

From: [PETER LE](#)
To: [FORA Board](#)
Subject: Cal Am wants to use MCWD owned water pipe to convey desalinated water
Date: Saturday, March 09, 2019 4:52:58 PM

March 8, 2019

Cal Am wants to use MCWD owned water pipe to convey desalinated water

Yes, it's true that Cal Am wants to use the existing water pipe on General Jim Moore Blvd that Marina Coast Water District (MCWD) owns to convey the new desalinated water to the Monterey Peninsula (See Table 3-1 and Section 3.2.3.4 of the certified **Final** EIR/EIS). Let look at the facts as shown below.

In 2009, Fort Ord Reuse Authority (FORA) reconstructed General Jim Moore Blvd and MCWD pre-installed a new water pipe under the new road at the same time to provide potable water to cities of Del Rey Oak and Monterey in the future. Both Del Rey Oak and Monterey own land in the former Fort Ord along South Boundary Road.

In 2012, Cal Am applied to the California Public Utilities Commission for the current desalination water supply project for the Monterey Peninsula. In this application, Cal Am did not propose to use the existing water pipe on General Jim Moore Blvd that MCWD owns.

In 2015, Cal Am amended the above application to use the existing MCWD owned water pipe to convey desalinated water to the Monterey Peninsula. But the **Draft** EIR/EIS did not perform any analyses on the feasibility or impacts of using this existing MCWD water pipe to convey new desalinated water (See Table 3-1 and Section 3.2.3.4 of the **Draft** EIR/EIS).

On December 9, 2016. MCWD informed Cal Am that Cal Am did not have any right to convey desalinated water on the existing MCWD pipe. Additionally, the existing MCWD pipe did not have enough capacity to carry potable water to cities of Del Rey Oak and Monterey, Carmel River water for the Aquifer Storage & Recovery (ASR) project and desalinated water at the same time.

On March 23, 2017, Cal Am provided to MCWD an assessment of estimated capacities of the existing MCWD owned pipe that was based on erroneous assumptions of the water pressures. Cal Am did not provided MCWD with any computer water model that shows the existing water pipe can carry additional desalinated water and any adverse impacts to the existing water systems.

On April 9, 2018, MCWD testified before the CPUC and stated that the existing

MCWD owned water pipe did not have enough capacity to carry new desalinated water. No one, including Cal Am, challenged this testimony.

The **Final** EIR/EIS corrected the omission shown on Table 3-1 and Section 3.2.3.4 of the **Draft** EIR/EIS. However, neither the CPUC nor Cal Am has submitted any computer water model that shows the existing water pipe can carry additional desalinated water without any adverse impacts nor addressed this issue fully in the Final EIR/EIS.

In the **Final** EIR/EIS Cal Am acknowledged that the executed 2009 Potable Water Wheeling Agreement needed to be revised since this executed agreement does not allow Cal Am to use the existing MCWD owned water pipe to convey the new desalinated water to the Monterey Peninsula (See pages 8.5-662 and 663, and 8.5-711 and 712). However, Cal Am still did not have any computer water model results that show that the existing MCWD owned water pipe could carry the additional desalinated water.

Cal Am referred to the 2009 Potable Water Wheeling Agreement in the **Final** EIR/EIS, page 8-5.712, and what is this agreement about?

In 2009, Cal Am wanted to store water pumped from the Carmel River in the Seaside Groundwater Basin and recovered the stored water later. Cal Am undertook this project under State Water Resource Control Board Permit number 20808A, the certified EIR/EIS for the Monterey Peninsula Water Management District's (MPWMD) Phase 1 Aquifer Storage and Recovery (ASR) project, the Notice of Exemption by MPWMD for the Water Right Petition and other legal decisions.

Cal Am at that time wanted MCWD to wheel this water to Seaside Groundwater Basin in the newly installed water pipe under General Jim Moore Blvd. Subsequently, Cal Am entered into an agreement with MCWD for the 2009 Potable Water Wheeling Agreement. This agreement was executed on April 8, 2009.

Under the terms of the executed agreement, Cal Am agreed to pay MCWD over one million dollars for the cost of pipe construction, paid \$2,000 per month for the wheeling charge, installed 2 water meters, performed water quality tests, and submitted to MCWD the monthly water flows, etc.

