FORA as set forth in Section 2.1.9 above.

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 Implementation Agreements and Transition Plan Agreements:

4.1 Projects in the CIP:

Pursuant to the authority granted by the Legislature in Government Code 67700(b)(2), the Board hereby designates all projects identified in the CIP as obligations required to be assigned by this Transition Plan in accordance with the formulas set forth in the Implementation Agreements as they may be modified by Transition Plan Implementing Agreements. The preferred method of evidencing such assignment is by the entry into Transition Plan Implementing Agreements, which can allow the jurisdictions choice and flexibility in exactly how the assigned obligations will be funded and carried out.

4.2 Transition Plan Agreements:

In order to continue to foster regional cooperation and completion of the FORA program, the Board requests that each member jurisdiction enter into a Transition Plan Implementing Agreement addressing how the respective jurisdiction will generate revenues to meet its obligations as assigned by this Transition Plan, 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 when the jurisdiction will complete said actions. 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 mechanism. Rather, it only recommends that any replacement mechanism be collected on a pay as you go basis and that all FORA CIP projects located within a jurisdiction be included in the jurisdiction's Capital Improvement Program. If any jurisdiction chooses not to perform, include, or address any such project, such jurisdiction shall comply with the requirements of all applicable laws, including but not limited to by making such analysis and taking such action as CEQA may require in connection with such change. 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).

4.3 Escrow:

In the absence of a FORA approved Transition Plan Implementing Agreement, all revenues required to be contributed by a jurisdiction pursuant to its Implementation Agreement shall be paid into an escrow account established for the purpose of sharing revenues and 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.

4.4 Power to Assign:

If by the time of FORA's dissolution Transition Plan Implementing Agreements have not been entered into by all of the relevant jurisdictions or have not been approved by FORA, the assignments of assets, liabilities and obligations described in this Transition Plan shall be imposed pursuant to Government Code 67700 and LAFCO shall handle such assignments as though they were conditions of special district dissolution imposed pursuant to Government Code section 56886 and use all of LAFCO's powers to enforce such assignments, including but not limited to by using enforcement powers under Government Code sections 56122 or 67700 as to the member jurisdictions. If a final judgment of a court having jurisdiction over the matter results in a determination that the FORA Act, including but not limited to Government Code 67700(b)(2), does not provide FORA with the requisite authority to make the assignments set forth in this Transition Plan, then LAFCO "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" as required by Government Code 67700(b)(1) through the exercise of LAFCO's powers under the FORA Act, the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000, and LAFCO's other relevant powers. If LAFCO refuses to agree impose such assignments as conditions to the dissolution of FORA and the transfer of its assets in accordance with this Transition Plan, then FORA shall seek such judicial clarification and/or legislative amendments as may be necessary to (a) clarify or establish FORA's and/or LAFCO's ability and/or duty to impose such assignments in connection with the dissolution of FORA or (b) extend the date of FORA's sunset so as to allow fulfillment of the mitigations, satisfaction of the obligations, and the completion of the elements of FORA Program which have not effectively been assigned to or accepted by the objecting jurisdictions.

4.5 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).

4.6 Reserved Right of Modification:

This Transition Plan includes the opportunity for continued regional cooperation by all affected jurisdictions to enter into a Transition Plan Implementing Agreement, subject to FORA approval, to implement this Transition Plan. This Transition Plan may be modified by the Board upon the receipt of an executed Transition Plan Implementing Agreement approved by FORA, if the Board finds a revision to this Transition Plan necessary and appropriate. The Board also reserves the right to make modifications based upon receipt of regional agreements which address matters such as future financing mechanisms to support completion of the FORA Program, additional factual information or refinements provided by FORA staff during quarterly updates, regional revenue sharing arrangements, or plans for coordinated completion of CIP elements or projects, in each instance approved by FORA. Such modifications of this Transition Plan shall be transmitted forthwith to LAFCO for its processing.

