
FORA Transition Plan

1 message

Ron Chesshire <ron@mscbctc.com>

Fri, Jun 19, 2020 at 6:12 PM

To: "mckennak@monterey.lafco.ca.gov" <mckennak@monterey.lafco.ca.gov>, "Brinkmann, Jonathan x5121"

<BrinkmannJ@monterey.lafco.ca.gov>, Josh Metz <josh@fora.org>, "board@fora.org" <board@fora.org>

Cc: Manny Pinheiro <Manny@mscbctc.com>, Mark Van Den Heuvel <mark@smw104.org>, Steve McArthur

<steve@pipetrades62.com>, Rod Smalley <rsmalley@oe3.org>, Heather Szerlag <hszerlag@nccrc.org>, Sean Hebard

<shebard@nccrc.org>, Jolene Kramer <jkramer@unioncounsel.net>

I have transcribed comments from our CEO regarding issues and concerns the Monterey/Santa Cruz BCTC has regarding the Transition Plan. He has signed it and asks that I forward to you for your review.

In Solidarity,

Ron Chesshire

Monterey/Santa Cruz Counties Building & Construction Trades Council

10300 Merritt Street

Castroville, CA 95012

(831) 869-3073

ron@mscbctc.com

www.MSCBCTC.com



FORA TP - IA's.docx

103K



Monterey/Santa Cruz Counties Building & Construction Trades Council

11445 Commercial Parkway, Castroville, CA 95012

Phone 831.884-8413

Email: Office@MSCBCTC.com

www.MSCBCTC.com

FPPC No. 850048

John Papa
President

June 19, 2020

Mark Van Den Heuvel
Vice President

Rod Smalley
Treasurer

Steve MacArthur
Recording Secretary

Manuel Pinheiro
CEO

Boilermakers #549
Bricklayers #3

Carpenters #505

Carpenters #605

Carpet, Lin. & Soft Tile #12

Elevator Constructors #8

Glaziers #1621

IBEW #234

Insulators & Asbestos #16

Ironworkers #155

Ironworkers #377

Laborers #270

Millwrights #102

OP & CMIA #300

Operating Engineers #3

Painters & Tapers #272

Plumbers & Steamfitters #62

Roofers & Waterproofers #95

Sheet Metal Workers #104

Sprinklerfitters #669

Teamsters #890

UA #355

To – Fort Ord Reuse Authority and Local Agency Formation Commission of Monterey County Board of Directors

The Monterey/Santa Cruz Counties Building and Construction Trades Council, has been involved with the Fort Ord Base Closure and Fort Ord Reuse Authority (FORA) for decades. As the representative of thousands of working men and women who are members of the Monterey County community, we remain highly concerned and critical of what is taking place with the Transition Plan process. With each step new questions arise.

We appreciate the efforts taken in recent months by the FORA Board of Directors to reaffirm the community benefit obligations adopted under the Master Resolution, in particular, its prevailing wage standard for workers employed in First Generation projects on former base lands.

We believe progress has been made but find the latest Memorandum from FORA Counsel – Interpretation of Survivability of the Base Reuse Plan, Master Resolution, and Implementing Agreements to be cause for renewed concern.

As we enter the final weeks prior to FORA's dissolution we are concerned about the standing of the Implementation Agreements executed in 2001 between member jurisdictions and the Authority.

During FORA's transition process, it has become increasingly apparent the jurisdictions do not want to be bound by the Reuse Plan and the policies and programs of FORA, including the Master Resolution or any other provisions FORA had adopted. This reluctance was seen in the refusal of local jurisdictions to agree to FORA's request that they accept responsibilities and liabilities under the Implementing Agreements.

We believe this decision is the result of a disconnect between a long-running succession of elected decision makers who adopted FORA's Master Resolution and other policies to the benefit of the local community and the advice being given by less tenured Administrative (staff) representatives from the jurisdictions who comprise the FORA Administration Committee and are responsible for the creation of the Transition Plan.

Most frustrating is the continued denial of responsibility and passing of the buck regarding the Implementation Agreements. It is stated no jurisdiction wants to accept responsibility for the IAs and LAFCO will not assign responsibility and as a result, the agreements, (continue reading excerpt)

“...may as a practical matter become difficult or impossible to enforce due to the lack of any voluntary assignee. Enforcement by a third party would require that such party establish that it is an intended third-party beneficiary of the Implementing Agreements, which may (be) a difficult hurdle to overcome. Under the circumstances, it is not possible to state with certainty whether the Implementing Agreements will be enforceable by any particular party in the wide variety of possible contexts.”

For several reasons, we disagree with this analysis:

1) The Implementation Agreements are a requirement of the Army in their MOA commonly referred to as the EDC Agreement. 2.01 F of the EDC states - The Authority shall enter into individual agreements with each Authority member jurisdiction ("Implementation Agreements") to insure that Authority member jurisdictions shall use the Accounting System and otherwise comply with this Agreement for all matters related to the Property.

The Implementation Agreements state in Section 2. Compliance With Other Agreements (a) The Jurisdiction shall use or transfer any Jurisdiction-Owned Jurisdiction Property in compliance with the EDC Agreement, the Base Reuse Plan, the Settlement Agreement in Sierra Club v.FORA, Monterey County Superior Court Case Number 112014, executed November 30, 1998, the Fort Ord Master Resolution, and the deed restrictions, attached to this Agreement as Exhibit F.

2) Similar to Exhibit F in which the Master Resolution and BRP are included, all of the implementing agreements are recorded documents contained and in the quitclaim.deeds transferring former base lands to the local jurisdictions and agencies. The recent FORA memorandum notes that, “recorded notices or covenants running with the land are generally effective to maintain land use restrictions, and this enforceability will hold true irrespective of FORA’s dissolution.”

FORA Counsel opines that all of this is open to interpretation. We think the legal facts speak for themselves but without an entity being designated as responsible for the IA’s, the legitimacy and strength of not only the agreements but also the Reuse Plan and Master Resolution will be challenged and, ultimately, will have to be tested and proven in the courts. We believe that will lead to expensive and unnecessary litigation.

The Authority Act states - The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred.

