

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Transition Planning Process Update

Meeting Date: October 12, 2018

Agenda Number: 7f

INFORMATION/ACTION

RECOMMENDATION:

Receive a report providing responses to Transition Plan items from the September 28, 2018 Special Board Meeting

BACKGROUND/DISCUSSION:

At its special September 28, 2018 Board Meeting, the Fort Ord Reuse Authority (“FORA”) Board engaged in an informational background session revolving around a DRAFT recommendation from staff which included an implementing DRAFT Resolution. The combination of the DRAFT recommendation and the DRAFT resolution is intended to serve as the heart of a statutorily required Transition Plan submittal to the Local Agency Formation Commission (“LAFCO”) due in December 2018. Since the August regular Board meeting, the Board received requests from some Board Members/ FORA jurisdictions asking that action regarding the Transition Plan be deferred from the Special Meeting date to a future time. Consequently, the Board elected to hold an information-only session. During that session, the Board and members of the public asked a number of questions and suggested options. This staff report will highlight some of those questions with responses, in order to expedite completion of this important task.

The first set of Board/public questions centered on the level of statutory authority held by FORA and LAFCO, and how to structure the process in a way that honors the statutes that both agencies operate under. FORA staff have adjusted prior language in the Resolution to focus on what we believe FORA has the authority to do, rather than a refutation of LAFCO’s interpretation which is best remedied through continued discussion between the agencies. There was some discussion in the meeting about overuse of the words ‘should’ and ‘shall’, and we are mindful of that sensibility, but it should also be kept in mind that the Transition process is not optional, it is a mandatory set of actions set out by the State Legislature, with specific deadlines and actions that must be accomplished. In particular, the tasks center on an orderly ultimate dissolution of the Fort Ord Reuse Authority, and assignment of assets, liabilities, and contracts to various successors.

Issues were also raised about the nature and extent of the liabilities and obligations needed to be completed. These are not new issues. The Transition Task Force members and the Board has been advised for quite some time that there is disagreement about the nature and extent of what needs to be completed. Some contend that this needs to be re-examined and further legal analysis performed on whether or not the entire capital improvement program contains enforceable obligations. As explained multiple times and throughout the Transition Planning process most of the obligations are ones where FORA is not the lead agency but is instead *reimbursing* lead agencies (i.e. sharing revenue collected by other member jurisdictions within the FORA Community Facilities District) for a portion of the costs associated with their projects. As outlined in the Transition Plan (and to be implemented by Transition Plan Implementation Agreements), this does not change. Instead of having a regional collection mechanism through the Community Facilities Fee program, the obligation to raise funding for their lead projects reverts to the underlying agencies (along with the “obligation” to the extent they so desire to revenue share with other member jurisdictions). For example, what this means to the County

with respect to the Davis Road project, is that it will have to absorb and/or figure out how to collect revenues from the other FORA member agencies (i.e. revenue sharing) in order to facilitate reimbursements it would have received from FORA. This is particularly difficult when trying to make collections from already entitled development. The only three transportation projects where FORA must assign are the ones in which FORA is the lead agency. The Transition Plan Implementation Agreement approach gives each jurisdiction which disagrees with any aspect of the plan, the opportunity to perform whatever legal analysis they wish, or enter agreements with other entities. It is not FORA, but ultimately the FORA jurisdictions, who would resolve any disagreements and bring back to the FORA Board those agreements on a set timeline.

What came out of the prior reworking of the Resolution was a staff recommended approach that appeared to receive support from most Board Members, and which also appears to satisfy the concerns of LAFCO that the FORA jurisdictions enter into a series of agreements formally implementing the Transition Plan. The basic outline of the recommendation is to approve the base Transition Plan by December 2018 as required by law, and forward it to LAFCO with a 'cascading' to do list, i.e. a listing of each agreement, purpose, parties, referred to as Transition Plan Implementing Agreements ("TPIA"), with clear deadlines and default results if any of the agreements are not completed by the desired timeframe. This approach is designed to protect the home rule rights of FORA and other jurisdictions, while respecting the will of the State Legislature to complete the transition as they envisioned. The ancillary benefit is that if successful the TPIA's would be negotiated by the jurisdictions themselves, with assistance from, but not imposed upfront by FORA, LAFCO or other parties. This approach also provides a discrete timeframe within which jurisdictions that disagree with what is perceived as an overbroad listing, of obligations or have legal objections. to have facilitated agreements with other jurisdictions. The Board's adoption of the Transition Plan would be without prejudice, to consider the facilitated agreements between the jurisdictions and potential modifications to the Transition Plan as necessitated by those agreements. Ultimately, the Board has responsibility for creating the Transition Plan.

