

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** Transition Planning Process Update

**Meeting Date:** September 28, 2018

**Agenda Number:** 8e

**INFORMATION/ACTION**

### RECOMMENDATION:

1. Review Transition Plan Resolution (**Attachment A**);
2. Provide direction to staff on Local Agency Formation Commission (LAFCO) jurisdiction issue to either:
  - a) Reach Agreements on all matters of assignment and succession prior to December 1, 2018 and well in advance of the June 30, 2020 statutory sunset; and/or
  - b) Secure any needed legislative amendment/clarification; and/or
  - c) Seek Court interpretation (i.e. declaratory relief) of authority/jurisdiction question.
3. Provide direction to staff about Community Facilities District/Capital Improvement Program financing issue and any related legislative action requests needed to implement an approved transition plan.
4. Provide direction to staff on the likely successor (either the City of Seaside or the County of Monterey) to the Environmental Services Cooperative Agreement (ESCA) contract and its associated contractual obligations and assets.
5. Provide direction to staff on policy and/or other revisions to the Transition Plan and/or consider adoption;
6. Take other actions as may be required to comply with state law requiring submitting a Transition Plan (based on the approved resolution) to LAFCO by December 2018.
  - a) Authorize the Executive Officer to prepare and execute the LAFCO Indemnification Agreement;
  - b) Authorize the Executive Officer to submit an approved Transition Plan to LAFCO;
  - c) Direct staff to begin working with all the jurisdictions on approved Transition Plan Implementation Agreements and return to report in January 2019 with status on Implementation Agreements;
  - d) Direct staff to work with Senator Monning to implement components or alternatives to items as approved in the Transition Plan.

### BACKGROUND/DISCUSSION:

FORA is slated to sunset **June 30, 2020**. FORA must submit a Transition Plan to the Local Agency Formation Commission no later than **December 30, 2018** to be in compliance with state law. FORA has been engaged in transition planning activities over the past three years, empanelling two Transition Task Force Committees, and one Transition Ad Hoc Committee. Reports and contract lists have been rolling out since January 2018. The FORA Board of Directors received a compiled report outlining the first draft of the Transition Plan and background materials on June 8, 2018 during a several hour Board Study Session. On July 13, 2018, a second Board study session was held to allow the Board to deliberate policy and programmatic issues to aid staff in preparing a Transition Plan for assignment of liabilities, obligations and assets. Senator Monning attended the July 13, 2018 session and was engaged in the discussion, with particular interest in how the Transition Plan would be implemented, how specific policies would be enforced, and how building removal might be addressed. At the August 13, 2018 Board meeting a draft Transition Plan Resolution was presented which covered the background, the legislative intent and findings, the assignment of assets, liabilities, obligations and schedule. In

this report, we provide an update on the various meetings and Transition Planning process and a revised draft Transition Plan Resolution.

Since the August 13, 2018 Board meeting, FORA staff has been engaged and busy. On August 23 and 24, FORA staff attended the County's Fort Ord subcommittee. On August 27, 2018, FORA staff attended the LAFCO presentation to its Board. On August 31, 2018, FORA staff made a workshop presentation to the City of Monterey. The City of Monterey will hold another session on September 19, 2018 to formalize its comments. On August 15, 2018, FORA staff met with the City Manager from the City of Marina who requested that FORA prepare and share a map which identifies where in the City of Marina (and all other locations on the FORA lands), CFD fees have been collected. In addition, FORA staff has fielded numerous phone calls from consultants and staff from the various jurisdictions. The County Board of Supervisors held a workshop on September 11, 2018 and plans subsequent subcommittee and Board meetings on September 24 and 25, respectively. The City of Seaside will consider Transition Plan issues on September 20, 2018. The City of Marina will consider a Resolution on Transition Plan/Dissolution issues on September 25, 2018. A table which compiles jurisdictional reports and materials can be accessed through this link: <https://www.fora.org/Transitiontaskforce.html>. Although, there have been multiple meetings to review Transition Plan issues, those reviews have focused on the bigger policy, funding and risk issues rather than a technical review and correction of the draft Transition Plan Resolution.

**LOCAL AGENCY FORMATION COMMISSION (LAFCO) JURISDICTION** Since January 2018, FORA staff has been meeting with LAFCO staff regularly. Although LAFCO staff expressed concern about LAFCO's ability to exercise its jurisdiction pursuant to the Cortese Knox Hertzberg (CKH) Act, FORA staff had not received a legal opinion from LAFCO opining limited jurisdiction. On the other hand, FORA staff have received information from its Authority counsel that the CKH Act does apply. On August 27, 2018, LAFCO presented its formal written interpretation that it does not have power to impose the dissolution and Transition Plan obligations pursuant to the Cortese Knox Hertzberg Act in a staff report and that the only "Transition Plan" was one made of assignment agreements. There was not a formal written legal opinion supporting the staff report offered. However, in recent meetings to discuss this issue with LAFCO's legal counsel and staff, LAFCO's legal counsel provided his oral opinion supporting the LAFCO report concluding that if LAFCO was to exercise its powers under Section 6 of the CKH Act, it would have so stated in the FORA Act. In addition, it was discovered, that even if LAFCO were to exercise jurisdiction pursuant to the CKH Act, it would not have jurisdiction over some of the key participants and recipients of successor obligations and liabilities. For example, LAFCO staff and counsel opined on September 10, 2018 that they do not have CKH Act power over the Transportation Agency of Monterey County (TAMC), the County of Monterey, or other entities such as CSUMB, UC, MPC. LAFCO Counsel further opined LAFCO would not have CKH Act jurisdiction over a joint powers agency (JPA), which may make designation of a HCP/HMP JPA successor to FORA habitat obligations problematic. Also, LAFCO Counsel opined that if all of the CKH Act were to apply, there could be protest hearings and other dissolution issues that clearly were not made applicable to the FORA statutory dissolution and transition plan process. Finally, LAFCO Counsel and County Counsel have suggested that the FORA Act does not empower the FORA Board to make assignments in the absence of agreements. These new interpretations, pose multiple issues that will need to be addressed for a successful transition plan.