The question is what Cal Am is going to do next since the existing MCWD owned water pipe does not have capacity to carry the new desalinated water (Section 1814 of the Water Code, Joint Use of Capacity in Water Conveyance Facilities, shall apply only to 70 percent of the unused capacity).

The opinions expressed above are my own and they do not represent the views of any organization or any other individuals.

Sincerely,

Peter Le

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From: [John Farrow](#)
To: [FORA Board](#)
Cc: [Michael Houlemard](#); [Sheri Damon](#); [Michael DeLapa](#)
Subject: Proposed legislation to amend FORA Act
Date: Monday, March 11, 2019 1:40:59 PM
Attachments: [LW letter to FORA Board re proposed legislation.pdf](#)

Dear Members of the FORA Board:

Attached are comments submitted on behalf of LandWatch on the draft legislation to amend the FORA Act that was discussed by the FORA Legislative Committee at its meeting this morning.

LandWatch asks that you consider these comments before acting to submit any proposed legislation for consideration by the California Legislature.

John Farrow

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March 11, 2019

By E-mail

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Re: Proposed legislation to amend FORA Act

Dear Members of the Board:

LandWatch Monterey County (“LandWatch”) offers the following comments on the draft legislation to amend the FORA Act that was discussed by the FORA Legislative Committee at its meeting today (“Proposed Amendments”).

The Proposed Amendments are inconsistent with the legislative mandate to sunset FORA in 2020. Nor are they responsive to the requests for autonomy in future planning and infrastructure development expressed by the land use jurisdictions.

In effect, the Proposed Amendments strip FORA of its ability to amend and enforce the Reuse Plan but leave a “FORA CFD Board” entity with plenary authority to determine “regional needs,” to program regional infrastructure and spending to meet these needs, to compel land use agencies to fund these needs, and to control the revenue raising enactments of the land use agencies. *The FORA CFD Board’s authority to manage all this would be unfettered because the remaining provision of the Reuse Plan are unclear and unenforceable and because the Proposed Amendments would provide a broad CEQA exemption that is worded to go well beyond mere organizational changes.*

Also, we note that the Proposed Amendments were not available for review until this weekend and that the Legislative Committee voted to forward them to the FORA Board after a short meeting held this Monday morning at 8 am. We understand that the FORA Board may act through a special meeting some time this week to recommend the Proposed Amendments to Senator Monning. This abbreviated review fails to provide an opportunity for public participation or careful deliberation by FORA and its member agencies.

These points are discussed below.

A. The go-forward entity should not have open-ended authority to determine “regional needs,” to program regional infrastructure, to compel land use agencies to fund these needs, or to control the revenue raising enactments of the land use agencies.

1. The FORA CFD Board would have final authority on “regional needs” and the infrastructure plans to meet these needs.

As written, the proposed legislation would effectively extend FORA for an indefinite period, with continued authority to determine and fund "regional needs," including, *but not limited to*, habitat management, transportation, transit, and water supply augmentation. (See Proposed Amendments, § 67700(h)(3), (k)(1) [emphasis added].)

Even if the open-ended phrase “but not limited to” were removed, the broad authority to determine, fund, and program future habitat management, transportation, transit, and water supply augmentation is inconsistent with the stated desires of the member agencies to have autonomy as to these future infrastructure and spending decisions.

The default infrastructure plan to meet these "regional needs" would be the Capital Improvement Plan (CIP) as of 2020. (Proposed Amendments, § 67700(h)(3).) The passive voice language that would permit future modification of the 2020 CIP to reflect new agreements by land use jurisdictions obscures the fact that it would be the FORA CFD Board that had the final authority to modify the 2020 CIP. (Proposed Amendments, § 67700(h)(3).) As a CFD legislative body, only the FORA CFD Board would have the authority under the Mello-Roos Act to determine for what purposes CFD taxes were imposed and how the CFD revenues were spent.

