FORT ORD REUSE AUTHORITY

920 2nd Avenue, Suite A, Marina, CA 93933
Phone: (831) 883-3672 | Fax: (831) 883-3675 | www.fora.org

MEMORANDUM

TO: **Fort Ord Reuse Authority Administrative Committee**

FROM: Assistant Executive Officer Steve Endsley

RE: Agenda Item 7a. Fort Ord Reuse Authority 2020 Sunset / Transition Plan

DATE: January 27, 2016

In December of 1993, Senator Henry Mello (1924-2004) proposed legislation [Senate Bill (SB) 899] to create a Fort Ord Reuse Authority (FORA). SB 899 was approved unanimously by the State Assembly Ways and Means Committee in April 1994 and was signed into law by Governor Pete Wilson on May 10, 1994. SB 899, as amended, has been codified as Title 7.85 of the Government Code, sections 76750, et. seq., known as the "Fort Ord Reuse Authority Act." Formally established as a corporation of the State of California on May 20, 1994, FORA's purpose is to prepare, adopt, finance and implement a plan for the land formerly occupied by Fort Ord. FORA's initial sunset was planned for June 30, 2014. In 2012, California State Senator Bill Monning proposed Assembly Bill (AB) 1614, which submitted a ten year extension of FORA. AB 1614 also required FORA's Board of Directors to approve and submit a transition plan to the Monterey County Local Agency Formation Commission (LAFCO) eighteen months before the inoperability date.

The transition plan assigns assets and liabilities, designates responsible successor agencies, and provides a schedule of remaining obligations. Through the LAFCO process, the obligations and responsibilities of FORA would be allocated among FORA's constituent membership and/or successor agency. Also, the bill required a progress report to be delivered to the State Legislature. Although FORA was granted six additional years rather than ten, the other requirements were adopted. Chapter 7. Dissolution of the FORA Act, effective January 1, 2013, states that FORA "shall become inoperative when the board determines that 80 percent of the territory of Fort Ord that is designated for development or reuse in the plan . . . has been developed or reused in a manner consistent with the plan adopted or revised pursuant to Section 67675, or June 30, 2020, whichever occurs first." To meet these requirements, several issues warrant discussion of FORA's dissolution.

This memorandum explores presently identified options to extend the June 30, 2020 dissolution date or create a successor agency or agencies to provide for completing the original FORA mission of converting the former Fort Ord from military to civilian land uses. This memorandum also identifies FORA's surviving post-2020 obligations, describes proposed or existing institutional and policy mechanisms to address them, and evaluates their relative merits. This document will discuss several approaches to addressing the FORA transition and includes specific recommendations.

This memorandum is organized in the following manner:

I. FORA Obligations that Survive 2020
II. Assets and Revenues
III. Post-2020 Organizational Structure Considerations
IV. Issues Posed by Extending FORA

I. FORA Obligations That Survive 2020

FORA has three broad categories of obligations that survive the FORA scheduled sunset: A. Capital Improvement Program (CIP) /Base Reuse Plan (BRP) California Environmental Quality Act (CEQA) mitigations, B. Board-determined base-wide obligations, and C. Organizational closure obligations. The following outline describes these obligations and their relative completion timeframes.

A. CIP/BRP CEQA mitigations

1. **Transportation/Transit**
   - Description: FORA must fund specific amounts for Transit as well as Regional, Off-site, and On-site roadways. FORA must complete specific on-site roadways for which it is lead agency: South Boundary Road, Gigling Road, Intergarrison Road, and Eastside Parkway (formerly known as Eastside Road).
   - Estimated cost: $120.9 million
   - On-site project completion schedule: 2025
   - Entire completion schedule: 2035
   - This is a CEQA requirement included in the BRP EIR.

2. **Water Augmentation**
   - Description: FORA must fund a Fort Ord water augmentation project to provide 2,400 acre-feet per year (AFY). FORA has contracted Marina Coast Water District (MCWD) to do this project. MCWD's Regional Urban Water Augmentation Project has identified a 1,427 AFY recycled water project. MCWD and FORA have not yet specifically identified a project that would produce the remaining 973 AFY of augmented water.
   - Estimated cost: $24 million (FORA's required mitigation only, project could exceed this cost).
   - Completion schedule: 2018-2035, in phases.
   - This is a CEQA requirement included in the BRP EIR, approved by the FORA Board June 13, 1997.