This issue needs resolution. We are very late in the game. We believe these agreements need to be honored and properly administered. The jurisdictions should accept their responsibilities or LAFCO needs to meet its responsibilities under The Authority Act and assign responsibility to ensure the obligations set forth in these agreements are met. The only other option is for LAFCO to reject the Transition Plan and after today's meeting that will put all in a deeper hole than you have already dug. .

.Sincerely,

A handwritten signature in blue ink that reads "Manuel B. Pinheiro". The signature is written in a cursive, flowing style.

Manuel Pinheiro – CEO M/SC BCTC

Re: FORA Transition Plan

Inbox x



Ron Chesshire <ron@mscbctc.com>

Sun, Jun 21, 9:36 PM (10 hours ago)

to mckennak@monterey.lafco.ca.gov, Jonathan, Josh, board@fora.org, Manny, Mark, Steve, Rod, Heather, Sean

The major point of our letter is, if no jurisdiction is accepting assignment (responsibility) and LAFCO going to assign to anyone, the IA's which are agreements with the jurisdictions won't be honored properly administered. That is irresponsible on the part of all parties and an open invitation to litig

In Solidarity,

Ron Chesshire

Monterey/Santa Cruz Counties Building & Construction Trades Council

10300 Merritt Street

Castroville, CA 95012

(831) 869-3073

ron@mscbctc.com

www.MSCBCTC.com

From: Ron Chesshire

Sent: Friday, June 19, 2020 6:12 PM

To: mckennak@monterey.lafco.ca.gov <mckennak@monterey.lafco.ca.gov>; Brinkmann, Jonathan x5121 <BrinkmannJ@monterey.lafco.ca.gov>; Josh Metz <josh@fora.org>; board@fora.org <board@fora.org>

2020

June 23, 2020

Commissioners

Chair

Ian Oglesby
City Member

Vice Chair

Christopher Lopez
County Member

Luis Alejo
County Member

Joe Gunter
City Member

Mary Ann Leffel
Special District Member

Matt Gourley
Public Member

Warren Poitras
Special District Member

Maria Orozco
City Member, Alternate

Jane Parker
County Member, Alternate

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Counsel

Kelly L. Donlon
General Counsel

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

FORA Chair/Supervisor Jane Parker
FORA Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: For Consideration at the June 26, 2020 FORA Board Meeting -
1) LAFCO-Requested Changes to the Transition Plan Update, and
2) Inapplicability of the Cortese-Knox-Hertzberg Act to FORA
Dissolution

Dear FORA Chair/Supervisor Jane Parker and FORA Board of Directors,

On behalf of the Local Agency Formation Commission of Monterey County, I am writing to reiterate LAFCO's request for alternative language for FORA's Transition Plan Update, and to respond to a June 22 FORA letter containing an incorrect interpretation of the Cortese-Knox-Hertzberg Act.

I would also like to inform you that, on advice of counsel, the Commission continued its June 22, 2020 public hearing on FORA Dissolution to the Commission's next regular meeting of August 24. A continuance was appropriate because FORA has not adopted its Transition Plan update, and in concern for proposed new and unacceptable language in Transition Plan sections 1.5, 2.2.8, and 3.1. LAFCO's objections to those proposed FORA updates were previously expressed in a June 18 letter to the FORA Board and in my remarks at a June 19 FORA Board meeting.

1) LAFCO-Requested Changes, and Potential Alternative Regarding Section 2.2.8

At this time, and as requested by the FORA Board and staff, LAFCO is resubmitting our June 18 proposed redline changes to the Transition Plan update (Attachment 1). These changes would delete the improper and unacceptable language in sections 1.5, 2.2.8, and 3.1 that attempts to shift FORA's responsibilities and liabilities onto LAFCO. The letter of June 18 also explains LAFCO's rejection of successor responsibilities and rejection of the use of LAFCO's litigation defense fund for potential payment of any FORA or FORA member agency liabilities, obligations, or claims.

LAFCO staff continues to request the changes to sections 1.5 and 3.1. However, as an alternative to our June 18 redline language for section 2.2.8, LAFCO staff may be able to support FORA's current wording in section 2.2.8, provided that the following important preconditions are met:

- i. FORA completely resolves and commits its funds to clear the Resource Environmental, Inc. (REI) claim by June 30, or – in the absence of a negotiated settlement between FORA and REI – the City of Seaside indemnifies LAFCO in the REI matter by August 15, 2020; and
- ii. The City of Del Rey Oaks indemnifies LAFCO in the California Native Plant Society lawsuit by August 15, 2020.

Should this alternative prove workable, LAFCO staff anticipates recommending to our Commission that LAFCO would be able to apply its litigation reserve funds, as

described in section 2.2.8, only after January 1, 2022¹, and only if sufficient funds remain in LAFCO's litigation reserve at that time, in LAFCO's sole discretion. Should LAFCO need to expend funds beyond the \$500,000 litigation reserve due to FORA-related claims or litigation, LAFCO would intend to recover such expenses by billing former FORA member agencies through LAFCO's annual budget cost-share allocation process or by a separate process.

Importantly the modification discussed above would apply only to matters unrelated to the use of real property. The Transition Plan currently provides that real property-related litigation or other disputes must be directed to the underlying land use jurisdiction(s) in which the subject site is located, and that would continue to be the case. As noted above, LAFCO opposes and will refuse to accept wording in section 3.1 that seeks to make LAFCO the default successor agency for all potential future liabilities or obligations.

LAFCO staff offers this alternative in the spirit of a good-faith compromise to make the most efficient and equitable use of funds in LAFCO's litigation reserve. Please know that LAFCO staff's support for inclusion of this alternative would be subject to the Commission's consideration and approval of a revised resolution at the August 24 LAFCO meeting.

Pursuant to the signed indemnification agreement, and as more fully summarized in the agreement itself, the only currently allowable use of the litigation reserve is to protect LAFCO from any costs, fees, damages, or liabilities resulting from any legal action related to LAFCO's oversight role in FORA dissolution. Therefore, the potential changes discussed above may warrant an amendment or other form of acknowledgement from FORA agreeing to this change to the executed FORA-LAFCO indemnification agreement.