Thus, under the Proposed Amendments and the Mello-Roos Act, the FORA CFD Board alone would have plenary authority to determine “regional needs,” to devise the infrastructure and spending plan to meet these needs, and then to program and disburse the funding for these needs.¹

2. The FORA CFD Board would compel land use agencies to fund the “regional needs” and infrastructure plans.

The land use jurisdictions would be *obligated* to continue to fund these "regional needs" on a pro rata basis, either through the CFD or through some "substitute funding

¹ The fact that the go-forward entity is named the "Fort Ord Reuse Authority Community Facilities District" (Proposed Amendments, § 67700a1) does not disguise the fact that this entity would continue to control the critical FORA functions of determining regional needs, determining the required infrastructure, imposing funding requirements, approving funding mechanisms, and programming that funding.

mechanism," which mechanisms must be *approved by FORA*. (Proposed Amendments, § 67700(j)(1), (k)(2).)

The Proposed Amendments do not state what role the FORA CFD Board would have in programming and disbursing the revenues from the substitute funding mechanisms. However, the FORA CFD Board would have approval authority over these substitute funding mechanisms, based on its "reasonable satisfaction" that the mechanisms "continue funding regional needs . . . on a pro rata basis." (Proposed Amendments, § 67700(k)(2).) Thus, the FORA CFD Board could not approve a land use authority's substitute funding mechanism unless the FORA CFD Board determined that the FORA CFD Board could ensure that substitute funding mechanism's revenues would be dedicated to meeting the regional needs it identified.

In short, the land use jurisdictions would remain subject to the FORA CFD Board's plans for all regional needs and would be required to fund those plans through mechanisms approved by FORA.

3. The FORA CFD Board would control revenue enactments by land use jurisdictions.

The FORA CFD Board would have the right to control how the land use jurisdictions set up their future substitute funding mechanisms. (Proposed Amendments, § 67700(k)(2).) These mechanisms might include impact fees, development agreements, City-level CFDs, property taxes, etc. *This is an approval authority that FORA does not have now, and it is an authority that goes well beyond the authority of a normal Community Facilities District. The exercise of this authority to control the fiscal affairs of other land use agencies would take the FORA CFD Board well outside of its existing competence. And it would interfere with the land use jurisdictions' autonomy.*

Many Fort Ord projects have relied on *ad hoc* development agreements that fund infrastructure and other community benefits. Under the Proposed Amendments, the use of such development agreements as a "substitute funding mechanism" in the future would require that the FORA CFD Board be at the bargaining table when these agreements are negotiated because the FORA Board would have to approve the agreements.

Finally, it is not clear that the legislative authority of the land use jurisdictions over their own fiscal affairs can in fact be delegated to another agency. LandWatch suggests that counsel for the land use agencies carefully consider this issue.

B. The Proposed Amendments fail to clarify and substantially confuse the issue of the continuity of the Reuse Plan.

During the Transition Planning process, LandWatch and others have repeatedly raised the issue of the continued applicability of the Reuse Plan. The Proposed Amendments do not clarify this issue.

Instead the Proposed Amendments simply provide that the Reuse Plan "shall continue to be applicable" unless a land use jurisdiction determines it is no longer applicable to a land use. (Proposed Amendments, § 67700(j)(1).) There is no clear procedure identified for a land use jurisdiction to make such a determination.

And even if the land use jurisdiction decides that the Reuse Plan is no longer applicable, that land use jurisdiction "remains obligated to fund regional needs" through the CFD or through some substitute mechanism the FORA CFD Board has approved. (*Ibid.*) Thus, even if a land use jurisdiction decided not to pursue the development as planned in the 22-year old Reuse Plan, it could still be made to fund the infrastructure and habitat management that FORA determined would be needed for that development.

More problematically, the language stating that the Reuse Plan "shall continue to be applicable to all lands" is unclear as to what particular mandates of the Reuse Plan would remain "applicable." Would this include specific land use designations? Land use intensities? Regional infrastructure plans? Development allocations to each land use jurisdiction in terms of total units? Specific policies intended to regulate development at the project level? Policies intended to be implemented at the program or plan level such as jobs/housing balances?

It is unclear who would have authority to enforce the continued applicability of the Reuse Plan. In the absence of the currently mandated consistency determinations and in the absence of a clear procedure for a land use agency to determine that the Reuse Plan no longer applies to a land use, no affected landowner, member of the public, or land use jurisdiction would have any remedy for failure to comply with the Reuse Plan.

The FORA CFD Board would have no continuing authority to modify the Reuse Plan to consider changing circumstances or to make consistency determinations. In short, no entity would have any clear authority to enforce a land use jurisdiction's compliance with the Reuse Plan.