3. **Habitat Management Plan/Habitat Conservation Plan (HCP)**
   - Description: the Army's 1997 Habitat Management Plan does not provide Fort Ord jurisdictions with "take" coverage necessary to implement required habitat conservation management on habitat reserves and development/reuse. The jurisdictions and FORA must implement an HCP to receive take coverage from Federal and State wildlife agencies.

- o Estimated cost: $43 million for HCP endowments
- o Completion schedule: 2035
- o This is a CEQA requirement included in the BRP Environmental Impact Report (EIR).

4. **FORA CIP funding replacement**
   - o Description: In 2002, FORA recorded a Special Tax lien on the majority of former Fort Ord property known as the FORA Community Facilities District (CFD) Special Tax. This Special Tax is the primary funding source for the FORA CIP, which includes HCP, Transit, Roads, and Water Augmentation. The Special Tax lien states that it shall not be levied after FORA's termination or later than calendar year 2051. Should FORA dissolve in 2020, entities assigned FORA's CIP mitigations must have a replacement funding mechanism.

B. Board-determined base-wide obligations

1. **FORA/US Army Environmental Services Cooperative Agreement (ESCA)**
   - o Description: In 2007, the FORA Board authorized execution of several ESCA agreements. The Administrative Order on Consent (AOC) agreement with United States Environmental Protection Agency (US EPA), California Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) was the overarching agreement.
   - o Estimated cost: $98 Million in grant funding.
   - o AOC completion schedule: AOC termination is tied to performance standards (completion of Munitions and Explosives of Concern [MEC] related remedial activities), not a fixed date. According to the AOC, EPA, DTSC and RWQCB must approve a successor to FORA's AOC obligations.
   - o ESCA completion schedule: Munitions/ explosives remediation regulatory acceptance is anticipated in 2019. Army 5-year review in 2017-18 and FORA Longer Term ESCA Obligations would continue to 2037.

2. **Base-wide building removal**
   - o Description: In 2001, the FORA Board approved inclusion of building removal costs as a FORA CIP obligation. FORA's remaining building removal obligations include Seaside Surplus II and the Marina Stockade areas. FORA is implementing plans that will evaluate overall Surplus II building removal costs. Based on current information, Surplus II building removal costs may exceed the underlying land value even after FORA's CIP obligation is met. FORA has met its financial obligations within the City of Marina Dunes on Monterey Bay project area. However, the Board has tasked staff with identifying means to expedite building removal in this project area.
   - o Estimated cost: $54 Million funded through land sale proceeds.
   - o FORA is designated by US EPA as a Hazardous Waste Generator for World War II contaminated building debris. The City of Marina would have to take on this obligation at the potential cost of several hundred thousand dollars.
   - o Completion schedule: FORA's building removal financial obligations can be met by 2020. If the FORA Board modifies FORA's building removal obligation

or role in Surplus II and/or Dunes on Monterey Bay project areas, such actions may extend the obligation completion schedule.

C. Organizational closure obligations

FORA has been in operation since 1994 and has acquired a number of contractual and legislative responsibilities. Before FORA dissolves in 2020, a number of these obligations must be assigned to another entity or otherwise addressed.

1. **FORA-Marina Coast Water District (MCWD) Water/Waste Water Facilities Agreement (Facilities Agreement)**
   Description: The Facilities Agreement provides for MCWD to annex the Ord Community Service area before FORA's dissolution. MCWD has not yet completed annexation of the Ord Community Service area. If MCWD annexation is not completed by June 30, 2020, FORA must assign its Facilities Agreement role and responsibilities to another entity.

2. **Fort Ord Water Allocations**
   Description: The June 23, 2000 Memorandum of Agreement (MOA) between the US Army and FORA for Sale of Portions of the Former Fort Ord (Economic Development Conveyance Agreement)[EDC]) assigned the majority of US Army groundwater rights to FORA. FORA subsequently allocated groundwater to former Fort Ord jurisdictions and property owners. FORA must assign its EDC role and responsibilities to another entity before its dissolution.