2) Inapplicability of the Cortese-Knox-Hertzberg (CKH) Act to FORA Dissolution

LAFCO fundamentally disagrees with the FORA June 22 letter's interpretation of the applicability of the CKH Act (LAFCO's enabling legislation) to FORA dissolution as represented in FORA's June 22, 2020 letter to LAFCO. The letter asserts that LAFCO had – but failed to use – powers invested in it under the CKH Act to impose obligations and liabilities on FORA member agencies.

LAFCO has established that FORA dissolution is undertaken pursuant solely to the FORA Act, as amended in 2012 – not pursuant to the CKH Act – in multiple writings, including the August 27, 2018 LAFCO Executive Officer's report on FORA dissolution (Attachment 2), September 26, 2018 letter sent to FORA (Attachment 3), November 8, 2018 letter sent to FORA (Attachment 4), and December 3, 2018 LAFCO Executive Officer's report on FORA dissolution (Attachment 5). Important points in these writings are summarized below. FORA has had more than a year and a half to dispute LAFCO's conclusions and provide arguments as to how the CKH Act could be applicable to FORA dissolution, but it has never done so. The CKH Act remains fundamentally inapplicable to FORA dissolution as described in the attachments and below.

FORA Jurisdiction Subject to the CKH Act:

The FORA Act of 1994 includes the following statement (Section 67657[b]):

- “The jurisdiction of the authority [FORA] shall be the **territory** of Fort Ord. The jurisdiction of the authority is subject to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000” (emphasis added).

The above statement clarifies that the CKH Act remains applicable to changes to the territorial boundaries of FORA member entities– in other words, to boundary changes to FORA member agencies such as the cities of Marina, Seaside, Monterey, and Del Rey Oaks, and special districts such as Marina Coast Water District. In other words, the statement clarifies that the advent of FORA, and inclusion of cities and special districts within FORA, did not negate CKH's applicability to boundary changes for those individual member agencies. This clarification was neither unnecessary nor meaningless. This wording does not subject any other aspects of FORA, including its dissolution, to the CKH Act. Accordingly, since the creation of FORA in 1994, LAFCO and the CKH Act have had no role in overseeing or regulating ongoing FORA activities other than territorial

¹ In accordance with a one-year period for potential claimants to allege harms caused by government agency actions or inactions, with such period beginning as of the FORA Act's repeal on January 1, 2021, on advice from LAFCO counsel. Otherwise, LAFCO currently anticipates being able to release and distribute the \$500,000 litigation reserve's unexpended balance to the former FORA land use jurisdictions when all litigation matters have been resolved (potentially three to five years).

boundary changes and spheres of influence of FORA member agencies. The boundaries of these agencies would not be affected by FORA dissolution.

FORA As a District Within the Meaning of the CKH Act: The FORA Act states that “the authority [FORA] is a public corporation of the State of California that is independent of the agencies from which its board is appointed.” The CKH Act includes no mention of, or references specific to, FORA or Fort Ord. The fact that FORA meets the definition of a district in certain meanings of that word does not indicate that FORA is a district in the meaning of the CKH Act. The CKH definition of a district specifically excludes school districts, improvement districts, and other types of districts. In the 20+ years of FORA’s existence, LAFCO has not regulated the actions or activities of the FORA agency itself. LAFCO does regulate the boundaries and services of certain FORA member agencies – the cities and special districts – in accordance with the CKH Act, as with other cities and special districts. But FORA itself has no LAFCO-adopted sphere of influence and has not been subject of any LAFCO-adopted municipal service review studies. Additionally, if FORA were subject to the CKH Act, then FORA should have been contributing to LAFCO’s annual budget, which FORA has never done.

Various CKH Provisions are Inconsistent with FORA Dissolution: If FORA dissolution were subject to the CKH Act, then LAFCO would have discretion to approve or deny FORA dissolution, which is not the case. The Legislature has already decided that FORA dissolution will occur on a date certain. Additionally, CKH’s protest proceedings, if applicable, would allow for further uncertainty of timelines and final outcomes, potentially subjecting FORA dissolution to a vote of the people. This would be inconsistent with the Legislature’s definite and certain mandates for the FORA Act to become inoperative on June 30, 2020 and be repealed on January 1, 2021. Finally, the CKH Act is prescriptive about who the successor agencies are in a dissolution, which stands in stark contrast with the FORA Act’s requirement for FORA to identify and designate appropriate responsible successors through a substantive, deliberative Transition Plan process. In summary, the CKH Act cannot and does not provide a mechanism to accomplish FORA dissolution. The applicable statutory guidance is contained wholly within the FORA Act.

We appreciate your attention to these FORA dissolution matters.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachments:

1. LAFCO letter to FORA dated June 18, 2020 and attachment thereto
2. August 27, 2018 LAFCO Executive Officer’s Report on FORA dissolution
3. LAFCO letter to FORA dated September 26, 2018
4. LAFCO letter to FORA dated November 8, 2018
5. December 3, 2018 LAFCO Executive Officer’s Report on FORA dissolution

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

2020

June 18, 2020

Commissioners

Chair

Ian Oglesby
City Member

Vice Chair

Christopher Lopez
County Member

Luis Alejo

County Member

Joe Gunter

City Member

Mary Ann Leffel

Special District Member

Matt Gourley

Public Member

Warren Poitras

Special District Member

Maria Orozco

City Member, Alternate

Jane Parker

County Member, Alternate

Steve Snodgrass

Public Member, Alternate

Graig R. Stephens

Special District Member, Alternate

Counsel

Kelly L. Donlon

General Counsel

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

FORA Chair/Supervisor Jane Parker
FORA Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: June 19, 2020 FORA Board Agenda Item 7c 2018 Transition Plan Update

Dear FORA Chair/Supervisor Jane Parker and FORA Board of Directors,

On behalf of the Local Agency Formation Commission (LAFCO) of Monterey County, I am writing in our dissolution oversight role to respectfully comment on Item 7c 2018 Transition Plan Update on the June 19 agenda. Specifically, LAFCO requests that the FORA Board remove new and improper language in sections 1.5, 2.2.8, and 3.1 designating successor agency responsibilities and assigning liabilities to LAFCO (as shown in the attachment to this letter in redline changes). LAFCO objects to new language in section 1.5 to designate LAFCO as the responsible successor agency for litigation concerning FORA's public records, in section 2.2.8 to assign liabilities to LAFCO stemming from late discovered items, and in section 3.1 to designate LAFCO as the responsible successor agency for all legal, financial, and unresolved matters and to assign to LAFCO all unassigned liabilities.