FORA staff and Authority Counsel believe FORA's interpretation and harmonization of the FORA Act and the CKH Act to be correct, that LAFCO is authorized to impose the transition plan assignments and successors in order to ensure that the plan is fulfilled. Nonetheless, there are limited ways to address this issue: 1) Reach Agreements on all matters of assignment and

succession prior to December 1, 2018 and in any event well in advance of the June 30, 2020 statutory sunset; 2) Legislative amendment/clarification and/or 3) Court interpretation (i.e.declaratory relief). In the absence of agreements, one entity, either FORA or LAFCO needs to have the power to impose and allocate the assets, liabilities, assign obligations and timelines to ensure compliance with the Transition Plan which is ultimately approved by a majority of the FORA Board. The draft Transition Plan now includes a requirement to execute Transition Plan Implementation Agreements with all the jurisdictions by March 2019.

### **REVENUE GENERATION/SHARING ISSUES**

Revenue generation and revenue sharing is one of the biggest issues facing a successful Transition Plan which completes the Basewide Costs and Mitigation measures as identified in the FORA Capital Improvement Plan. FORA's community facilities district special tax (CFD) is the primary generator of revenues, funding habitat protection, roads, and water augmentation. City of Marina, is by far the largest generator of CFD revenues given its numerous entitled and underway projects, although the County of Monterey also is projected to generate a substantial amount of CFD revenue. Marina has been very proactive in negotiating with at least one developer to continue to pay the FORA CFD or its equivalent post-2020. Although, it has been represented multiple times that Marina has agreements with all their developers and will share that revenue with successor entities that revenue, FORA staff was only provided one unsigned Agreement in response to a Public Records Act request. As requested by the FORA Board previously, attached please find the relevant portions of the agreement which Marina approved (**Attachment B**). In general the language for generating replacement FORA CFD revenue seems to be appropriate (but as compared to extension of the CFD may lead to a shortfall over time), but the revenue sharing is qualified to be shared with only a regional agency designated as a FORA successor. That language qualification begs the question: Who is/qualifies as a **regional agency**? Is the County a regional agency? Is a habitat joint powers agency a regional agency? Is the City of Seaside or other City that receives successor obligations? Does the fact that LAFCO has no jurisdiction to impose or designate a successor given their lack of jurisdiction under the CKH Act an issue, that effects implementation of this language? Simple written clarification by Marina and its developer can address this issue.

Marina's City Manager clarified (by phone) on September 7 that while Marina has "oral commitments" from its other developers, it is still "in process" of negotiating language modifications to its other development agreements.

FORA staff has revised the Transition Plan resolution language to seek legislative extension of the FORA CFD and in the alternative to require jurisdictional establishment of replacement revenue mechanisms no less than six months prior to FORA sunset. Upon majority approval of the Transition Plan Revenue replacement requirements, FORA staff will produce a schedule of implementing actions to include a review of each jurisdiction's replacement revenue generating mechanisms. FORA to verify the mechanisms have been formed and are ready to be enacted upon a FORA dissolution, in any event such replacement mechanisms should be formed and ready no less than six months prior to FORA sunset.

**HABITAT CONSERVATION** Since the August Board meeting, the draft Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) were submitted to the Solicitor General for USFWS to begin the review process in order to meet the timelines associated with the 2018 directives from the Deputy Secretary of Interior for NEPA Document clearance. Under the new guidance all environmental review documents and the Record of Decision documents must be finalized by April 2019. The notice of intent to prepare an environmental document for issuance of the incidental take permit (ITP) was issued on or about September 29, 2004. The CEQA Notice of Preparation for the 2081 permit was issued on

June 21, 2005. The County's Fort Ord subcommittee recommended a "wait and see" approach to formation of a joint powers agency, until the HCP proceeds further in the process. A Habitat Conservation Plan workshop was held on September 24, 2018 outlining the process and the options. In the absence of issuance of an ITP pursuant to a HCP, habitat will be required to be managed in accordance with the Habitat Management Plan (HMP). In the absence of a basewide consolidated approach, management of Habitat Management Areas (HMAs) covered by the HMP will require ITP coverage pursuant to either Section 9 or Section 10 of the Endangered Species Act and will disproportionately affect the County who has three HMA's within its jurisdictional boundaries totaling approximately 1,800 acres. Other jurisdictions will be affected as well as future development projects who will be required to acquire individual take permits (both state and federal) if their project area has any protected species.