The notion that a FORA CFD Board can adequately steward what was intended to be a living regional plan without the authority to modify and enforce that plan is fundamentally flawed. The land use jurisdictions cannot be indefinitely required to develop only in accordance with a set of land use designations, development intensities, infrastructure plans, development unit allocations, and land use policies developed 22 years ago for which there is no remaining authority to enforce or modify.

Even if it were legal to indefinitely permit the dead hand of the Reuse Plan to regulate future development plans forever, it would not be wise policy. Again, the land use jurisdictions have asked for autonomy.

If *specific provisions* of the Reuse Plan are to survive, e.g., the affordable housing and prevailing wage provisions identified in Proposed Amendments section 67700(j)(2),

they should be enumerated. There appears to be no agreement among the land use agencies as to the continuity of other provisions of the Reuse Plan. Without such agreement, the vague language in the Proposed Amendments is a recipe for litigation.

C. Eventual termination of FORA CFD Board is postponed indefinitely until the last unit is built.

The draft language would ensure that FORA would continue indefinitely because FORA could only be dissolved when "all CFD revenues have been collected from entitled development" and when "substitute funding mechanisms have been implemented." (Proposed Amendments, § 67700(l)(1)(A).) Since an entitled development only pays the CFD tax when it finally pulls a building permit, FORA would continue in existence as long as there were a single unbuilt lot in any jurisdiction still subject to the CFD.

The language perpetuating FORA until "substitute funding mechanisms have been implemented" (Proposed Amendments, § 67700(l)(1)(A)) is unclear as to whether this means until the substitute funding mechanism is *enacted* or until all of the substitute funding is *collected, programmed, and disbursed*.

D. Authority to shrink CFD boundaries is not specified.

Although the Mello-Roos Act permits annexation to a CFD, there is no current authority under Mello-Roos to de-annex lands to shrink the borders of a CFD. The Proposed Amendments contemplate that FORA could do this by revising the CFD boundaries as replacement funding mechanisms were adopted. (Proposed Amendments, § 67700(h)(4).) As LandWatch has advocated previously, this authority should be set out specifically.

E. A CEQA exemption is not required for changes in organization.

It is unclear why FORA now seeks to designate its Transition Plan both as "not a project" subject to CEQA and as "exempt" from CEQA. (Proposed Amendments, § 67700(d).)

FORA has already adopted the Transition Plan in its December 19, 2018 Resolution 18-11. That resolution states that no EIR or other CEQA document was required because the Transition Plan is "not a project" subject to CEQA, citing the definitions of "project" in 14 CCR section 15378(b) and Public Resources Code section 21065, which exclude organizational activities that will "not cause a foreseeable physical impact on the environment."

To the extent that the Transition Plan *is* merely an organizational change without the potential for physical impacts, there is no *need* for a statutory exemption. Exemptions

are not applicable to or needed for activities that are not a project under 14 CCR section 15378(b) and Public Resources Code section 21065.

The Proposed Amendment would also characterize *all future* “changes in organization from and after June 30, 2020, to implement the Transition Plan” as “not a project” and exempt. (Proposed Amendments, § 67700(d).) To the extent that the future changes in organization to implement the Transition Plan were in fact merely changes in organization with no potential for a foreseeable physical impact, then they would meet the “not a project” test and no exemption would be needed.

However, it remains unclear what might be included in future “changes in organization . . . to implement the Transition Plan.” This language could easily be misinterpreted to include all sorts of actions intended “to implement the Transition Plan” that are not merely changes in organization without physical impacts.

For example, the FORA CFD Board might argue in the future that it is merely implementing an organizational change when it supports or enters into an agreement that includes a funding commitment to one or more specific infrastructure projects in Fort Ord that may cause physical changes in the environment. In the normal course of events, such a funding commitment is subject to CEQA review at the program or plan level. It is not sufficient that individual projects eventually be subject to piece-meal project-specific environmental review as proposed in sections 1.2 and 2.2.7 of the Transition Plan. A funding commitment that enables one set of infrastructure projects, as opposed to some other set of projects or possibly no projects at all, must be subjected to environmental review *at the plan level*. Otherwise, there would be no opportunity to consider alternatives and mitigation at the plan level, where it matters most in the regional planning context.