A number of additional questions then arose regarding how to conduct these negotiations, whether or not an overarching consultant would be needed, and what the process might look like. Again, in outline form, it is noted that the time frame for the TPIA negotiations is short, they need to be concluded by March 31, 2019 for some items, and by June 30, 2020 for others. It is unlikely that a consultant could be brought online in time to complete the process of drafting multiple agreements, especially in light of reluctance of some of the parties to do so and the newly raised legal issues. Over a year ago, FORA staff contacted at least two facilitator firms in an endeavor to obtain assistance with this process and were advised that the facilitators would not be able to meet a December 2018 timeline. In addition to their own existing City Attorneys and County Counsel, each of the FORA jurisdictions have already hired various financial and legal consultants to analyze and advise on the Transition process. It is best to take advantage of that already in place brain-power. FORA could provide the venue where these discussions can take place, including the physical space, access to files and data base, availability of staff with subject matter expertise, and support staff, as well as help with scheduling and organization of required meetings. In order to meet the legislative deadlines and promote an urgency to reach timely agreements, it is suggested that the Board adopt the Transition Plan but authorize simultaneously securing a facilitative consultant as requested by the County. This facilitator would work with the jurisdictions to negotiate the agreements and understandings noted in this report. In the instance that agreements are reached that do not implement all of the "obligations" (because the parties believe them to be legally inappropriate or otherwise) as set forth by the Board approved

Transition Plan, then those agreements should return to the Board by March 2019 for final resolution and potential revision of the Transition Plan. Another series of questions had to do with the financing mechanisms required to complete a successful transition. The key dilemma we face, is the potential loss of FORA's Community Facilities District ("CFD") fees which provide the bulk of financing for major elements of the FORA Capital Improvement Program ("CIP"), in particular Transportation (Roads and Transit), Water Augmentation, and Habitat Management/Conservation. FORA land sale and property tax revenue streams are also lost if a mechanism cannot be found to extend FORA's financing authority. This has a direct impeding effect on efforts to master finance large scale additional activities like building removal, the bulk of which was not assigned to FORA by the legislature and remains a burden to both the individual jurisdictions and economic development in general.

Staff has discussed with the Board a potential legislative fix to this problem that would take a great deal of pressure off the jurisdictions/successor agencies. The Board should explore extending FORA solely for the purpose of implementing a Board approved Transition Plan, including collecting the necessary CFD, property tax and land sale revenues, assign those revenues to specific entities including, TAMC, Habitat JPA, County-Seaside ESCA JPA, and the jurisdictions themselves, and ramp FORA down under set timeframes and as functions are transferred and agreements implemented. The continued revenue stream could then be coordinated with existing efforts by the FORA jurisdictions to create their own CFD's and financing mechanisms, and revenue sharing agreements needed to complete the physical projects, operational expenses, and the like. This effort would also be 'cascading,' if state legislation is not forthcoming, individual jurisdictions and successor agencies would continue to work on bridging the financing gap as FORA implements the default shuttering of the agency on June 30, 2020.

Finally, the Board expressed its intent to hold another Special Board Meeting in October, tentatively scheduled for October 19, 2018, where these approaches can be further discussed and harmonized. This effort is one of the more complicated government efforts that most staff and elected officials will face in their careers. It is not surprising that it would entail a certain amount of uncertainty and political disagreement, but it is not insoluble. The draft approach outlined here is meant to help the Board steer its decision making through timelines and deadlines not of their making, assuage legislative mandates of multiple agencies, while remaining cooperative and focused on solutions to specific problems. In this manner, the completion of the Reuse Plan envisioned so many years ago gets nearer to reality.