NOW THEREFOR, 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
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b) by approving this Transition Plan and intends that those assignments be

implemented preferably through Transition Plan Agreements but in the absence of executed Transition Plan Agreements approved by FORA then as assignments and conditions of dissolution, as though they were imposed pursuant to Government Code sections 56886 and 67700(b); and

3. The Board hereby 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
4. The Board further directs the Executive Officer, or his designee, to hire a facilitator consultant to assist the jurisdictions in creating and negotiating Transition Plan Agreements or other inter-agency regional agreements to implement the requirements of this Transition Plan. The facilitator consultant may also assist FORA in agreements for the disposition of its obligations to named entities or implementing the terms and conditions of this Transition Plan. The Executive Officer is directed to report progress on or before January 1, 2019 and to complete all negotiations and documents not later than March 2019. The Executive Officer shall compile a list of such additional actions necessary to implement this Transition Plan.

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

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Mayor Ralph Rubio, Chair

ATTEST:

Michael A. Houlemard, Jr., Clerk

GLOSSARY

“Army” means the United States Army.

“Base-wide Costs” means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan and included in the current FOR A Capital Improvement Program.

“Base-wide Mitigation Measures” means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water line and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1 (f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.

“Base 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.

“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.

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

“FORA” means the Fort Ord Reuse Authority.

“FORA Act” means the Fort Ord Reuse Authority Act, as amended to date (Government Code section 67650 and following).

“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.

“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended. For your convenience link 5 on Exhibit B, is the most recent Master Resolution.

“MCWD” means the Marina Cost Water District.

“PFIP” means the Public Facilities Implementation Plan adopted by the Fort Ord Reuse Authority in 2001.

“Reuse Plan” means the plan for the future use of the former Fort Ord adopted pursuant to Government Code section 67675, as amended to date.

“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.

November 26, 2018

By E-mail

Board of Directors
Fort Ord Reuse Authority
920 2nd Ave. Suite A
Marina, CA 93933
board@fora.org
michael@fora.org
dominique@fora.org

Re: Proposed Revisions to the “Hybrid” Transition Plan

Dear Members of the Board:

On behalf of LandWatch Monterey County, I write to thank FORA staff for inviting LandWatch to discuss its concerns with the draft Transition Plan. LandWatch discussed its primary concerns with FORA staff and legal counsel on November 20, 2018 and offered to propose specific changes to the November 8, 2018 “Hybrid” Transition Plan in order to address those concerns. LandWatch’s suggestions are attached.


LandWatch has two overarching concerns.

First, nothing in the Transition Plan should constrain the authority and discretion of the land use jurisdictions to determine when and if to fund or build any specific road or transit project.

Second, nothing in the Transition Plan should purport to oblige MCWD to fulfill FORA’s existing water supply allocations by pumping groundwater.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

LandWatch’s Proposed Changes to FORA Staff’s November 8, 2018 “Hybrid” Transition Plan

November 26, 2018

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PROPOSED CHANGES RE TRANSPORTATION AND TRANSIT

Section 1.7

Change

The Board hereby finds and determines that completion of the on-base Fort Ord Transportation Network and Transit policies and programs are essential to the long term success of the economic recovery of the reuse. The Board further finds that nexus fees alone will not be sufficient to fund aspects of the Transportation Network and Transit needs and revenue sharing between the land use jurisdictions will be required. Revenue generation and revenue sharing for Transportation and Transit needs will be addressed in the Implementing Agreements.

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The Board hereby finds and determines that completion of the on-base Fort Ord ~~t~~ransportation ~~n~~etwork and ~~t~~ransit policies and programs are essential to the long term success of the economic recovery of the reuse. The Board further finds that nexus fees alone ~~will~~ may not be sufficient to fund aspects of the ~~T~~ransportation ~~N~~etwork and ~~t~~ransit needs and revenue sharing between the land use jurisdictions ~~will~~ may be required. Revenue generation and revenue sharing for ~~t~~ransportation and ~~t~~ransit needs will be addressed in the Implementing Agreements.

Rationale for change:

Because the term “Fort Ord Transportation Network and Transit policies and programs” is not a defined and term, it should not be capitalized. Since there is no agreement as to what roads may be build or when, there should not be any suggestion to the contrary.

Neither the insufficiency of nexus fees nor the categorical requirement for revenue sharing have been established. Nor can these conclusions be established without a legal conclusion as to mandated infrastructure and reliable projections about future development and impact fees. There is no need to draw these conclusions if the parties all agree that the land use jurisdictions shall have plenary authority to fund, solicit funding, and construct roads and transit projects when and if they determine the projects to be necessary.