**TRANSPORTATION NETWORK** FORA staff has met with the Transportation Agency of Monterey County (TAMC) staff, Todd Muck and Mike Zeller, to discuss approaches to transfer funding obligations to TAMC for regional roads identified in FORA's CIP. TAMC's 2018 update to its Regional Development Impact Fee (RDIF) includes a FORA zone analysis utilizing a cost per trip fee calculation. TAMC's 2018 RDIF study does not include all of the road projects in FORA's Capital Improvement Program. The RDIF study does include most regional and "off-site" projects, but does not include "on-site" roads.

TAMC's FORA zone analysis was unable to identify what portion of FORA's fee comes from (existing) entitled developments and would only apply to future unentitled development. Several issues were identified during the meeting. For example, TAMC staff is concerned with the transition of regional road fees in the absence of a "catch-up" or "pay back" provision being addressed for development fees already collected. As a part of the collaboration between TAMC and FORA staff, FORA staff are identifying an allocation of the amounts in the FORA program between entitled and future development as the basis for an agreement on how to effectively transition from a special tax program to the RDIP nexus program while maximizing the best of both funding programs. An additional issue of how to ensure that FORA funds are applied to the projects within the FORA CIP was also identified, as well as the nomenclature utilized while discussing each program. As characterized by TAMC staff, the primary issue is FORA's policy to focus on "on-site" transportation projects has resulted in minimal contributions to "regional" road obligations. Yet, even with the on-site policy direction, FORA has already contributed for example, almost \$1M towards Davis Road which is labeled in the FORA CIP as an "off-site" project but considered a "Regional Road" in the RDIF program.

There will be policy implications as the TAMC regional transportation fee program relies upon a CEQA/nexus analysis, this shift will cause new developments to pay fees differently than under the FORA program as retail, commercial, and industrial will pay more because of trip generation. RDIP project costs for regional roads are substantially increased over the amounts currently in the FORA CIP. Another issue specific to the RDIF program is that LAFCO contends they do not have jurisdiction to impose obligations on TAMC because they are a joint powers agency.

It is not likely that an agreement with TAMC, regarding the transfer of funding and implementation of regional obligations, can be reached prior to December of 2018. Such agreement may take the better part of a year to negotiate and finalize. As the Transition Plan is currently drafted, all funding obligations under the FORA program for regional roads will revert to TAMC to collect. Other on-site and off-site roads will be assigned to the underlying lead agency jurisdictions to replace the funding and finally, those on-site roads which FORA has not completed will be assigned, together with any capital improvement funds collected and assigned to those projects, to the underlying jurisdiction in which the majority of the road is located.

## WATER/WASTEWATER

FORA relies on its ongoing Facilities Agreement for water and wastewater services with the Marina Coast Water District (MCWD). FORA also is currently working with MCWD on its efforts to annex former Fort Ord lands not within its current boundaries. FORA staff recommends that the Board review how water/wastewater services can be provided to all former Fort Ord jurisdictions in order to complete the commitments in the 1997 Base Reuse Plan.

## ENVIRONMENTAL SERVICES

At the current time, the ESCA obligations on behalf of the United States Army include property clean-up, regulatory coordination between the state and federal agencies, and future land use covenant monitoring and regulatory required reporting. There is a current ESCA Amendment that will reimburse up to \$6.8M to pay for the future services with limited staff and consultants. The staff services provided pursuant to this contract are specialized and require certification and pertinent knowledge. Under the terms of the ESCA there are a limited number of successors: the County, the City of Seaside, City of Marina and/or a JPA. Currently, the recommendation is for the City of Seaside, which has the most potential reuse projects moving forward, to be designated. The Army clean up contract assumes a LAFCO-designated successor to the contractual obligations, so lack of LAFCO jurisdiction may be problematic in the absence of an agreement. We request Board consensus on identifying either the County of Monterey or the City of Seaside as the likely successor entities to the contractual obligations and assets of ESCA.

## IMPLEMENTATION

As revised, the Transition Plan Resolution now requires that the underlying jurisdictions enter into Transition Plan Implementation Agreements no later than March 2019 outlining their compliance with the Transition Plan elements, including replacement funding, construction of roadway improvements, revenue sharing, and other obligations. The FORA Board will review and approve that any Transition Plan Implementation Agreement complies with the Transition Plan approved by the board. Other assignments of Agreements with outside entities will continue throughout 2019 until FORA sunset. In the absence of legislative clarity or legal certainty that either LAFCO or FORA have the ability to identify and impose obligations on the member agencies, implementation will require multiple agreements and actions. Once the Board comes to a majority approval of the elements of the Transition Plan, staff will prepare a finalized resolution and schedule of additional implementing actions.