To recap prior efforts, FORA is slated to sunset **June 30, 2020**. FORA is required under State Law to submit a Transition Plan to the LAFCO 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, empaneling two Transition Task Force Committees, and one Transition Ad Hoc Committee. The FORA Board of Directors received a report outlining the first draft of the Transition Plan and background materials on June 8, 2018. On July 13, 2018, a second Board study session was held to allow the Board to deliberate policy and programmatic issues. 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 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 legislative intent and findings, assignment of assets, liabilities, obligations and schedule. Since the August 13, 2018 Board meeting, FORA held or participated in the following meetings:

- 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 held another session on September 19, 2018 and October 2 and will further consider the Transition Plan on October 16th.
- On August 15, 2018, FORA staff met with the City Manager of Marina who requested that FORA prepare and share a map which identifies locations of FORA lands), and where CFD fees have been collected.
- The County Board of Supervisors held a workshop on September 11, 2018 and held subcommittee and Board meetings on September 24 and 25, respectively.
- The Board of Supervisors also held a meeting on October 2, 2018.
- The City of Seaside considered Transition Plan issues on September 20, 2018.
- The City of Marina considered and transmitted a Resolution on Transition Plan/Dissolution issues on September 25, 2018 and provided copies of that resolution to the FORA Board

In addition, FORA staff has fielded numerous phone calls from consultants and staff from the jurisdictions. A table which compiles jurisdictional reports and materials can be accessed through this link: <https://www.fora.org/Transitiontaskforce.html>.

As discussed above, there were multiple examples of how the Transition Plan could be implemented without resorting to the General Fund of an agency and how the implementing agreements may be negotiated and returned to the FOR A Board, if modifications to the Transition Plan are required. Accordingly, staff is recommending the following next steps:

1. October 19, 2018: Approve the Transition Plan (DRAFT) and authorize retention of a facilitator to work on Transition Plan Implementation Agreements (and if a corresponding amendment to the Transition Plan is required to return to the Board with the Agreements) no later than March 2019;
2. Transmit the Transition Plan to LAFCO with the caveat that the member agencies are working on Implementation Agreements which may modify the Transition Plan and to hold off on final action until after March 2019;
3. Direct staff to continue work with TAMC, MST and MCWD on regional transportation and water issues.

FISCAL IMPACT:

Reviewed by FORA Controller _____

COORDINATION:

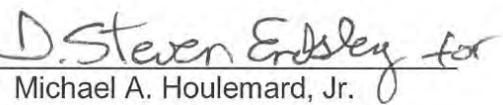
County of Monterey, LAFCO, TAMC, Cities of Seaside, Monterey, Del Rey Oaks, Marina and Salinas.

ATTACHMENTS:

Attachment A: Revised Draft Transition Plan Resolution *(includes minor revisions by Authority Counsel)*
[Exhibit A:to Attachment A: Contract Assignment Chart](#)

Prepared by 
 Sheri L. Damon

Reviewed by 
 Steve Endsley

Approved by  for
 Michael A. Houlemard, Jr.

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 United States Army (the "Army") moved the 7th Infantry Division - Light to Fort Lewis Washington over the following two years. Regional communities lost 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, the regional political leadership formed a Fort Ord Community Task Force ("Task Force") which was asked to develop 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 early 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 (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. FORA's primary legislative directive is to plan, facilitate, and manage the transfer of former Fort Ord property from the Army to the 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 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 (“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; 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.

F. FORA is obligated either by the California Environmental Quality Act, the Reuse Plan and/or the FORA Act 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’s 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 FORA Act and transition the base as quickly as possible, FORA sought funding, entered into multiple agreements with local, state, and federal entities, established community facilities district (“CFD”) special taxes and 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”). The PFIP served as the baseline CIP for the Reuse Plan.