Furthermore, it is not clear whether the proposed Transition Plan Implementation Agreements (“TPIAs”) would be treated as “not a project” or exempt. The language in section 4.1 of the Transition Plan describing the possible provisions of these TPIAs includes not just funding agreements, which *should* be subject to CEQA if they constitute project commitments, but also includes the catch-all phrase “such other matters as may be required to implement this Transition Plan.” LandWatch opposes a CEQA exemption that covers the TPIAs without additional provisions that narrow the exempted activities to just those activities that meet the “not a project” test.

In sum, the fundamental problems with the Proposed Amendments with respect to CEQA are that the first sentence covering past actions is unnecessary and the second sentence covering future actions is too broad. The proposed Amendments should be revised to define and specify the limits of the future action that would not be subject to CEQA as follows:

~~The Transition Plan, and its adoption, are not projects for purposes of the California Environmental Quality Act and shall be exempt therefrom.~~ Changes in

organization from and after June 30, 2020; to implement the Transition Plan ~~shall also be~~ not ~~be~~ a project for purposes of the California Environmental Quality Act provided that such changes do not cause a foreseeable physical impact on the environment and shall be exempt therefrom.

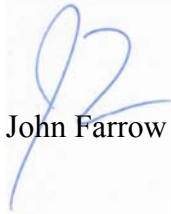
In the absence of any remaining enforceable constraint on the FORA CFD Board from the Reuse Plan, compliance with CEQA may represent the only real check on its authority to impose infrastructure projects on other land use agencies.

Conclusion

The Proposed Amendments should be carefully reconsidered and revised with the cooperation and participation of the land use agencies and an opportunity for public review. An unfettered FORA CFD Board should not be created to manage regional needs on an ad hoc basis without a living regional plan and at the expense of the autonomy of the land use jurisdictions.

Yours sincerely,

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



John Farrow

JHF:hs

From: [Ron Chesshire](#)
To: [Michael Houlemard](#); [Sheri Damon](#); [FORA Board](#)
Cc: [Andy Hartmann](#); [John Papa](#); [Steve MacArthur](#); [Rod Smalley](#); [Jolene E. Kramer](#)
Subject: Re: Question re: FORA meeting of March 15th, 2019
Date: Thursday, March 14, 2019 2:29:14 PM

FORA Bd. members - (j) (2) ensures survival of the 20% affordable housing and prevailing wage requirements. Our concern? How are those two requirements to be enforced?

Someone, somewhere, locally, needs to be responsible. We understand the jurisdictions want to be free of FORA as much as possible. Therefore, will the jurisdictions be held responsible for maintaining both requirements? The answer is, that those elements are to be in any replacement plan. So, once the replacement plan is in place the local jurisdiction will be held responsible? How? Plus, what if a replacement plan is not created? Who then is responsible?

In Solidarity,

Ron Chesshire

Monterey/Santa Cruz Counties Building & Construction Trades Council

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From: Ron Chesshire
Sent: Thursday, March 14, 2019 2:11 PM
To: Uptain-Villa, Tobias
Cc: Andy Hartmann; John Papa; Steve MacArthur; Rod Smalley; Jolene E. Kramer
Subject: FORA

Toby, (j) (2) ensures survival of the 20% affordable housing and prevailing wage requirements. Our concern? How is that to be enforced?

Someone, somewhere, locally, needs to be responsible. We understand the jurisdictions want to be free of FORA as much as possible. Therefore, will the jurisdictions be held responsible for maintaining both requirements? The answer is, that those elements are to be in any replacement plan so, once the replacement plan is in place the local jurisdiction will be held responsible. Well, they aren't now and fight any claim that they are. Plus, what if a replacement plan is not created? Who then is responsible?

The transition language is attached and the FORA analysis is below.

Section 677000(j) addresses the concept of regional planning for the Fort Ord area. This section addresses an issue which was raised during the adoption of the 2018 Transition Plan as to the survivability of the Base Reuse Plan (BRP) and the Master Resolution policies post June 30, 2020. The language of the Section tries to balance the need for continuity of the BRP with the articulated desire of many jurisdictions not to be bound by the BRP. Thus, jurisdictions may adopt their own replacement plans for their Fort Ord properties upon completing the appropriate level of environmental review. The only requirement is that those replacement plans address funding regional needs, maintain 20% affordable housing and prevailing wage for first generation construction. Note the section does not require any consistency determinations by the Successor Board, any replacement or increased CFD or property tax revenues to address these new plans. Nonetheless, the Board might consider adding language which would require compilation and publication of a regional map, showing the approved plans for the Fort Ord regional area.