## FISCAL IMPACT:

Reviewed by FORA Controller 

## COORDINATION:

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

## ATTACHMENTS:

Attachment A: Transition Plan Resolution

Attachment B: Marina Replacement Fee Language

[Exhibit A to Attachment A: Contract Summaries](#)

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

### *A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY Adopting a Transition Plan*

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 under the Base Realignment and Closure Act. The US Army moved the 7<sup>th</sup> Light Infantry to Fort Lewis Washington over the coming two years. Regional communities lost significant economic, social, and cultural contributions that had been associated with the military presence.
- B. At the time the closure was made public, the regional political leadership formed a Fort Ord Community Task Force (“Task Force”) prior to the downsizing/closure. After closure was announced, that Task Force was asked to form recommendations for moving forward with a recovery effort.
- C. In October 1992, the Fort Ord Reuse Group (“FORG”) was formed/organized by local governments and potential property recipients to initiate former Fort Ord recovery planning - predicated upon the June 1992 Fort Ord Task Force Strategy Report. An initial and revised plan were considered and adopted by FORG in 1993. Those initial planning efforts recognized the significant costs associated with the implementation of any plan and sustained the regional and basewide approaches that were inherent in the Task Force conclusions.
- D. The Fort Ord Reuse Authority (“FORA”) was established in 1994 by state legislation and when each Jurisdiction voted to create the Fort Ord Reuse Authority in accordance with Government Code section 67700 and following (the “FORA Act”). FORA, as a regional agency, is authorized with a primary legislative directive to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to the governing local jurisdictions or their designee(s).
- E. FORA, under FORA Act authority, adopted a Fort Ord Base Reuse Plan (the “Reuse Plan”) on June 13, 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the “Basewide Mitigation Measures”), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the “Basewide Costs”). As a part of that approval, the Board certified an Environmental Impact Report and adopted a Statement of Overriding Considerations making the follow 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 (“Seaside”) and Marina (“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 (“DRO”), Monterey (“Monterey”), Seaside, Marina, and the unincorporated areas of the County of Monterey (“County”) 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.
- 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.

F. FORA is obligated either by the California Environmental Quality Act, the Reuse Plan and/or the Authority Act (Government Code Section 67670 and following) to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA arranged for a public financing mechanism to apply to all former Fort Ord properties.

G. In the Reuse Plan, FORA identified land sale and lease (or “property based”) revenues, FORA share of Fort Ord property taxes, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.

H. To implement its obligations under the Authority Act and transition the base as quickly as possible, FORA sought funding, entered into multiple agreements with local, state, and federal entities, established a community facilities district (“CFD”) fee and a Capital Improvement Program (“CIP”). The BRP carries a series of mitigative project obligations which were defined in Appendix B of the Public Facilities Implementation Plan (“PFIP”).

The PFIP served as the baseline CIP for the reuse plan. The FORA CIP was adopted in 2001 and is reviewed on an annual basis. The CIP expenses are estimated in the 2018-19 CIP to be approximately \$194.5M post-2020.

- I. On or about June 7, 2000, FORA entered into a Memorandum of Agreement (MOA) for the No-Cost Economic Development Conveyance (“EDC”) of former Fort Ord Lands. This document was recorded on June 23, 2000 at Series No. 2000040124 in Monterey County records. The MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. Under the Federal legislation any Sale or Lease Proceeds are to be applied to the economic development of the former Fort Ord.
- J. In 2001, each underlying Land Use Jurisdiction and FORA entered into an Implementation Agreement or other Agreement to provide for orderly transfer of EDC property and the allocation of a fair and equitable share of Basewide Costs and Mitigation Measures. The Army required that water be allocated in a fair and equitable manner amongst all property recipients and the Implementation Agreement requires compliance with FORA water allocations. It is intended that these contracts be addressed through this Transition Plan Agreement for the mutual benefit of the Monterey Bay region and to the mutual benefit of all other successors in interest to FORA.
- K. On or about 2001, FORA established a Community Facilities District (“CFD”), which collects a special tax on all properties to be developed. The tax is due and payable on issuance of a building permit for the property. That tax adjusts annually and cannot be legally challenged. The CFD is structured to promote business/job generating uses on the base. When the FORA legislation sunsets that CFD may no longer be collected. If the CFD is replaced with a nexus fee, it is likely the underlying taxation will be shifted to job generating uses paying more and housing paying less. Replacement fees may be imposed on future development.
- L. The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) applies to the entire Fort Ord base closure. The Army is obligated to remediate the former Fort Ord by state and Federal law, including the removal of munitions and explosives. The timeline for the Army cleanup was based in part upon the contingent nature of funding and Department of Defense priorities for funds. Accordingly, in order to receive the properties early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement. Through a series of agreements between Army, FORA, Environmental Protection Agency, and Department of Toxic Substance Control, FORA has proceeded pursuant to an Army contract for services to remediate munitions and explosives on the former Fort Ord. The remediation obligations will be ongoing post dissolution of FORA.
- M. The Board wishes to continue orderly reuse, and to provide for the orderly transition of FORA’s assets, liabilities, pledges, obligations and a schedule of those obligations to complete the FORA basewide costs and mitigation measures.
- N. Government Code section 67700 requires that FORA sunset when eighty percent (80%) of the base has been reused or on June 30, 2020 and that FORA Board approve and



submit a Transition Plan to the Local Agency Formation Commission (“LAFCO”) on December 31, 2018 or eighteen months prior to expiration of FORA. The Transition Plan shall assign assets and liabilities, designate responsible successor agencies and provide a schedule of remaining obligations.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Board hereby makes the following findings:

Section 1. Basewide Costs and Basewide Mitigation Measures:

The Board hereby finds that all the projects contained in the CIP are basewide costs and/or basewide mitigation measures and required to be addressed as assets, liabilities or obligations pursuant to Government Code section 67700 by this Transition Plan.