The CIP was adopted in 2001 and is reviewed on an annual basis. It is estimated that the expenses identified in the 2018-19 CIP will be approximately \$194.5M after 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. A condition of the land transfer was that any proceeds from the subsequent sale or lease of the transferred land must 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 Basewide Mitigation Measures. The Army required that water be allocated in a fair and equitable manner among all property recipients and each Implementation Agreement requires compliance with FORA water allocations. It is intended that these contracts be addressed through Transition Plan Agreements to be entered into with the recipients of EDC property for the mutual benefit of the Monterey Bay region and all 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, due and payable on issuance of a building permit for the property and adjusted annually. The CFD special taxes are structured to promote business/job generating uses on the base. Unless assigned or modified as part of the transition process, when FORA sunsets the CFD special taxes may no longer be collected. If the CFD special taxes are replaced with a nexus fee, it is likely that there will be a shift of the tax burden resulting in job generating uses paying a greater share and housing paying a lesser share than under the current system. Other forms of replacement fees may also 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, remediation of munitions and explosives on the former Fort Ord has proceeded. The remediation obligations will not be completed before the currently scheduled dissolution of FORA.
- M. The FORA Board wishes to continue orderly reuse, arrange for the orderly transition of FORA’s assets, liabilities, pledges, and obligations, and provide for the payment and satisfaction of the Basewide Costs and Basewide 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, whichever first occurs, and that FORA Board approve and submit a Transition Plan to the Local Agency Formation Commission (“LAFCO”) on or before December 30, 2018 or eighteen months prior to the anticipated expiration of FORA, whichever first occurs. 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 are 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 CFD funding mechanism provides the best vehicle to ensure long term revenue generation and revenue sharing to complete the projects contained in the CIP and should be extended at a minimum, until all CFD special taxes have been collected from already entitled development. Unless assigned or modified as part of the transition process, 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 toward 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 the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County all require that they continue to fund the base reuse until all Basewide Costs and Basewide 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 CIP 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 CFD. Additionally, the Board encourages member jurisdictions to include in documents about future projects, language which will obligate future development projects to pay a CFD fee (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 which 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, ESCA and other contractual obligations). Each type of asset/liability/obligation must be accounted for and assigned as a part of the transition process.

In general, administrative liabilities and obligations will be assigned to member jurisdictions in conformity with the voting percentage in FORA held by each as outlined below and each voting member shall be deemed a successor to FORA in the percentages as outlined below.

Voting Percentage

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%

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.

Contractual Obligations.

FORA's outstanding contractual obligations are reflected on the attached Exhibit A. These contractual obligations are hereby assigned in accordance with Exhibit A. The TPIA shall address how each agency intends to comply with such assignments.

Assets. FORA has multiple assets, the most significant of which are identified below. These assets shall 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 the California Public Employees' Retirement System upon FORA's sunset or as otherwise set forth in a TPIA to minimize future jurisdictional liability and maximize 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 for that year.

Habitat Conservation Funds. Estimated to be approximately \$21M on June 30, 2020, any amounts accumulated by that date shall be transferred to the HCP Cooperative, if it has been established; or if no HCP Cooperative or alternative joint powers authority for basewide habitat management issues is by then in existence, then such funds shall be transferred to the County in trust for individual basewide habitat management and future development take permits, as more fully developed in the 2020 CIP.

Indemnification/Litigation Funds. To the extent required, indemnification funds shall be managed pursuant to a contract with the Monterey County Local Agency Formation Commission ("LAFCO"). If 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 fund or litigation fund shall be disbursed to all the member jurisdictions in proportion to their voting percentages in FORA as outlined above.

Capital Improvement Funds. All CFD special taxes collected prior to FORA's 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 CIP. 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 is situated.

ESCA Reimbursement Agreement. Estimated to be \$6.8M in potential reimbursement. Said Reimbursement Agreement shall be transferred to either the County or Seaside, which shall be deemed the FORA successor agency and accepted by the Army as successor to the ESCA contract. The County and/or Seaside TPIA shall address succession by one or both of these entities.

Miscellaneous Plant/Facilities. FORA has office furniture and equipment which shall be disposed of within two (2) months of FORA's sunset in accordance with any applicable rules or requirements for the disposal of surplus property by a California public entity. Any proceeds shall first be directed to any shortfall in administrative liabilities. Once all administrative liabilities have been fully satisfied, any remaining funds shall be directed into the CIP toward any project in which FORA is the lead that is then under construction first, and any funds remaining thereafter shall be directed next to other projects in the CIP.