In Solidarity,

Ron Chesshire

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From: [John Farrow](#)
To: [FORA Board](#)
Cc: [Michael Houlemard](#); [Sheri Damon](#); [Michael DeLapa](#)
Subject: Board Report on Proposed Legislation
Date: Thursday, March 14, 2019 3:04:18 PM
Attachments: [LW letter to FORA Board re Board Report for proposed legislation.pdf](#)

Dear Members of the FORA Board:

Attached are comments submitted on behalf of LandWatch on the Board Report for the proposed legislation to amend the FORA Act that was discussed by the FORA Legislative Committee at its meeting this morning.

This letter reiterates LandWatch's March 11, 2019 letter and explains why those concerns were not addressed by the Board Report.

LandWatch asks that you consider these comments before acting to submit any proposed legislation for consideration by the California Legislature.

John Farrow

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March 14, 2019

By E-mail

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Re: Proposed legislation to amend FORA Act – comments on Board Report

Dear Members of the Board:

LandWatch Monterey County (“LandWatch”) offers the following comments on the Board Report regarding the draft legislation to amend the FORA Act (“Proposed Amendments”).

LandWatch reiterates the comments in its March 11, 2019 letter. The Board Report fails to consider or to effectively address a number of LandWatch’s concerns.

Given the short time between the release of the Board Report today and the Board meeting tomorrow morning at 10:00 am, LandWatch can only summarize its most salient concerns.

A. The Proposed Amendments fail to clarify who will have final authority to determine “regional needs” or the programming of the uses for CFD taxes and revenues realized by “replacement funding mechanisms.”

Sections 66700(h)(3), and (k)(1) would authorize FORA to determine what counts as “regional needs” because they authorize the Board to disburse funds for “habitat management, transportation, transit, and water supply augmentation,” identified as the “regional needs,” and they require that the Board “continue to fund regional needs.” Even if the open-ended phrase “including but not limited to” were removed, the set of projects that might qualify as “habitat management, transportation, transit, and water supply augmentation projects” is ultimately left to the Board’s discretion.

The June 2020 CIP would be the initial and presumptive set of “regional needs” project. Although 66700(h)(3) provides that this project list can be “modified to reflect agreements between underlying land use jurisdictions implementing the Transition Plan, or other applicable agreements and actions of the governing bodies of the underlying land

use jurisdictions.” Unless there is unanimous agreement among all land use jurisdictions, the Proposed Amendments provide no mechanism other than the FORA CFD Board’s dictate to resolve disagreements as to what “regional needs” projects should be funded, much less the priority and timing of those projects. It is highly unlikely that the land use jurisdictions will reach unanimous agreement to follow the 2020 CIP or unanimous agreement as to changes that should be made to it. Thus, the FORA CFD Board will be in control.

If a land use agency determines that its lands are no longer subject to the Reuse Plan under section 6700(j)(1), the FORA CFD Board would still have the authority to compel that agency to fund regional needs. Again, it is presumably the FORA CFD Board that would have the authority to determine how the land use jurisdiction’s departure from the Reuse Plan would affect the set of infrastructure projects required to meet “regional needs” and what level of continued funding would be required from that agency.

Assuming all of the land use jurisdictions agreed on the “regional needs” projects and their priority, or are willing to defer to the FORA CFD Board indefinitely on this matter, the land use agencies would also be required to defer to the FORA CFD Board’s determination of their “pro rata” shares under section 66700(k)(2). The Board Report proposes to clarify the pro rata share determination problem by adding a new provision:

The pro rata basis shall be determined by the provisions of the Transition Plan and implementing agreements and by the regional entities to address any shortfalls in revenue generation for the following regional needs: habitat management, transportation, transit, and water supply augmentation projects. The Board may not withhold satisfaction/approval if all of the regional entities and Transition Plan and implementing elements are met.