LAFCO cannot and refuses to accept FORA's proposed draft Transition Plan language attempting to shift some of FORA's responsibilities and liabilities to LAFCO. LAFCO rejects FORA staff and counsel's proposals in the following Transition Plan sections:

Section 1.5 – Successor to Litigation Concerning FORA's Records

FORA seeks to designate LAFCO as the responsible successor to litigation concerning FORA's public records prior to July 1, 2020. This is inappropriate because LAFCO cannot inherit the risks that FORA assumed through its compliance or lack of compliance in maintaining its public records. Moreover, the Public Records Act imposes no responsibility on an agency for records it does not own, control or possess.

Section 2.2.8 – Successor to Late Discovered Liabilities

FORA attempts to assign payment responsibilities for late discovered items not tied to real property that result in a liability to County of Monterey and LAFCO. FORA would have LAFCO apply any unexpended funds received from FORA to satisfy these liabilities. This proposed use of funds is improper because the FORA-LAFCO indemnification agreement makes no provision for the \$500,000 received by LAFCO to be used as a funding source to satisfy liabilities or claims levied against FORA or its member agencies. Rather, the indemnification agreement specifies that the \$500,000 is to be used to protect and reimburse LAFCO from a FORA-related legal action or proceeding. Furthermore, FORA staff and counsel's actions to attempt to transfer liabilities to LAFCO are contrary to FORA's indemnification agreement commitments to defend and indemnify LAFCO in matters of FORA dissolution.

Section 3.1 – Successor to All Legal, Financial, and Unresolved Matters and to All Unassigned Liabilities

FORA seeks to designate LAFCO as the responsible successor to all legal, financial, and other unresolved matters, and to assign all liabilities not otherwise specifically assigned in the Transition Plan to LAFCO. As previously pointed out, LAFCO cannot

inherit risks that FORA assumed through its own action or inaction and LAFCO's funds received from FORA are for use in LAFCO's own legal defense.

LAFCO's Limited Role in FORA Dissolution

The FORA Act, California Government Code sections 67650 to 67700, gives LAFCO the oversight role, without enforcement authority, to ensure that FORA completes its dissolution process role of preparing, approving, and transmitting a Transition Plan to LAFCO. Specifically, Government Code section 67700(b)(1) mandates that LAFCO: "provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred."

Put simply, there is no legal basis for FORA to include this new language in its Transition Plan and to attempt to place FORA's non-land use related liabilities on LAFCO. California Government Code section 67700 does not invest LAFCO with authority to make assignments, designations or provisions in the event the transition plan approved by the FORA Board failed to do so, nor does it invest LAFCO with authority to accept successor agency responsibilities and assignment of liabilities. The language merely places LAFCO in a referee position to aid in the dissolution process, which LAFCO has done over the last four years through its regular involvement and communications with FORA and interested stakeholders.

Generally, LAFCO has a "watchdog" role, as created by the Legislature, to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies. LAFCO also has regulatory and planning responsibilities under the Cortese-Knox-Hertzberg Act for local agencies. FORA is not and has never been regulated by LAFCO. Dissolution of FORA is undertaken pursuant to the FORA Act, not the Cortese-Knox-Hertzberg Act. Through the FORA Act, as amended, the Legislature has declared that FORA shall dissolve as of June 30, 2020. LAFCO has no statutory basis on which to approve, conditionally approve, or deny FORA dissolution.

Impractical for LAFCO to Perform Proposed Responsibilities and Assignments

In the context of FORA dissolution, LAFCO cannot be an active participant in performing successor agency responsibilities and taking on assignment of liabilities because LAFCO's role is to perform oversight of the dissolution process conducted by FORA and its designated successors. It would be a conflict if LAFCO took on responsibilities, for which it is also responsible for monitoring and reviewing to ensure completion. Also, importantly, LAFCO is solely funded through its member agency contributions. Requiring LAFCO's members, a majority of who have nothing to do with FORA, to be responsible for FORA's unresolved responsibilities and liabilities is patently unfair. Furthermore, LAFCO lacks the staff and financial resources to assume FORA's responsibilities and liabilities.

FORA's Responsibility to Negotiate Proper Successors

LAFCO takes exception to a representation made in the staff report for Item 7c stating that the proposed 2018 Transition Plan changes, as related to identifying successors to FORA obligations, were reviewed at previous FORA Board meetings. LAFCO only discovered these recent changes to sections 1.5, 2.2.8, and 3.1 as of June 17, 2020 when a redline version of the 2020 Transition Plan was posted to the FORA Board website. These changes were not included in previous FORA Board agenda items pertaining to the draft Transition Plan.

LAFCO also takes exception to FORA staff and counsel's proposed last-minute divesting of its responsibilities and liabilities to LAFCO. LAFCO is not a proper successor in these matters as pointed out in this letter. FORA staff and counsel did not consult LAFCO about these proposed successor designations and liability assignments to LAFCO. LAFCO has clearly communicated its limited FORA dissolution role from the onset, which was understood in the FORA Board's adoption of the 2018 Transition Plan on December 19, 2018. Since neither FORA or LAFCO could compel FORA member agencies to become responsible successors to FORA's responsibilities and obligations, FORA's 2018 Transition Plan envisioned a process of FORA negotiating Transition Plan Implementing Agreements with FORA members. Although FORA staff and counsel successfully negotiated some implementing agreements such as the ESCA and EDC Agreements with City of Seaside, FORA negotiators failed to reach agreement on a Multi-Agency Implementing Agreement. FORA staff and counsel should not seek to remedy these circumstances by attempting last-minute to shift FORA responsibilities and liabilities to LAFCO.