The Board further finds that the FORA Community Facilities District (“CFD”) funding mechanism provides the best vehicle to ensure long term revenue generation and revenue sharing to complete the projects contained in the Capital Improvement Program and should be extended at a minimum, until all CFD have been collected from already entitled development. The CFD will expire by its own provision when FORA sunsets. The Board makes this finding knowing that imposing new financing mechanisms on already entitled development creates risk of loss to the Monterey County region of approximately \$72 million dollars towards completing the remaining Basewide Mitigation measures. The Board further finds that shifting revenue generation from a Mello Roos special tax to a nexus based system will shift costs to economic job generating land uses, such as retail, industrial and commercial uses.

The Board further finds that the Implementation Agreements with Marina, Seaside, City of Monterey, City of Del Rey Oaks and the County all require that they continue to fund the base reuse until all basewide costs and mitigation measures have been retired. Accordingly, the Board assigns all its rights in each Implementation Agreement to its successor who is responsible to complete the projects in the CIP. Each Implementation Agreement requires each jurisdiction to generate revenues according to the following formula as its fair and equitable share of Basewide Costs and Basewide Mitigation Measures: 50% land sales or lease revenues, plus the CFD or development fee, plus the property tax revenues to be received by FORA.

Pursuant to the authority granted by the legislature in Government Code 67700(b), the Board hereby designates all projects identified in the Capital Improvement Program as obligations required to be assigned by this Transition Plan in accordance with the formulas set forth in the Implementation Agreements and as the schedule of implementing those obligations.

The Board further finds that this Transition Plan may be implemented through Transition Plan Implementation Agreements (TPIA) with all agencies affected by this Transition Plan. All TPIA shall address how each underlying jurisdiction will generate revenues to meet its obligations as assigned herein, revenue sharing provisions between those that will generate revenues and those implementing CIP projects and such other matters as required to implement this Transition Plan and a schedule of when the receiving jurisdiction will complete said actions.

The Board strongly encourages all underlying jurisdictions with future prospective development to form Community Facilities Districts (or other replacement mechanisms) to replace the revenues which would have been raised by the FORA CFD. Additionally, the Board encourages member jurisdictions to include in documents about future projects, language which will obligate future development projects to pay a FORA CFD fee, as escalated (or equivalent replacement fees).

In the absence of fully executed TPIA, all revenues required to be contributed pursuant to the Implementation Agreements shall be paid into a fund/escrow account established for the purpose of sharing revenues. A TPIA may identify a jurisdiction or entity who will manage said account, which shall be done on a reimbursement basis pursuant to the 2020 CIP adopted by FORA.

**Section 2. Assignment of assets/liabilities/obligations:**

FORA has two types of assets/liabilities/obligations: **administrative** assets, liabilities and obligations (E.g. CalPERS, Administrative, costs not flowing from the ownership, control, management or transfer of real property) and **real property related** assets, liabilities and obligations (Basewide Mitigation Measures, Basewide Costs, Contractual, and ESCA obligations). Each type of obligation will have a unique assignment as a part of transitioning to successor entities.

In general, administrative liabilities and obligations will be assigned based upon FORA Board voting percentage as outlined herein below. For administrative liabilities, each voting member shall be deemed a successor to FORA in the percentages as outlined below. Unless otherwise specified, Real property related assets, liabilities and obligations shall be assigned to the underlying jurisdiction, unless there are agreements changing that allocation. For real property related assets, liabilities and obligations, unless otherwise specified each identified underlying jurisdiction shall be deemed FORA’s successor entity for that obligation.

**Administrative**

	VOTING (13)
City of Monterey 1/13	7.69%
City of Marina 2/13	15.38%
City of Del Rey Oaks 1/13	7.69%
City of Monterey 1/13	7.69%
County of Monterey 3/13	23.1%
City of Pacific Grove 1/13	7.69%
City of Carmel-by-the-Sea 1/13	7.69%
City of Sand City 1/13	7.69%
City of Seaside 2/13	15.38%
	100%

## **Contractual Obligations.**

The Board hereby finds that FORA contractual obligations have been collected and reflected on the attached Exhibit A and hereby makes assignments in accordance with Exhibit A. The TPIA shall address how each agency intends to comply with such assignments.

**Assets.** FORA has multiple assets. The following is the identification of main assets and proposed to be transferred to the corresponding entity, in proportion to the obligation.

**Section 115 Trust:** To be used only for retirement purposes. Currently the Section 115 Trust is returning over 2%. The fund will be transferred to Cal PERS upon FORA sunset or as otherwise identified by TPIA to minimize future jurisdictional liability and maximizes the Trust benefits.