LandWatch’s Proposed Changes to FORA Staff’s November 8, 2018 “Hybrid” Transition Plan

November 26, 2018

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Section 2.2.6

Change

For all of those Fort Ord Transportation Network and 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 responsibility to generate and/or collect revenues from the 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, responsibility to generate and/or collect revenues and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the majority of the project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. FORA’s 2018-19 CIP projects that \$132,346,818 will remain to be funded for FORA’s share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. Funding responsibilities shall be addressed through a facilitated process of Implementing Agreements to be completed by December 30, 2019 and may be adjusted or offset based upon a jurisdiction’s actual construction of a transportation project, participation in a regional traffic impact fee funding program, contribution agreements with other jurisdictions, receipt of inter-governmental grant funding and/or implementation of other funding mechanisms that fully replace the funding responsibility as outlined above. 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. 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.

to

For all of those ~~Fort Ord Transportation Network and Transit~~ 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 ~~responsibility authority and discretion~~ to generate and/or ~~collect-solicit~~ revenues from the 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 and discretion ~~responsibility~~ to generate and/or ~~collect-solicit~~ revenues and to complete construction is assigned by this Transition Plan to the underlying jurisdiction in which the ~~majority of the~~ project is situated, unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. FORA’s 2018-19 CIP projects that \$132,346,818 will remain to be funded for FORA’s share of the transportation network for on-site, off-site, regional, and transit improvements after June 30, 2020. Funding ~~responsibilities~~ shall be addressed through a facilitated process of Implementing Agreements to be completed by December 30, 2019 and may be adjusted or offset based

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November 26, 2018

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upon a jurisdiction’s actual construction of a transportation project, participation in a regional traffic impact fee funding program, contribution agreements with other jurisdictions, receipt of inter-governmental grant funding and/or implementation of other funding mechanisms that ~~fully~~ replace the funding ~~responsibility~~ as outlined above. 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 or its Implementing Agreements shall interfere with the discretion of a lead agency to determine when and if 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.

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Rationale for change

“Fort Ord Transportation Network and Transit projects” is not a defined term so should not be capitalized. Since there is no agreement as to what roads may be build or when, there should not be any suggestion to the contrary.

The changes clarify that land use agencies will have plenary authority and discretion to fund and construct road and transit projects within their territory.

PROPOSED CHANGES RE WATER SUPPLY

Recital K.

Change

The Army also required that water available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of the EDC Property.

to

The Army also required that water available on the former Fort Ord be allocated in a fair and equitable manner among all of the various recipients of portions of the EDC Property and that Marina Coast Water District meet all requirements of the 1993 Annexation Agreement between MCWRA and the Army and implement the Non-Army Responsibility Mitigations in the Amy’s 1993 and 1997 Environmental Impact Statements for the Fort Ord Closure.

Rationale for change:

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Page 4

MCWD’s obligation to provide an “equitable supply of water at equitable rates” is only one of three obligations assumed by MCWD as grantee of the Army’s interests in water facilities and production rights. (See Easement to Fort Ord Reuse Authority for Water and Wastewater Distribution Systems Located on Former Fort Ord, October 23, 2001, paragraph 2, Consideration, available at pdf page 141 of <https://www.mcwd.org/docs/ocsiaa/MCWD%20Public%20Draft%20IS%20Dec192017.pdf>.) MCWD’s obligations as grantee are discussed below in the rationale for proposed changes to Paragraph 1.7.

Paragraph 1.7

Change

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. The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction’s approved developments exceed the jurisdiction’s approved water allocation. In addition, the Board finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District (“MCWD”) to implement the Reuse Plan is appropriate at FORA’s dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that jurisdictional implementation of a replacement source of revenue substantially similar to the FORA CFD might allow for funds to reduce connection and other costs imposed by MCWD.

to

The Board hereby finds that in the 1993 Annexation Agreement between the Army and MCWRA, MCWRA agreed that the Army could pump 6,600 afy of groundwater for use on Fort Ord on an interim basis pending implementation of an expected water supply project to provide a replacement potable water supply of at least 6,600 afy, at which time all Fort Ord wells would be shut down due to the seawater intrusion caused by existing groundwater pumping. The Board further finds that the Army assigned a portion of its interest in the 6,600 afy to Marina Coast Water District (“MCWD”) in the 2001 Assignment of Easements on 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, to implement the Non-Army Responsibility Mitigations in the Army’s 1993 and 1997 Environmental Impact Statements for the Fort Ord Closure, and to cooperate and coordinate with others to ensure landowners continue to be provided with an equitable supply of water at equitable rates. The Board further finds that the Non-Army Responsibility Mitigations in the Army’s 1993 and 1997 Environmental Impact Statements for the Fort Ord Closure required FORA to cooperate with MCWRA’s plans