Given the reasons described in this letter, LAFCO requests that FORA remove language in sections 1.5, 2.2.8, and 3.1, as shown in the attachment to this letter in redline changes. Thank you for your attention to these

urgent dissolution matters. Also, I would like to apprise you that the Local Agency Formation Commission will conduct a public hearing on June 22 at 4:00 p.m. to consider a resolution making determinations about FORA's scheduled dissolution on June 30.

Sincerely,

A handwritten signature in blue ink that reads "Kate McKenna". The signature is fluid and cursive, with the first name "Kate" and last name "McKenna" clearly legible.

Kate McKenna, AICP
Executive Officer

Attachment: Requested changes to FORA's 2020 Transition Plan Update

Requested changes to FORA's 2020 Transition Plan Update included as **Attachment A** to Item 7c in the June 19, 2020 FORA Board meeting packet:

1.5 Transfer of FORA's Records:

Except for (a) records pertaining to the ESCA, which records will be transferred to the City of Seaside as custodian pursuant to the ESCA contract documents; (b) records transferred to the local redevelopment authority designated as FORA's successor in connection with the EDC MOA; and (c) records of attorney-client privileged communications and materials protected by the attorney work product doctrine, which will be transferred to Authority Counsel, Kennedy, Archer & Giffen, PC, all of FORA's public records will be transferred to the County of Monterey which shall be the custodian and is designated as the responsible successor agency for records management and compliance with applicable law concerning FORA's public records, including but not limited to the California Public Records Act for the period after FORA's dissolution. Appropriate compensation to the County and the County's responsibilities with regard to the stewardship of FORA's public records will be further defined in an agreement entered into between FORA and the County prior to FORA's dissolution. ~~FORA hereby designates LAFCO as the responsible successor agency for any litigation concerning FORA's compliance or alleged lack of compliance with applicable law, including but not limited to the California Public Records Act, concerning FORA's records for the period prior to FORA's dissolution.~~

2.2.8 Late Discovered Items: To the extent that any contractual or other obligation of FORA is discovered during implementation of this Transition Plan, those obligations shall be assigned as follows: If the liability or obligation is related to the use of real property, it shall be assigned to the underlying land use jurisdiction. If the liability or obligation is unrelated to the use of real property, LAFCO shall notify any appropriate insuring entity and the County. Upon the establishment of the validity and amount of the liability or obligation by LAFCO and the County acting in coordination with each other, such established liability or obligation shall be paid or discharged first (a) by the County applying monies, if any, then on hand in the FORA accounts; next (b) ~~by LAFCO applying any then unexpended funds received from FORA, including but not limited to the litigation reserve funds received from FORA as described in Section 2.1.3; and only then (c)~~ by encumbering and expending future property tax revenues pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of FORA's recognized debts have been retired.

3.1 Schedule of Remaining Obligations, General Designation of Responsible Successor Agency, and General Assignment of Liabilities:

Obligation	Reference in Updated Transition Plan
Implementation of Mitigation Measures Pertaining to North-South Road/Highway 218 Project and CEQA Lead Agency Status	See Section 1.2
Implementation of Mitigation Measures Pertaining to Relocation and Reconfiguration of General Jim Moore Boulevard Project and CEQA Lead Agency Status	See Section 1.2
Habitat Management Responsibilities on Sites Held by the Monterey Peninsula Community College District	See Section 1.2
Repair of Stormwater Infiltration Units on Eucalyptus Road CEQA Lead Agency Status	See Section 2.1.5
Removal of the Stockade and Ancillary Buildings CEQA Lead Agency Status	See Section 2.1.5
South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements CEQA Lead Agency Status	See Section 2.1.5
Transfers of Real Property in accordance with the federal "Pryor Amendment"	See Section 2.1.9
Payment of Unfunded Terminated Agency Liability to CalPERS	See Section 2.2.1
Payment of Late Discovered Obligations	See Section 2.2.8 <i>(note: incorporate LAFCO's changes)</i>
Successor for Litigation Matters	See Section 3.1 (also 1.5)
FORA Contract with California Native Plant Society and City of Del Rey Oaks	See Section 3.3

Except as identified in the schedule of remaining obligations set forth above or specifically provided for elsewhere in this Transition Plan, FORA is not aware of any remaining obligations. ~~In recognition that FORA has transmitted funds identified for indemnification of LAFCO in the aggregate amount of \$500,000 as described in Section 2.1.3, except as specifically provided to the contrary elsewhere in this Transition Plan, FORA hereby designates LAFCO as the responsible successor agency for all legal, financial, and other unresolved matters, known and unknown, and assigns to LAFCO all liabilities not otherwise specifically assigned in this Transition Plan.~~

AGENDA ITEM NO. 13

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369
Salinas, CA 93902
Telephone (831) 754-5838

132 W. Gabilan Street, Suite 102
Salinas, CA 93901
www.monterey.lafco.ca.gov

DATE: August 27, 2018
TO: Chair and Members of the Commission
FROM: Kate McKenna, AICP, Executive Officer
SUBJECT: Fort Ord Reuse Authority (FORA) Dissolution Process Update

SUMMARY OF RECOMMENDATION:

It is recommended that the Commission:

1. Receive the Executive Officer's report; and
2. Provide general direction to staff.

EXECUTIVE OFFICER'S REPORT:

Purpose

This report provides a background summary of FORA dissolution, highlights two primary areas of concern with the current process, and discusses LAFCO staff-recommended next steps. Staff requests that the Commission provide general direction on this significant component of LAFCO's 2018-19 work program.

Background

FORA is legislatively scheduled to "sunset" by June 30, 2020. The enactment of AB 1614 in 2012 included a role for LAFCO to "provide for the orderly dissolution of FORA." Per AB 1614, FORA is required to prepare and submit a transition plan to LAFCO by December 30, 2018. The transition plan "shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of obligations."

In January 2018, the Commission approved a staff-prepared review of LAFCO's statutory responsibilities and expectations for FORA dissolution (Attachment 1). A total of four staff-level meetings between FORA and LAFCO have taken place since January. During these meetings, LAFCO staff received updates on the draft plan sections, discussed anticipated next steps in the dissolution process, and reiterated LAFCO's need to receive a thorough and comprehensive transition plan from FORA.