**Reserve Funds.** FORA currently has funds identified for retirement and other purposes. Those funds shall be reviewed in 2020, allocations made and distributed in accordance with the approved FORA budget.

**Habitat Conservation Funds.** Estimated to be approximately \$21M on June 30, 2020, any amounts accumulated by June 30, 2020 to be transferred to the HCP Cooperative, if it has been established; and if no HCP Cooperative or alternative JPA for basewide habitat management issues, then to be transferred to Monterey County in trust for individual basewide habitat management and future development take permits, as more fully developed in the 2020 Capital Improvement Program.

**Indemnification/Litigation Funds.** To the extent required, Indemnification Funds shall be managed pursuant to the contract with LAFCO. In the instance that there is no need for the indemnification funds, said funds shall "roll over" into a Litigation Fund for any post-FORA sunset litigation costs. Upon conclusion of any litigation in which FORA is either the named Petitioner or Respondent, any funds remaining in the Indemnification/Litigation Fund shall be refunded to all the underlying jurisdictions in proportion to their voting percentages outlined above in this section.

**Capital Improvement Funds.** All CFD funds collected prior to June 30, 2020 or sunset, shall first be directed to completing in progress construction projects, such as South Boundary Road as identified in the 2019-2020 or final year Capital Improvement Program. Funds shall be transferred to the jurisdiction completing construction, which in general shall be completed by the jurisdiction in which the majority of the project lies.

**ESCA Reimbursement Agreement.** Estimated to be \$6.8M in potential reimbursement. Said Reimbursement Agreement shall be transferred to either the County or Seaside, who shall be deemed the FORA successor agency and accepted by the U.S. Army as successor to the ESCA contract. The County and/or Seaside TPIA shall address which entity and how they will succeed FORA.

**Miscellaneous Plant/Facilities.** FORA has a myriad of office furniture and equipment which shall be disposed of within two months of FORA sunset in accordance with the rules of California for disposal of state property. Any proceeds shall first be directed to any shortfall in administrative liabilities, if no administrative liabilities all funds shall be directed into the Capital Improvement Program toward any project in which FORA is the lead and is under construction first, then to other projects in the Capital Improvement Program.

### **After Discovered Items:**

To the extent that any contractual obligation is discovered during the LAFCO review and/or enforcement of this Transition Plan or a TPIA, those contractual obligations shall be assigned as follows:

- If the obligation is related to underlying use of property, it shall be assigned to the underlying land use jurisdiction;
- If the obligation is an administrative liability/obligation it shall be assigned/addressed jointly and severally in conformance with the voting percentage obligation;

### Section 3. Transition Plan Subject matters:

A. **Habitat.** The Board hereby finds that integrated basewide habitat protection is best funded by the FORA CFD. By Board policy the Board has identified and set aside approximately 30.2% of collected CFD fees to be put towards a basewide habitat management and conservation plan. It is the Board's intent that if/once a joint powers agency/authority is formed for the purposes of basewide habitat management and conservation, that the habitat management and conservation obligations shall be assigned/transferred to that entity. If the FORA CFD is continued, it shall continue to keep basewide habitat conservation as one of the funding requirements and shall transfer funds to the JPA for purposes of management of habitat in perpetuity. The attendant funds on hand at FORA sunset shall be provided to that entity to be held in trust solely for the purposes of long term management of habitat management areas and assistance for other projects requiring site specific habitat conservation plan and take permits. If no JPA is formed, then long term habitat management shall be borne by the underlying land use jurisdictions. Prior to FORA Board sunset, the Board shall review the basewide habitat funding policies to determine whether those funds shall be transferred/provided to underlying jurisdictions at FORA sunset or allocated to other basewide costs and mitigation measures. FORA's 2018-19 Capital Improvement Program (CIP) projects that \$45,161,654 will remain to be funded for the Fort Ord Habitat Conservation Plan (HCP) after June 30, 2020. As part of this Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on former Fort Ord: \$20,142,098 (44.6% of the cost) to the City of Marina, \$9,890,402 (21.9%) to City of Seaside, \$7,587,158 (16.8%) to City of Del Rey Oaks, \$4,516,165 (10%) to County of Monterey, \$2,935,508 (6.5%) to University of California, and \$90,323 (0.2%) to City of Monterey. These assignments shall be addressed in the TPIA to be executed by all member and/or ex officio member affected by this Transition Plan.

B. **Transportation.** The Board hereby finds that completion of the on-base Fort Ord Transportation Network 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 FORA CFD 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 and off-site projects and the regional projects to the extent that a replacement regional transportation fee may not be imposed on already approved development projects. For all those projects in which FORA is not the designated lead

agency and have not been completed, the responsibility to generate and/or collect revenues from the other member agencies and construct will rest with the lead agency. For those projects in which FORA is the lead agency and have not yet been completed, the Board assigns those projects to the underlying jurisdiction where the project is mostly located, to be FORA's successor, to generate and/or collect revenues and construct in accordance with the schedule set forth in the 2020 CIP, unless otherwise addressed in a TPIA. FORA's 2018-19 Capital Improvement Program (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. As part of its Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on 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.