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LandWatch’s Proposed Changes to FORA Staff’s November 8, 2018 “Hybrid” Transition Plan

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and/or develop private plans for additional water supplies and to phase development based on water supply availability. The Board ~~hereby further~~ 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.~~ The Board further finds that its water allocations were intended to allocate the potable water supply expected to be available from the replacement water supply and that FORA did not require or authorize MCWD to fulfill the allocations by pumping groundwater. The Board further finds that continuing seawater intrusion may preclude increases in existing groundwater pumping to meet the allocations and may require development of alternative, non-groundwater sources of potable water supply to meet the allocations.

The Board recognizes that the land use jurisdictions may choose to use the FORA allocations in the future as a means of allocating whatever water supply is available and may wish to agree that MCWD may manage available water supply with reference to the FORA allocations. ~~The Board further finds that the Implementation Agreements may need to be enforced if any jurisdiction’s approved developments exceed the jurisdiction’s approved water allocation.~~

In addition, the Board finds that ~~transferring the obligation~~ recognizing MCWD’s authority and discretion to finance a planned non-potable water augmentation project, water infrastructure, and wastewater infrastructure to Marina Coast Water District (“MCWD”) to implement the Reuse Plan is appropriate at FORA’s dissolution. To the extent that MCWD is unable to impose and/or collect revenues to replace the revenues generated by the CFD Special Taxes, the Board finds that jurisdictional implementation of a replacement source of revenue substantially similar to the FORA CFD might allow for funds to reduce connection and other costs imposed by MCWD.

Rational for change

The Transition Plan should recognize that there is no mandate to MCWD to meet the FORA water supply allocations, and especially no mandate to do so with pumped groundwater. The Transition Plan should recognize that FORA’s “fair and equitable” water supply allocations were made in the context of plans in the 1993 Annexation Agreement between the Army and MCWRA to replace the groundwater supply with another potable water supply and commitments to phase development based on the availability of a supply that does not induce seawater intrusion or exceed safe yield.

The Transition Plan should recognize that FORA cannot assign new obligations to MCWD. The Transition Plan should only recognize the obligations that MCWD has already undertaken and that will not expire when FORA sunsets. FORA’s authority over

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MCWD expires with the expiration of the 1998 Water/Wastewater Facilities Agreement between FORA and MCWD when FORA sunsets. (See Article 9 of that agreement.)

When the Army quit claimed to MCWD the Army's Fort Ord infrastructure and the Army's water production rights under the 1993 Annexation Agreement, the Consideration for that grant recited three obligations that Grantee (MCWD) assumed: to cooperate and coordinate with others to ensure landowners continue to be provided with an equitable supply of water at equitable rates; to honor the 1993 Annexation Agreement; and to implement the Non-Army Mitigations in the Army's 1993 and 1997 Environmental Impact Statements for the Fort Ord Closure. See Easement to Fort Ord Reuse Authority for Water and Wastewater Distribution Systems Located on Former Fort Ord, October 23, 2001, paragraph 2, Consideration. (Available at pdf page 141 of <https://www.mcwd.org/docs/ocsiaa/MCWD%20Public%20Draft%20IS%20Dec192017.pdf>.) If the Transition Plan is going to recite one of the obligations MCWD assumed, it should recite them all.

While the FORA water allocations may be one means of providing a "fair and equitable" supply, these allocations are not the only means; and the specific allocations are not mandated by the Army's grant to MCWD, and they do not survive by virtue of the 1998 Water/Wastewater Facilities Agreement, which expires when FORA sunsets. That said, the Transition Plan may recognize that land use jurisdictions are free to agree among themselves to use the FORA allocations in the future as a basis for allocating whatever potable water supply is available.