3. **Pollution Legal Liability (PLL) Insurance**
   Description: FORA and participating jurisdictions purchased base-wide PLL insurance coverage in 2014 that terminates in 2024. FORA has not as yet assigned its first named insured status to an entity after June 30, 2020 but is working with the County of Monterey as a potential first-insured.

4. **FORA's Powers and BRP Compliance**
   Description: FORA's oversight, consistency, enforcement and financing powers described in the FORA Act are repealed on July 1, 2020. This includes FORA's financing role through the CFD Special Tax, Property Taxes, and land sales/lease proceeds. FORA's BRP compliance role of performing Consistency Determinations and, potentially, provisions that establish that "[the BRP] shall be the official local plan for the reuse of the base for all public purposes, including all discussions with the Army and other federal agencies, and for purposes of planning, design, and funding by all state agencies" would end as well unless modified by state legislation.

5. **Miscellaneous Contract Obligations**
   Description: FORA has entered into a number of contracts with state, federal, and local agencies since 1994. These contracts must be reviewed and, if FORA's obligations continue past 2020, FORA must assign its obligations to another entity. For example, FORA entered into an agreement with Monterey Peninsula College, Bureau of Land Management (BLM), and County of Monterey in 2002. FORA agreed to assume MPC's habitat management responsibilities for its habitat reserve parcels

after MPC makes a specific mitigation payment to FORA. FORA would need to assign these responsibilities to another entity before 2020.

6. **Post-FORA Employee Retirement/Health Provisions**
FORA participates in the CalPERS retirement program. Public Agencies participating in CalPERS programs are typically on-going entities, such as a City government or Special District such as a water district. FORA staff have communicated with CalPERS, who has estimated that FORA would need to pay CalPERS a lump sum payment of approximately $5 million or transfer its long-term CalPERS obligations to another entity.

II. Assets and Revenues

FORA's assets and revenues will be affected by its 2020 dissolution. These changes will affect the financial resources available for Fort Ord Base Reuse. The following section describes each asset or revenue source and its future post 2020.

A. Land sale and lease proceeds
Under State law, FORA currently shares land sale and lease proceeds 50/50 with the underlying jurisdictions. Post 2020, barring legislative action otherwise, jurisdictions would receive 100 percent of sale or lease proceeds paid to them by end-users of the property.

B. Property Taxes
By a special formula included in the State Health and Safety Code, FORA currently receives a portion of property taxes generated from former Fort Ord, approximately $1.5 million in FY 14/15. Post 2020, and assuming no legislative action otherwise, this revenue source would be reallocated to the State of California, Educational institutions, special districts, and County of Monterey.

C. FORA CFD Special Tax
The Special Tax lien establishing the FORA CFD does not provide for special tax collection after FORA's dissolution. This revenue source would end on June 30, 2020 unless the State legislature and/or LAFCO expressly act to continue it, or a jurisdiction acts to create a new one.

D. Membership dues
The FORA Act provides for membership dues to help fund FORA operations. This revenue source would end on June 30, 2020.

E. MCWD Franchise Fee
FORA receives an MCWD Franchise Fee of $15,000 annually in accordance with the Facilities Agreement. If FORA assigns its Facilities Agreement roles and responsibilities to another entity, this revenue source would continue past 2020. If MCWD annexes the Ord Community service area before June 30, 2020, this revenue source would end before June 30, 2020.

F. MCWD Revenues

FORA receives a percentage of MCWD's Ord Community revenues annually in accordance with the Facilities Agreement. If FORA assigns its Facilities Agreement roles and responsibilities to another entity, this revenue source would continue past 2020. If MCWD annexes the Ord Community service area before June 30, 2020, this revenue source would end before June 30, 2020.

G. ESCA grant funds

FORA will likely have sums remaining in ESCA funding in 2020. If FORA assigns its ESCA responsibilities to another entity or entities, this funding would continue past 2020.