- C. **Environmental Services**. The Board hereby finds that the long term stewardship obligations and related monitoring activities identified by the United States Army for its munitions removal obligations are crucial to the future success of the recovery program. The Board further finds that the current full time staffing of the Environmental Services Cooperative Agreement ("ESCA") be continued and sustained either through an extension of a modified FORA through ESCA contract terminus in 2028 or assignment to County or Seaside upon the dissolution of FORA. The Board also finds that the funding associated with the performance of the terms of the contract be negotiated for assignment at the point of dissolution.
- D. **Building Removal**. The Board hereby finds that former Fort Ord remnant, non-historic, and abandoned US Army structures, not obligated to be removed under the FORA CIP, are a barrier to the recovery and reuse overall program and a nuisance to quiet enjoyment of the region assets. The Board also finds that an extension of the FORA Act to sustain resources that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, further requests legislative consideration of an extension to meet this blight eradication need as well as other resource demands noted in A & B herein.
- E. **Establishment of a Basewide Funding Escrow Account**. The Board hereby finds that a unified funding mechanism for handling Indemnification, Litigation and other expenses related to Basewide Mitigation Measures and Basewide Costs is necessary and appropriate. The unified fund may be either managed by a successor Jurisdiction willing and able to hold these funds in a special account solely for the purpose of administering the Basewide Mitigation Measures and Basewide Costs or an escrow account established for the sole purpose of holding and administering Basewide Mitigation Measures and Basewide Costs. The administrative overhead for holding and managing either of these mechanisms shall be treated as a real property related cost. Litigation management shall be pursuant to unanimous agreement of all affected parties, unless otherwise agreed to in writing. Any additional funds required for administrative type liabilities/obligations shall be funded in accordance with the voting percentages of the FORA Board member jurisdictions. Any additional funds required for real property type

liabilities/obligations shall be borne jointly and severally by the underlying land use jurisdictions, unless such basewide mitigation measure or costs is a project in which an underlying jurisdiction is the lead agency.

- F. **Water/Wastewater.** The Board hereby finds that it has made water allocations in accordance with its obligation under the Memorandum of Agreement with the U.S. Army to ensure a fair and equitable water supply to all property recipients and imposed those requirements in the Implementation Agreements. The Board further finds the Implementation Agreements may need to be enforced should any jurisdiction's approved developments exceed their water allocations. In such a case, the remedy shall be that no water connection permits shall be issued until that jurisdiction brings its water allocation into compliance **or** MCWD develops an augmented water supply in excess of the water allocations to all jurisdictions.

The Board further finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to Marina Coast Water District to implement the Reuse Plan is appropriate at FORA sunset. To the extent that Marina Coast is unable to impose and/or collect revenues to replace the revenues generated by FORA's CFD, the Board finds that continuation of the CFD (or jurisdictional replacement) allows for funds to reduce connection and other costs imposed by MCWD. FORA's 2018-19 Capital Improvement Program (CIP) projects that \$17,098,686 will remain to be funded for basewide water augmentation improvements after June 30, 2020. As part of its Transition Plan, FORA assigns this cost in the following manner based on projected CFD special taxes to be collected on former Fort Ord: \$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 Board's intent is that jurisdictions may alter their water allocations as identified in the Implementation Agreements, only by written agreement with other jurisdictions. Upon submission of such revised written agreement as to water allocation, MCWD shall honor that revision as though it was the allocation set forth in the Implementation Agreement.

- G. **Policy Issues.** The FORA Board hereby finds that the policies contained in the Master Resolution (Chapter 3 & 8 in particular) should be continued and enforced upon FORA dissolution and hereby direct staff to record the Master Resolution in its entirety one month prior to the dissolution. 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 shall be sustained in the completion of the former Fort Ord recovery program. The Board further finds that the State of California should provide legislative clarity regarding the authority of the Department of Industrial Relations, underlying land use jurisdictions or the Fort Ord Reuse Authority to monitor and establish a procedure for compliance with this policy.

#### **Section 4. California Environmental Quality Act**

The Board hereby finds that it adopting this Transition Plan in response to Government Code section 67700 and solely allocates assets, liabilities and obligations of the Fort Ord Reuse Authority in advance of its ultimate dissolution. Nothing herein approves any change in land use or underlying land use jurisdiction, or makes any changes to project-specific review by lead agencies for those projects located within their respective boundaries, including but not limited to those projects contained in the Capital Improvement Program. As such, the Board hereby finds that this Transition Plan is not a project under CEQA and/or is exempt as an organizational reorganization.

#### **Section 5. LAFCO Review and Enforcement**

If LAFCO finds that this Transition Plan does not fully address the requirements of Government Code section 67700 to identify and assign all assets, liabilities, obligations, the Board requests that LAFCO return the Transition Plan with LAFCO's identified deficiencies at the earliest possible time for FORA Board action.

This Transition Plan includes the opportunity for all affected jurisdictions to enter into a TPIA, subject to Board approval, to implement this Transition Plan. In the instance there are no executed TPIA, the Board hereby makes the above assignments pursuant to Government Code 67700 and requests that LAFCO ensure such Transition Plan assignments as though they were conditions of special district dissolution imposed pursuant to Government Code section 56886 and use all LAFCO's powers to enforce said Transition Plan assignments utilizing Government Code section 56122 or the enforcement powers of Government Code section 67700 as to the member jurisdictions.