This passive voice construction obscures the issue of what agency would have the authority to make the determination of the pro rata basis. Absent some other mechanism, that agency would be the FORA CFD Board. This new language provides no standards or guidance to determine whether there is a “shortfall,” when it would occur, how big it is, and how to allocate that shortfall among the land use jurisdictions. Not only are the terms “regional entities” and “implementing elements” obscure and undefined, the proposed language does not explain what it means to say that “all of the regional entities and Transition Plan and implementing elements are met.”

In sum, the FORA CFD Board would continue to determine what infrastructure must be funded and when, and it would still compel land use jurisdictions to fund it. The Board Report’s claim that FORA would not be authorized “to promulgate any new programs or projects” ignores the facts that the FORA Board CFD would have plenary authority to (1) decide what regional needs projects would be funded; (2) collect and disburse the funding; (3) authorize any changes from the 2020 CIP; and (4) compel land use jurisdictions to pay a pro rata share of the “regional needs” projects.

These provisions indefinitely perpetuate FORA's control over regional infrastructure needs, and they are inconsistent with the mandate to sunset FORA and the autonomy of the land use jurisdictions.

B. The Proposed Amendments do not clarify what elements of the Base Reuse Plan will “continue to be applicable” or how applicability would be enforced.

The Proposed Amendments provide that the Reuse Plan "shall continue to be applicable" unless a land use jurisdiction determines it is no longer applicable to a land use. (Proposed Amendments, § 67700(j)(1).) As LandWatch objected, this language does not clarify what particular mandates of the Reuse Plan would remain “applicable,” including

- specific land use designations;
- land use intensities;
- specific regional infrastructure plans;
- development allocations to each land use jurisdiction in terms of total units;
- specific policies intended to regulate development at the project level;
- specific policies intended to be implemented at the program or plan level such as jobs/housing balances.

Nor is it clear who would have authority to enforce the continued applicability of the Reuse Plan. The Board Report ignores this issue.

However, as the Board Report acknowledges, the currently mandated consistency determinations will no longer take place. Thus, no affected landowner, member of the public, or land use jurisdiction would have any remedy for failure to comply with the Reuse Plan.

The proposed Amendments should be modified to identify each specific provision of the current Base Reuse Plan that would continue to apply, as it does in section 667700(j)(2) for affordable housing and prevailing wage. It should also specify which provisions a land use jurisdiction can change in the future and what action it would need to make that change (e.g., amend its General Plan).

C. The Proposed Amendments would perpetuate FORA until the final building permit is pulled for any approved project that has an obligations to pay the CFD tax or to contribute to a “replacement funding mechanism.”

As LandWatch objected on March 11, 2019, the Proposed Amendments would ensure that FORA would continue indefinitely because FORA could only be dissolved when "all CFD revenues have been collected from entitled development" and when "substitute funding mechanisms have been implemented." (Proposed Amendments, § 67700(l)(1)(A).) Since an entitled development only pays the CFD tax when it finally

March 14, 2019

Page 4

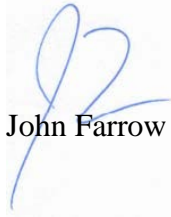
pulls a building permit, and it is not clear when the substitute funding mechanisms will have “been implemented,” FORA would continue in existence as long as there were a single unbuilt lot in any jurisdiction still subject to the CFD or any project potentially subject to a substitute funding mechanism. A CFD tax cannot be collected if the CFD has been terminated.

Conclusion

The Proposed Amendments should be carefully reconsidered and revised with the cooperation and participation of the land use agencies and an opportunity for public review. An unfettered FORA CFD Board should not be permitted to manage regional needs on an ad hoc basis without a living regional plan and at the expense of the autonomy of the land use jurisdictions.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to read "John Farrow", is positioned above the printed name.

John Farrow

JHF:hs

From: [Ron Chesshire](#)
To: [Michael Houlemard](#); [Sheri Damon](#); [FORA Board](#)
Cc: [Andy Hartmann](#); [John Papa](#); [Steve MacArthur](#); [Rod Smalley](#); [Jolene E. Kramer](#)
Subject: Re: Question re: FORA meeting of March 15th, 2019
Date: Thursday, March 14, 2019 3:41:17 PM

(i) (1) states, The Board may utilize any of the powers granted in Chapters 4 & 5 of this Title (Authority Act).