After Discovered Items:

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

- If the obligation is related to underlying use of real property, it shall be assigned to the underlying land use jurisdiction.
- If the obligation is an administrative liability/obligation it shall be proportionately assigned to the member jurisdictions in conformity with their voting percentages in FORA as outlined above.

Section 3. Transition Plan Subject matters:

A. **Habitat.** The Board hereby finds that integrated basewide habitat protection is best funded by the CFD special taxes. The Board has identified and set aside approximately 30.2% of collected CFD special taxes to be put toward a basewide habitat management and conservation plan. Once a joint powers authority (JPA) is formed for the purposes of basewide habitat management and conservation, the habitat management and conservation obligations shall be assigned/transferred to that entity. If the CFD special taxes are continued, they shall continue to be used to fund basewide habitat conservation and management of habitat in perpetuity. The attendant funds on hand at FORA's sunset shall be provided to the JPA 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 plans 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's sunset, the Board shall review the basewide habitat funding policies to determine whether those funds shall be transferred/provided to underlying jurisdictions at FORA's sunset or allocated to other basewide costs and mitigation measures. FORA's 2018-19 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 members and/or ex officio members 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 CFD special taxes 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 of those projects in which FORA is not the designated lead agency and that have not been completed, 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 have not yet been completed, the Board assigns those projects to the underlying jurisdiction in which the majority of the project is situated, to be FORA's successor, to generate and/or collect revenues and complete construction in accordance with the schedule set forth in the 2020 CIP, unless otherwise addressed in a TPIA. 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. As part of its Transition Plan, FORA assigns this cost 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.

- C. **Environmental Services**. The Board hereby finds that the long term stewardship obligations and related monitoring activities identified by the 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") must be continued and sustained either by an extension of a modified FORA through the anticipated termination of the ESCA in 2028 or by assignment to the County or Seaside upon the dissolution of FORA. The funding associated with the performance of the terms of the ESCA shall be addressed in the TPIA.
- D. **Building Removal**. The Board hereby finds that former Fort Ord remnant, non-historic, and abandoned Army structures, not obligated to be removed under the CIP, are a barrier to the recovery and reuse overall program and a nuisance to quiet enjoyment of the region's 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 above.
- 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 funding mechanism may be either managed by a successor jurisdiction willing and able to hold the collected 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 member jurisdictions. Any additional funds required for real property type liabilities/obligations shall be borne by the underlying land use jurisdictions, unless such Basewide Mitigation Measure or Basewide Cost relates to 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 MOA with the 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 that the Implementation Agreements may need to be enforced should any jurisdiction's approved developments exceed its water allocation. 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** the Marina Coast Water District (MCWD) develops an augmented water supply sufficient to cover any excess.

The Board further finds that transferring the obligation to finance water augmentation, water, and wastewater infrastructure to MCWD to implement the Reuse Plan is appropriate at FORA's sunset. 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 a replacement source of revenue) allows for funds to reduce connection and other costs imposed by MCWD. FORA's 2018-19 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 agreements 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's dissolution and hereby directs staff to record the Master Resolution in its entirety one (1) 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 FORA to monitor and establish a procedure for compliance with this policy.

Section 4. California Environmental Quality Act

The Board hereby finds that this Transition Plan solely addresses the allocation of the assets, liabilities and obligations of FORA 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 CIP. 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 (to enable possible further consideration and action by the Board).

This Transition Plan includes the opportunity for all affected jurisdictions to enter into a TPIA, subject to Board approval, to implement this Transition Plan. This Transition Plan may be modified by the Board upon the receipt of executed TPIA, if the Board so finds a revision necessary and appropriate. If by the time of FORA's sunset 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 preferably through TPIA but in the absence of executed TPIA then as assignments and conditions of dissolution, as though they were imposed pursuant to Government Code sections 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, including an Indemnification Agreement, and pay all LAFCO required fees; and
4. The Board further directs the Executive Officer, or his designee, to hire a facilitator for the purpose of **negotiating a TPIA** with each jurisdiction implementing the terms and conditions assigned in 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 September, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Mayor Ralph Rubio, Chair

ATTEST:

Michael A. Houlemard, Jr., Clerk

DRAFT