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 through Transition Plan Implementation Agreements in the first instance, but if no agreements, then as assignment and conditions of dissolution, as though they were imposed pursuant to Government Code section 56886 and 67700(b).
3. The Board hereby directs the Executive Officer to submit this Transition Plan to LAFCO and execute all LAFCO required documents and fees, including an Indemnification Agreement; and
4. The Board further directs the Executive Officer, or his designee, to begin **Transition Plan Implementation Agreements** with each jurisdiction implementing the terms and conditions assigned in this Transition Plan. The Executive Officer is directed to report progress on 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 September, 2018, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

\_\_\_\_\_  
Mayor Ralph Rubio, Chair

ATTEST:

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

DRAFT



6. **Fees.** Section 2.7.1 is hereby deleted in its entirety and replaced with the following:

2.7.1.1 During the Original Term, Developer shall be obligated to pay only the Original City Impact Fees as set forth in Exhibit B attached hereto and incorporated herein by this reference, and the City shall not impose or exact any additional fees, whether through the exercise of the police power, the taxing power, or any other means. During the Extended Term, Developer shall be obligated to pay the Updated City Impact Fees. Notwithstanding anything set forth in this Section 2.7.1.1 or in Section 2.3, during the Extended Term the Developer shall be obligated to pay any lawful and lawfully imposed fees, taxes or assessments adopted by the City subsequent to the Effective Date applicable to residential development projects within the City, including new development impact fees that were not previously included in the Original City Impact Fees.

2.7.1.2 FORA Fee. (a) City and Developer acknowledge that (i) Developer is currently obligated to pay at time of issuance of building permit a one-time special assessment per residential unit levied by the Fort Ord Reuse Authority (“FORA”) Basewide Community Facilities District in the amount of \$23,837, which may be adjusted (the “FORA Fee”); (ii) FORA may be dissolved in 2020 and some or all of its obligations may be transferred to local agencies. In the event that FORA is dissolved Developer acknowledges that it will no longer be obligated to pay the FORA Fee to FORA. Developer further acknowledges that City may assume certain obligations of FORA currently paid by FORA with the FORA Fee or assume obligations to collect fees or assessments from property owners and developers to pay for obligations currently covered by the FORA Fee and assumed by other public entities and that City will need to collect a fee comparable to the FORA Fee to cover such obligations.

(b) Developer agrees to cooperate with the City in addressing the replacement of the FORA Fee, including the following:

- (i) Developer shall vote for inclusion of any property owned by Developer for which the FORA Fee has not already been paid within assessment districts or community facilities districts formed by the City or another regional entity, and shall pay such fees as may be imposed by such assessment districts or community facilities districts, provided such fees are lawful and lawfully imposed, and such fees do not exceed the FORA Fee in effect at the time of FORA’s dissolution subject to annual adjustments equal to the lesser of (1) five percent (5%) or (2) the

percentage change since the immediately preceding fiscal year in the Engineering News Record's Construction Cost Index applicable to the Marina area ("FORA Fee Adjuster").

- (ii) As part of the consideration for City's agreement to extend the term of this Agreement as set forth above, Developer agrees in the event that FORA is dissolved with respect to any property owned by Developer for which the FORA Fee has not already been paid, to pay to the City a new fee to replace the FORA Fee (the "New Fee"), provided that such New Fee:
  - (A) is required to be paid upon issuance of a building permit and not before,
  - (B) is a one-time fee or assessment; and
  - (C) the City shall be responsible for distributing such applicable portions of the New Fee to other regional agencies, if any, that assume obligations that were previously funded by the FORA Fee.

(c) Whether the New Fee is a single fee and/or assessment or multiple fees and/or assessments, it shall not in the aggregate exceed the lesser of (1) the amount of the FORA Fee at the time of FORA's dissolution as increased by the FORA Fee Adjuster; or (2) the amount that when added to any FORA related development impact fee adopted by the City or other local entities or any special assessment or special tax imposed pursuant to subsection (b)(i) above does not exceed the FORA Fee at the of FORA's dissolution as adjusted by the FORA Fee Adjuster.

Notwithstanding anything set forth in this paragraph or the provisions of Sections 6.2 and 6.3, the provisions of this Section shall not be applicable to individual homeowners or assignees who took title to portions of the Property prior to the Effective Date of this Amendment and provided further, in no event shall the New Fee pursuant to subsection (b)(ii) and any assessment or special tax pursuant to subsection (b)(i) exceed the FORA Fee at the time of FORA's dissolution increased by the FORA Fee Adjuster. The limitations set forth herein on the amount of any fee imposed by the City or adopted by the City to replace the FORA Fee shall not in any way limit the City's ability to adopt and impose other development impact fees, special taxes, or assessments unrelated to the replacement of the FORA Fee.

7. **Park Fees.** Section 2.8.2 is hereby deleted in its entirety and replaced with the following:

During the Original Term, Developer shall pay Park Development Fees ("Park Fees") set forth in Exhibit B to this Agreement as part of the City