Please note the bold and underlined sentence of Chp. 4 (b) (1). We have been told for years that FORA does not know what this means. They said they were unsure, had an idea, or interpretation of what it meant but were sure it didn't give them police powers and didn't determine responsibilities of the Executive Officer. We suggest this be defined as to what it means going forward so there will be no confusion as in the past. Even in this limited state of the Board, if they want to utilize any of the powers, we most certainly suggest they know what those powers are and how they may be exercised.

Chp. 4 Powers 67675.8

(b) (1) Notwithstanding any provision of law allowing any city or county to approve development projects, no local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is not consistent with the plan as adopted or revised pursuant to this title. Except as required by state or federal law, other than state law authorizing cities and counties to approve development projects, the board shall be the final judge of this consistency with the requirements of this title. **The board may adopt regulations to ensure compliance with the provisions of this title.** No local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is outside the jurisdiction of that local agency.

Staff analysis -

Section 67700(i)(1) allows the Successor Board to use any of the powers granted to FORA now limited, however, to the new scope of the Successor Board. For example, the Successor Board could not litigate a consistency issue regarding City of Marina's adoption of a new project or general plan or specific plan, except as that consistency issue involves the 2018 Transition Plan or collection of property tax revenues or CFO fees. This language is included to address some of the issues related to LAFCO and its concerns about litigation post June 30, 2020 and who will manage the litigation. This also responds to comments by FORA Board members about who will manage and participate in litigation on Transition Plan items post June 30, 2020.

In Solidarity,

Ron Chesshire

Monterey/Santa Cruz Counties Building & Construction Trades Council

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www.MSCBCTC.com

From: Ron Chesshire

Sent: Thursday, March 14, 2019 2:29:05 PM

To: Michael Houlemard; Sheri Damon; board@fora.org

Cc: Andy Hartmann; John Papa; Steve MacArthur; Rod Smalley; Jolene E. Kramer

Subject: Re: Question re: FORA meeting of March 15th, 2019

FORA Bd. members - (j) (2) ensures survival of the 20% affordable housing and prevailing wage requirements. Our concern? How are those two requirements to be enforced?

Someone, somewhere, locally, needs to be responsible. We understand the jurisdictions want to be free of FORA as much as possible. Therefore, will the jurisdictions be held responsible for maintaining both requirements? The answer is, that those elements are to be in any replacement plan. So, once the replacement plan is in place the local jurisdiction will be held responsible? How? Plus, what if a replacement plan is not created? Who then is responsible?

In Solidarity,

Ron Chesshire

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From: Ron Chesshire

Sent: Thursday, March 14, 2019 2:11 PM

To: Uptain-Villa, Tobias

Cc: Andy Hartmann; John Papa; Steve MacArthur; Rod Smalley; Jolene E. Kramer

Subject: FORA

Toby, (j) (2) ensures survival of the 20% affordable housing and prevailing wage requirements.

Our concern? How is that to be enforced?

Someone, somewhere, locally, needs to be responsible. We understand the jurisdictions want to be free of FORA as much as possible. Therefore, will the jurisdictions be held responsible for maintaining both requirements? The answer is, that those elements are to be in any replacement plan so, once the replacement plan is in place the local jurisdiction will be held responsible. Well, they aren't now and fight any claim that they are. Plus, what if a replacement plan is not created? Who then is responsible?

The transition language is attached and the FORA analysis is below.

Section 677000(j) addresses the concept of regional planning for the Fort Ord area. This section addresses an issue which was raised during the adoption of the 2018 Transition Plan as to the survivability of the Base Reuse Plan (BRP) and the Master Resolution policies post June 30, 2020. The language of the Section tries to balance the need for continuity of the BRP with the articulated desire of many jurisdictions not to be bound by the BRP. Thus, jurisdictions may adopt their own replacement plans for their Fort Ord properties upon completing the appropriate level of environmental review. The only requirement is that those replacement plans address funding regional needs, maintain 20% affordable housing and prevailing wage for first generation construction. Note the section does not require any consistency determinations by the Successor Board, any replacement or increased CFD or property tax revenues to address these new plans. Nonetheless, the Board might consider adding language which would require compilation and publication of a regional map, showing the approved plans for the Fort Ord regional area.

In Solidarity,

Ron Chesshire

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