III. Post-2020 Organizational Structure Considerations

There are several ways to discharge the above–listed duties. These alternatives raise policy choices. It will take substantial discussion to reach consensus. For this reason, staff urges the Board to initiate this discussion in 2016.

Several suggestions have been made to either assign FORA's functions or to extend FORA in its current form. The following section analyzes options by exploring their advantages and disadvantages.

Options analyzed:

A. Extend FORA with existing authority for a fixed term.
B. Assign FORA responsibilities to an existing entity.
C. Assign responsibilities to FORA's member agencies and regional and state agencies.
D. Create a Joint Powers Agency (JPA), modify an existing JPA, or create a Community Services Area (CSA) governed by the Board of Supervisors.
E. Turn the current FORA into a JPA or multiple JPA's.
F. A la carte program (Any combination of the above.)

A. Extend FORA for a fixed term.

Advantages:

This option has a number of advantages including: efficiency and economy of scale, sustaining current working relationships with external agencies, does not require the cost and time of creating a new entity, and retains FORA staff's institutional memory, expertise and continuity of success. Since many elements of the BRP are not yet complete, such an extension would retain important procedures/practices for financing, mitigation, compliance, and implementation. At the same time, this is the least disruptive to activities known to survive the scheduled sunset date and extends existing grant and other funding accomplishments. For example, in terms of base-wide PLL insurance, FORA has a favorable claims history with PLL carriers and may be the logical entity to negotiate and manage the future policy, including cross boundary coverage.

The AOC requires a close relationship with the State and Federal environmental regulatory community, which FORA has fostered. Introduction of a new structure and or new players from the FORA side risks sacrificing the relationships, trust and confidence FORA has built with these agencies over the last 20 years.

The US Army would not need to amend its FORA property transfer and remediation contracts to substitute another agency. FORA's positive relationship with regulatory agencies would be effectively sustained and the ground water/reclaimed water allocations would continue uninterrupted. The FORA CFD fee, land sales/lease revenue, and property tax would continue to fund FORA obligations without changing FORA's funding strategy. Environmental regulatory oversight and relationships would not be disrupted.

Challenges:
Several jurisdictions have expressed the need to alter FORA membership to more closely reflect former Fort Ord on-base obligations. Several others have indicated they would like out. CA State Legislature expressed little interest in another extension.

Disadvantages:
Extension would require amendment of the FORA Act, which may require local and statewide political support. Non-jurisdiction members would continue to pay membership fees although non-landholding members could be allowed (by statute) to opt out of participation, thereby avoiding the payment of membership fees.

B. Assign FORA responsibilities to an existing entity or entities.

Advantages:
This option would reduce the number of governmental agencies. Some would argue that the net result is positive and maintains certain economies of scale. Consideration should be given by any replacement entity to the provision for stipulated penalties to be paid in the event of noncompliance with the AOC.

Challenges:
Some of FORA's obligations (HCP implementation, ESCA/MEC long-term stewardship) require specialized skill that is not currently in other existing entities. It is unclear whether the staff retirement health benefits and FORA CFD would/could be assigned to the existing entity.

Disadvantages:
This option can work only if an existing regional entity (e.g. County, TAMC, etc.) has the statutory authority to perform FORA's functions and is willing to assume them. It is not clear whether any existing entity has the full range of financial, planning, and oversight authority that has been established in State Law for FORA. If an entity (or entities) were identified, there could be significant debate and action by individual FORA members to define the terms of the transition. Also, the identified agency would be subject to the contractual (i.e. ESCA) rights requiring approval by external agencies and may not carry the benefit of existing staff expertise/experience.

C. Assign responsibilities to FORA's member agencies and regional and state agencies.

Advantages:
This would result in local planning and development decision making, as each jurisdiction would perform independent financial, physical and reporting obligations. This option addresses the previous concern about external regional involvement in local decisions.

Challenges:
To complete the financial obligations included in the BRP and the related environmental mitigations, there would be individual budget implications to address these obligations, including: staffing and reporting, agency reimbursements, construction, monitoring, regulatory interface, conservation, and project management. It is unclear whether the staff retirement health benefits and FORA CFD would be assigned to multiple agencies.