Nothing in the Army's grant to MCWD obligates MCWD to continue pumping groundwater to provide a "fair and equitable" supply, especially if increased pumping induces seawater intrusion and compromises the continuing use of groundwater for existing MCWD customers on Fort Ord. The Transition Plan should expressly recognize this, and it should certainly not suggest anything to the contrary by implying MCWD has a duty to continue meeting the allocations if MCWD does not have available supply.

Finally, the Transition Plan should recognize that there is no legal basis to assign MCWD responsibility to provide the non-potable augmentation supply after the 1998 Water/Wastewater Facilities Agreement expires, but that MCWD may pursue the augmentation project on its own volition.

Section 2.2.7

Change

This Transition Plan hereby assigns to MCWD, effective as of the dissolution of FORA, FORA's rights of enforcement under the Implementation Agreements regarding water allocations. In the event that any jurisdiction's approved developments exceed the

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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. 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. MCWD commits 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 water allocations as identified in the Implementation Agreements² only by written agreement with other jurisdictions. Upon its receipt of such an agreement altering the water allocations as between two or more jurisdictions, MCWD shall honor the agreement as though it was the allocation set forth in the Implementation Agreements.

to

~~Should the land use jurisdictions agree, MCWD may use the FORA water allocations as a means of allocating whatever potable water supply is available. This Transition Plan hereby assigns to MCWD, effective as of the dissolution of FORA, FORA’s rights of enforcement under the Implementation Agreements regarding water allocations. For example, in the event that any jurisdiction’s approved developments exceed the jurisdiction’s approved water allocation, the jurisdictions may agree that 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. Regardless how water is allocated among the land use jurisdictions, nothing in this Transition Plan or its Implementing Agreements shall authorize or obligate MCWD to pump groundwater to meet those allocations or to abrogate MCWD’s statutory responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. 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. MCWD commits 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 water allocations as identified in the Implementation Agreements² only by written agreement with other jurisdictions. Upon its receipt of such an agreement altering the water allocations as between two or more jurisdictions, MCWD shall honor the agreement as though it was the allocation set forth in the Implementation Agreements.~~

Rationale for change

When FORA sunsets, MCWD will no longer be bound by the 1998 Water/Wastewater Facilities Agreement (see Article 9). There is no authority for, or agreement on, the proposition that the FORA water allocations would persist, and there is no need to resolve this question if the land use jurisdictions are willing to reach an agreement among

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themselves to continue to allow MCWD to manage the available water supply with reference to the allocations in some manner. There is also no apparent legal basis to constrain the future agreements the land use agencies may make with regard to water allocation.

The Transition Plan must acknowledge that it cannot compel MCWD to honor the FORA water allocations by pumping groundwater. This would abrogate MCWD’s authority to refuse service in a water shortage. See Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350; *Building Industry Assn. v. Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641; *Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512; *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2004) 117 Cal.App.4th 13. It would also be inconsistent with MCWD’s duties to phase development based on available water supply under the Army’s assignment of its Fort Ord water facilities and water production rights.

Language purporting to bind MCWD to new obligations, or to constitute a commitment now being made by MCWD (e.g., “MCWD commits to working with the jurisdictions ...”), is inappropriate because MCWD is not a party to the Transition Plan.

Discussion of the remaining funding balance for the non-potable water augmentation project is not relevant because the Transition Plan does not provide funding for this project.

OTHER PROPOSED CHANGES:

Recital F: Strike the definitions of Base-wide Mitigation Measures and Base-wide Costs. These terms are not useful in the Transition Plan since there will not be agreement as to the actual referents of these terms (Which projects? Which policies? Which development restrictions?)

Recital G: Strike all of recital G, which states that FORA is obligated to implement the Base-wide Mitigation Measures and Base-wide Costs. This recital is not useful in the Transition Plan.

Paragraph 1.1: This should be captioned “Continuity of Base Reuse Plan Policies and Programs” since that is what it actually covers. It should not be captioned “Base-wide Costs and Base-wide Mitigation Measures” since it does not mention these topics.

Paragraph 2.1.5: Unexpended funds should be allocated on a pro-rata basis among land use jurisdictions based on an agreed formula. Allocating these funds to specific projects is inconsistent with recognizing that the land use jurisdictions have plenary authority and discretion to pursue infrastructure projects when and if they chose to implement those projects.