FORA continues to work towards completion of a comprehensive transition plan pursuant to the requirements of AB 1614. To the degree that the FORA's transition plan comprehensively addresses the statutory requirements when FORA submits a transition plan to LAFCO, that level of completeness will support LAFCO's efforts to provide for FORA's orderly dissolution.

Primary Areas of Concern

1) Status of FORA's Transition Plan Development

FORA's documents identify a goal of the FORA board receiving a substantially completed transition plan from FORA staff by September or October. That timeframe is quickly approaching. However, FORA's initial June 5, 2018 draft transition plan inventoried a wide range of fundamental, but largely unanswered,

questions regarding post-FORA roles and responsibilities. The July 13 FORA board report (Attachment 2) summarized and distilled these unresolved matters into a more streamlined format. However, as of this writing, there are no clear indications that a comprehensive plan addressing post-FORA responsibilities, successor agencies, the timing of transfer of assets and obligations, and similar key aspects of FORA dissolution, is nearing completion.

LAFCO staff therefore anticipates that, as a practical matter, the final transition plan that FORA will submit to LAFCO by the end of 2018 will likely need to include an inventory of not-yet-resolved matters, as well as outlining a process of how and when FORA anticipates reaching a final determination on these matters, whether that occurs before or after LAFCO adopts a resolution making determinations as to FORA dissolution. FORA's transition plan should also discuss a process for resolving additional, unforeseen issues that may emerge after the transition plan has been submitted to and acted on by LAFCO.

FORA and others should not expect the limited-duration LAFCO process itself to refine the transition plan to completion, or to function as a mechanism to continue to seek consensus on all unresolved, substantive aspects of the transition plan after FORA submits its plan to LAFCO. As previously stated and clearly outlined in AB 1614, it is incumbent on the FORA-prepared transition plan, not on LAFCO, to "assign assets and liabilities, designate responsible successor agencies, and provide a schedule of obligations." Additionally, the FORA board, staff, and consultants have the subject-matter expertise and the experience that are needed to craft the transition plan and carry it through to FORA's anticipated sunset date in 2020.

The dissolution of FORA is undertaken pursuant to specific 1994 State legislation known as the FORA Act, as amended by AB 1614 in 2012. The FORA Act does not specify a remedy if FORA's transition plan, or subsequent implementation actions by FORA through June 30, 2020, fall short of meeting AB 1614's statutory obligations. At a minimum, if the Commission were to determine that the transition plan does not meet the requirements set forth in AB 1614, then LAFCO may find it necessary to send the plan back to FORA for revision and resubmittal to LAFCO.

2) Assignment of Roles and Duties to Prospective FORA Successor Agencies

On August 7, LAFCO received from FORA a draft resolution (Attachment 3) listing various findings and conditions of approval for the FORA board to consider alongside a draft transition plan in September or October. These proposed findings included requesting that LAFCO impose requirements, specifically regarding a potential replacement for the FORA Community Facilities District fee and responsibility for not-yet-completed FORA roadway projects, on anticipated successor agencies – in this case the Ord Community Cities and the County, and the Transportation Agency for Monterey County, respectively.

In response, LAFCO staff submitted a memo (Attachment 4) to FORA on August 8, and also attended the August 10 FORA meeting to speak on this subject. To summarize the August 8 memo, neither AB 1614 nor statewide LAFCO law (the Cortese-Knox-Hertzberg, or CKH Act) appears to give LAFCO any legal basis to impose such requirements on any public agency in the context of FORA dissolution.

The dissolution of FORA is undertaken pursuant to the FORA Act, as amended by AB 1614, not pursuant to the CKH Act. The CKH Act applies only to changes to local agencies. The CKH Act's definition of a local agency includes cities, counties, and special districts. More specifically, Section 56100(a) of CKH states that CKH "provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts" (emphasis added). The FORA Act states that "the authority [FORA] is a public corporation of the State of California that is independent of the agencies from which its board is appointed." The CKH Act includes no mention of, or references specific to, FORA or Fort Ord.

It is unclear whether FORA falls within the definition of a special district as defined by the CKH Act. In the 20+ years of FORA's existence, LAFCO has not regulated the actions or activities of the FORA agency itself. LAFCO does regulate the boundaries and services of certain FORA member agencies – the cities and special districts – in accordance with the CKH Act, as is the case with other cities and special districts.

FORA itself has no LAFCO-adopted sphere of influence and has not been subject of any LAFCO-adopted municipal service review studies.

The FORA Act of 1994 includes the following statement (Section 67657[b]):

- “The jurisdiction of the authority [FORA] shall be the **territory** of Fort Ord. The jurisdiction of the authority is subject to the provisions of the Cortese-Knox- Hertzberg Local Government Reorganization Act of 2000” (emphasis added).

The above statement clarifies that the CKH Act remains applicable to **changes to the territorial boundaries** of FORA member entities– in other words, to **boundary** changes to FORA member agencies such as the cities of Marina, Seaside, Monterey, and Del Rey Oaks, and special districts such as Marina Coast Water District. This wording does **not** subject any other aspects of FORA, including its dissolution, to the CKH Act. Accordingly, since the creation of FORA in 1994, LAFCO and the CKH Act have had no role in overseeing or regulating ongoing FORA activities other than territorial boundary changes and spheres of influence of FORA member agencies. The boundaries of those agencies would not be affected by FORA dissolution, unless boundary changes are sought, separately, through the standard LAFCO proposal process, as Marina Coast Water District is currently pursuing. The CKH Act **is** applicable in such instances.

Additionally, even if FORA were to be construed as a district, the CKH Act is a “general,” statewide statute. Its general provisions regarding agency dissolution would, in the current context, be superseded by the FORA Act, as amended by AB 1614, which is specific to FORA dissolution. The FORA Act and AB 1614 define and prescribe LAFCO’s role in FORA dissolution as follows:

- “LAFCO shall provide for the orderly dissolution of the authority [FORA] including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred.”

AB 1614 makes no reference to the CKH Act. The whole of the FORA Act appears to contain no other references to the CKH Act other than the reference to the geographic boundaries of FORA member agencies, discussed immediately above.