Disadvantages:
Each jurisdiction would need to re-create taxing districts to fund post-FORA obligations or otherwise support the FORA activities out of general revenue. This approach would result in duplicative efforts to address what are now common/shared tasks. This would also require each agency to be subject to the contractual and regulatory obligations (i.e. ESCA, AOC, CFD) for approval by external agencies if the requirements were not yet complete, and might not retain the benefit of existing staff expertise/experience.

D. Create a Joint Powers Authority (JPA), modify an existing JPA, create a County Service Area (CSA) governed by the Board of Supervisors, or restructure FORA's membership/legislative authority and extend for a fixed term.

Advantages:
A JPA could be an efficient replacement for FORA due to economies of scale and limited duplication. The JPA would be solely focused on a set of reduced obligations post-2020 and would be much more locally controlled – not requiring state legislative approval. (While planning obligations may decrease, the development, financial and environmental obligations may not.)

Challenges:
It is unclear if the staff retirement health benefits and FORA CFD would be assigned to the JPA. For the JPA or CSA to retain existing FORA revenue sources (CFD special tax, land sale proceeds, and property taxes), legislative action would be required.

Disadvantages:
Establishing a JPA requires time, produces political issues, creates expense, and requires that revenue be identified to support financing operations, staffing, projects, field management, and overhead. This also would require that the JPA be subject to the contractual and regulatory (i.e. ESCA, AOC) obligations for approval by external agencies if the requirements were not complete, and might not retain the benefit of existing staff expertise/experience.

E. Turn the current FORA into a JPA.

Advantages:
The advantages are the same as listed under previous option (D). In addition, this option would provide a familiar structure and track record of operations. Sometimes referred to as 'FORA lite' or 'FORA shell,' it could be structured so that FORA retains its state authorized revenue streams while reducing overall scope and size. This would require State legislative action.

Challenges:
The challenges are the same as listed under previous option (D).

Disadvantages:
The disadvantages are the same as listed under previous option (D).

F. Establish an "a la carte" program with recommendations by function.

This option utilizes the strengths from options 1-5 and incorporates them into a customized program. The recommended approach would be to extend FORA by 5 years and, during those five years, assign FORA's remaining obligations to existing entities and/or a JPA. The reason for a five-year extension is to coincide with the expected completion of on-site transportation projects.

- **ESCA/AOC** – FORA would complete its 5-year review in FY 17/18 and have time to transition its role to its successor. This would allow transfer of institutional knowledge and relationships from FORA to its successor. After the 5 year period, ESCA/AOC functions would transition to a JPA specifically designed for that purpose.

- **Pollution Legal Liability (PLL) Insurance** – FORA's status as first-named insured under the $50 million PLL insurance policy could potentially be assigned to County of Monterey from July 1, 2020 to December 31, 2024.

- **CIP/Basewide mitigations** – FORA would continue CFD Special Tax collection for 5 years and facilitate CFD collection (or replacement fee structure) after FORA's dissolution. This would help fund critical CIP programs and create a seamless fee structure application.

- **Transportation/Transit** – FORA would complete its lead agency on-site road projects and assign its off-site and regional road projects to other entities such as TAMC. On-site road network completion is a crucial step in the base reuse process. After the 5 year period, TAMC would assume responsibility for FORA transit and transportation projects and would incorporate the FORA CFD into its regional transportation fee.

- **Water/Augmentation** – FORA, MCWD and MRWPCA would identify a water augmentation project for the already allocated 1427 acre feet/year (AFY) and the remaining 973 AFY and navigate a project completion strategy. Securing an augmented water supply is necessary to achieve base reuse for all former Fort Ord communities. This is similar to the program already contemplated. FORA's obligations and mitigation funding stream could be subsumed by MCWD/MRWPCA by State legislative action.

- **Habitat Management/HCP** – FORA would continue CFD Special Tax collection for 5 years. A JPA specifically tailored to this function would facilitate CFD collection (or replacement fee structure) after FORA's dissolution. This option would allow FORA to support the JPA's assumption of FORA's responsibilities and retain FORA's revenue stream for that purpose. (This model, already assumed in the program currently being reviewed by the US Fish and Wildlife Service and CA Fish and Wildlife, is recommended by them.)