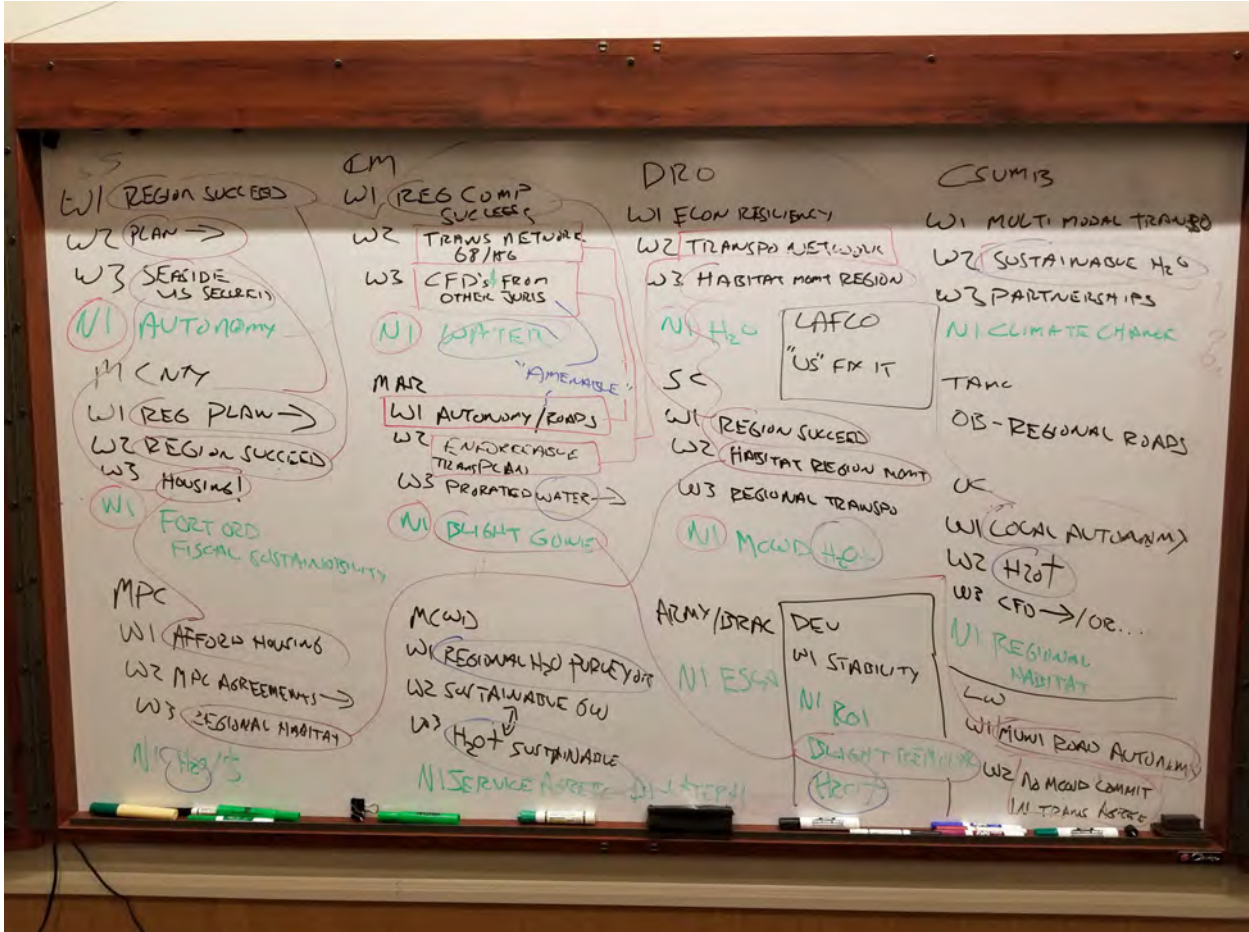
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Paragraph 4.1: This paragraph should be revised to provide that the preferred method is to allow “jurisdictions choice and flexibility in whether and how CIP projects” will be funded and carried out. There can be no guarantee that CIP projects will in fact be implemented and the assumption that all CIP projects will be carried out is inconsistent with the “home rule” provisions for road and transit projects.

Paragraph 4.2: Change “generate revenues to meet its obligations” to “generate revenues to exercise its authority and discretion.” There is no foundation for assuming that there are any post-FORA obligations.



WATER (x3)

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CLIMATE CHANGE

REGIONAL HABITAT

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