AB 1614, not the CKH Act, is the statute that provides the legal authority and guidance for FORA dissolution. This is an important distinction, in that the CKH Act’s provisions (Section 56886, among others) authorize the Commission to potentially impose certain conditions of approval on the dissolution of a city or district. These authorizations are not applicable to Commission actions taking place outside the context of the CKH Act, as is the case with FORA dissolution. AB 1614 defines a limited role (see above) for LAFCO to provide for the orderly dissolution of FORA. AB 1614 does not extend the CKH Act’s provisions to FORA dissolution, nor does AB 1614 provide LAFCO with any other apparent legal basis to unilaterally impose directives on FORA member agencies (the cities, the county, and TAMC) as was proposed in FORA’s July 10 draft resolution.

Based on the preceding information, FORA must plan to take responsibility both for identifying successor agencies, and for arranging and negotiating to actually transfer its existing roles and responsibilities to those agencies in accordance with its principal act (the FORA Act of 1994, as amended by AB 1614), and according to other existing, applicable laws and legal doctrines. LAFCO cannot carry those actions out on FORA’s behalf.

Staff has reviewed the applicable statutes – including the FORA Act and CKH Act – with LAFCO’s legal counsel and determined that LAFCO’s authorized role in FORA dissolution is defined in the FORA Act, as amended by AB 1614, listed above. LAFCO’s role will begin when FORA submits its transition plan. A staff-recommended framework of the specific subsequent actions proposed to put LAFCO’s statutory role into action is discussed in the **Next Steps** section, below.

Other Related Elements of FORA Dissolution

FORA will be the CEQA lead agency and LAFCO will be a responsible agency. FORA has indicated its likely intent to determine that approval of the transition plan is either not within the definition of a “project” under CEQA, or is categorically exempt as an organizational change. No formal actions have taken place on an environmental document. A signed indemnification agreement from FORA, indemnifying LAFCO’s actions regarding FORA dissolution, is also anticipated with the final transition plan in December. It is LAFCO staff’s understanding that, alongside the dissolution planning process, the FORA board is also still considering pursuing an additional legislative extension.

Next Steps

The attached, LAFCO staff-recommended tentative schedule (Attachment 5) outlines specific steps to implement LAFCO’s statutory role in FORA’s dissolution. This updated schedule expands on the approach that was introduced in concept in the January 2018 LAFCO agenda item report.

The schedule incorporates an initial public review period, a study session, responses to the transition plan, potential revisions by FORA to the transition plan, and a LAFCO resolution making determinations for the dissolution of FORA. Subsequent to LAFCO’s dissolution resolution, the FORA board will have approximately 15 months remaining to execute contractual agreements with all successor agencies, fulfill any conditions of approval set forth and adopted by the FORA board or LAFCO, and refine any unresolved matters that may remain in the transition plan at the time of LAFCO’s resolution action.

In terms of any ongoing LAFCO role subsequent to approval of a FORA dissolution resolution (i.e. between approximately April 2019 and July 2020), the Commission may consider requiring periodic status updates from FORA to verify that the dissolution is occurring in accordance with the transition plan and with LAFCO’s resolution on FORA dissolution. However, it is ultimately the responsibility of FORA, not LAFCO, to impose responsibilities and assign obligations to the proposed successor agencies.

LAFCO’s formal role will begin upon receiving from FORA a transition plan. In the meantime, LAFCO staff will continue to work with FORA, Senator Monning’s office, and other stakeholders to assist in carrying out the important work mandated by AB 1614.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Prepared by: Joe Serrano, Senior Analyst

Attachments:

1. LAFCO January 22, 2018 Staff Report
2. FORA July 13, 2018 Staff Report
Related note – The first draft transition plan was presented to the FORA board on June 8, 2018:
http://www.fora.org/Board/2018/Packet/Additional/060818_Transition_Plan_Draft_Study_session_Report.pdf
3. FORA’s Draft Resolution circulated on August 7, 2018
4. LAFCO Memo to FORA dated August 8, 2018
5. LAFCO Schedule – FORA Dissolution Process (updated as of August 27, 2018)

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

September 26, 2018

**2018
Commissioners**

Board of Directors, Fort Ord Reuse Authority
920 Second Ave., Marina CA 93933

Chair

Warren Poitras
Special District Member

Re: FORA Transition Plan

Vice Chair

Matt Gourley
Public Member

Luis Alejo
County Member, Alternate

Dear FORA Board Members:

Joe Gunter
City Member

The staff of the Local Agency Formation Commission of Monterey County (“LAFCO”) has reviewed the staff report and draft transition plan on the agenda of the FORA meeting of September 28, 2018, and has consulted with its General Counsel with regard to LAFCO’s role in FORA’s transition and dissolution. We would like to reiterate LAFCO’s position with respect to its role in the transition process as set forth in the FORA Act, specifically Government Code section 67700.

Mary Ann Leffel
Special District Member

Section 67700 requires FORA to transmit to LAFCO a transition plan that “shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations [emphasis added].” The Government Code does not invest LAFCO with any authority to make such assignments, designations or provisions in the event the transition plan approved by your Board fails to so do, nor does it not make the provisions of the Cortese-Knox-Hertzberg Act (Government Code section 56000 et seq., “CKH”) applicable to the transition process. Had it wished to do so, the Legislature easily could have made CKH specifically applicable, but it did not. In addition, the dissolution process in CKH contains a majority protest procedure which could defeat the specific intent of the Legislature that FORA be dissolved by June 30, 2020; we do not believe the Legislature intended such a result.

Maria Orozco
City Member, Alternate

Jane Parker
County Member

Ralph Rubio
City Member

Simón Salinas
County Member

We caution against any amendment of CKH to address FORA-specific issues, as LAFCO has neither the subject-matter expertise nor resources to undertake a substantive role in FORA’s dissolution, and CKH is a law of general applicability addressing disincorporation and dissolution of agencies under its jurisdiction. Finally, we point out that LAFCO does not have jurisdictional authority over many members of FORA, including the County of Monterey, CSUMB, the UC system, or MPC. This lack of jurisdiction makes LAFCO’s role in a substantive manner questionable.