- **Building Removal** – FORA would be able to complete its remaining building removal obligations in the Marina Stockade and Seaside Surplus II, and support City of Marina building removal efforts. FORA's role as the Hazardous Waste generator could be utilized with potential cost savings to the jurisdictions.

- **BRP/Consistency** – FORA's planning role would be maintained for 5 years allowing projects to come forward for consistency determinations allowing BRP and RUDG visions to be implemented.

- **Prevailing Wage** – FORA's prevailing wage policy ensures prevailing wages are paid for first-generation construction projects on the former Fort Ord. The FORA Board may need to assign FORA's prevailing wage role to another entity before its dissolution.

- **Employee/retiree benefits placement and assumption** – FORA could pay CalPERS a lump sum payment or transfer its long-term CalPERS obligations to another entity with the needed financial resources. FORA currently has 15 positions and a number of retirees. As obligations are completed or assigned to others, current levels of FORA staffing could be reduced.

Establishing an "a la carte" program would allow FORA to transition its functions over time to ensure an orderly dissolution without loss of service to critical base reuse programs. An example of transitioning FORA's form and function over time might look like the following:

- **FORA JPA successor** – Assumed functions: ESCA/AOC, on-site transportation projects, building removal program, BRP/Consistency, Prevailing Wage, Revenue Collection, and Employee/retiree obligations.

- **TAMC** – Assumed functions: Off-site and regional transportation project, Transit Programs, and TAMC Regional development impact fee incorporation of Fort Ord area.

- **MCWD/MRWPCA** – Assumed functions: MCWD/MRWPCA would assume FORA's water augmentation obligations and either receive funding through FORA JPA successor or develop a new funding mechanism to complete obligations.

- o **Regional Habitat Cooperative JPA** – Assumed functions: Habitat management/HCP administration and manage HCP endowment established through FORA revenues.

- o **County of Monterey** – Assumed function: PLL insurance first named insured role.

IV. Issues Posed by Extending FORA.

A. *<u>Choice of New FORA Termination Date</u>*
The following factors influence selection of a new FORA termination date:

1. Given current rates of development, the FORA Capital Improvement Program may not be fully funded for 15 years or more. That roughly reflects 80% of the BRP completion, which was an initial target date for FORA to end. Remaining Improvement Projects: South Boundary, Gigling Road and linkage of Eastside Parkway to Eucalyptus Road.
2. The crucial links in the on-base transportation network infrastructure program, including the Eastside Parkway road project, are currently expected to be completed by June 30, 2020.
3. Under the agreement with the US Army, US EPA, and CA DTSC, the five-year ESCA review will occur in 2018, but FORA's Long Term Obligations continue to 2037.
4. HCP endowment funding extends beyond 2020.
5. Fort Ord Water Augmentation funding extends beyond 2020.
6. Funding FORA or successor entity operations and office space past 2020; funding FORA retiree/health benefits past 2020.

Overriding all of these considerations is the inescapable nature of the project: The former Fort Ord is a regional asset, not confined to the jurisdictional boundaries of any one municipality or governmental unit. It is easy to forget why FORA was created. It evolved from the parochial views of disparate communities, each of which considered its own concerns in a vacuum. But as has been demonstrated repeatedly in the last 20 years, progress in the development of the former Fort Ord is best achieved when planning and implementation are addressed from a regional perspective. Protection of open space, job creation and economic development, emplacement of transportation infrastructure, allocation of scarce resources, environmental remediation, and priority setting are but a few of the activities that have been undertaken from a regional, as distinguished from a local perch. There will come a time when FORA will have outlived its usefulness. That time is not temporally driven. Rather, it would be wise to examine the functional, financial and performance requirements remaining and end FORA's role when its mission is assured.

Based on the foregoing presentations and discussion, it is recommended that FORA's life, powers, and revenue streams be extended as it is currently structured, for five years, and/or assigning of FORA functions, assets, and responsibilities in a precise, step-wise format (see option 6).