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Counsel

Leslie J. Girard
General Counsel

LAFCO believes it is incumbent upon FORA to adopt and transmit to LAFCO a fully developed transition plan that can be implemented without LAFCO needing to make additions or changes to the plan. If such a plan is approved and transmitted, LAFCO will fulfill its statutory duty to ensure that the plan is implemented as set forth in Government Code section 67700(b)(1).

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

Sincerely,



Kate McKenna, AICP
Executive Officer

www.monterey.lafco.ca.gov

CC:
LAFCO Commissioners
Leslie Girard, LAFCO General Counsel

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

2018

November 8, 2018

Commissioners

Chair

Warren Poitras
Special District Member

Board of Directors
Fort Ord Reuse Authority
920 Second Avenue
Marina CA 93933

Vice Chair

Matt Gourley
Public Member

RE: FORA Transition Plan Resolution

Luis Alejo

County Member, Alternate

Dear FORA Board Members:

Joe Gunter
City Member

I am writing with respect to the draft Transition Plan Resolution (“Plan”) prepared for the November 9, 2018 meeting of your Board. This revised Plan includes formatting changes and other revisions from the previous version circulated for the FORA board meeting on October 29, 2018. We have not yet had the opportunity to brief our Commission on the proposed Plan, and intend to do so at the Commission’s last meeting of the calendar year on December 3, 2018. I am writing with staff and counsel’s observations regarding the Plan so that you have the benefit of those observations at your meeting of November 9.

Mary Ann Leffel
Special District Member

Maria Orozco
City Member, Alternate

Jane Parker
County Member

Ralph Rubio
City Member

Simón Salinas
County Member

First, we would like to acknowledge that the transition planning process, and the obligation to create an enforceable and effective Plan, is a difficult task, and we commend the Board and your staff for the effort to comply with the requirements of the FORA Act with regards to transition planning. However, we believe the Plan is flawed with respect to the assumptions regarding LAFCO’s authority and role in that transition.

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Specifically, paragraph 4.5 of the Plan purports to set forth LAFCO’s authority with respect to the transition and FORA’s dissolution. We believe that paragraph is not accurate. The paragraph assumes that LAFCO will act with respect to the dissolution consistent with its powers under LAFCO’s organic law, the Cortese-Knox-Hertzberg Act (“CKH”), set forth at Government Code sections 56000 et seq. For example, the paragraph states:

Counsel

Leslie J. Girard
General Counsel

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

If by the time of FORA’s dissolution Transition Plan Implementing Agreements have not been entered into by all of the relevant jurisdictions or have not been approved by FORA, the assignments of assets, liabilities and obligations described in this Transition Plan shall be imposed pursuant to Government Code [section] 67700 and LAFCO shall handle such assignments as though they were conditions of special district dissolution imposed pursuant to . . . section 56886 [of CKH] and use all of LAFCO’s powers to enforce such assignments, including but not limited to by using enforcement powers under . . . sections 56122 [of CKH] or 67700 [of the FORA Act] as to the member jurisdictions.

Our main concern with this language is that section 67700 of the FORA Act does not make the dissolution of FORA subject to CKH; it merely gives LAFCO oversight over the implementation of a Transition Plan that is required to “assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.” Had the legislature intended to make FORA’s dissolution subject to the

provisions of CKH it could have easily done so by specifically referencing CKH; it did not. Instead, the legislature created a process outside of CKH that gave LAFCO a limited role, and not a substantive one to make decisions where FORA and the Plan did not.¹ We have previously outlined this concern in writings to the FORA Board (August 8 and September 26, 2018) and in the August 27, 2018 LAFCO meeting agenda packet.

There are many instances in the Plan where it is uncertain if agreements can be reached, and whether, even if reached, can be enforced. For example, paragraph 1.6 contemplates that the Environmental Services Cooperative Agreement (ESCA) obligation should be continued under either the County, City of Seaside, or a to-be-formed JPA. However, if the County and City were to decline this obligation, and the JPA is never formed, the recourse is unclear. LAFCO does not have the authority to make determinations on how the ESCA obligation should continue, much less who should take it.

Similarly, paragraph 4.2 calls for the member jurisdictions to enter into Transition Plan Implementing Agreements in order to address revenue generation and associated obligations. If, however, the member jurisdictions do not reach such agreements by the time FORA sunsets, no clear recourse is identified. LAFCO does not have the statutory authority to impose obligations and decide revenue sharing mechanisms.

In short, and subject to feedback and input from our Commission, we urge FORA's member jurisdictions to reach contractual agreements among themselves, over which LAFCO will have oversight and potential enforcement authority. Absent such agreements with respect to all matters, LAFCO does not have the statutory authority to, in essence, substitute our own determinations for Plan issues that can only appropriately be resolved by member jurisdictions.

We are prepared to continue working with FORA staff, Senator Monning's office, and staff of the member jurisdictions, to address these concerns and resolve uncertainties as FORA addresses the Plan required by its Act. We also look forward to briefing our Commission on the proposed Plan and receiving their input at the December 3 LAFCO meeting.

Sincerely,

A handwritten signature in blue ink that reads "Kate McKenna". The signature is fluid and cursive, with the first name "Kate" and last name "McKenna" clearly legible.

Kate McKenna, AICP
Executive Officer

cc:

LAFCO Commissioners
Leslie J. Girard, LAFCO General Counsel
Senator Bill Monning

¹ We point out that CKH does not give LAFCO authority over a number of the jurisdictions that make up or have a role in FORA, including the County of Monterey, the Transportation Agency for Monterey County, the University of California and California State University systems, Monterey Peninsula College, and the Army. In addition, the dissolution proceedings for a special district in CKH have a majority protest proceeding, in which land owners can object to the dissolution; a condition that we submit was not contemplated by the legislature in the dissolution of FORA.

AGENDA ITEM NO. 13

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369
Salinas, CA 93902
Telephone (831) 754-5838

132 W. Gabilan Street, Suite 102
Salinas, CA 93901
www.monterey.lafco.ca.gov

DATE: December 3, 2018
TO: Chair and Members of the Commission
FROM: Kate McKenna, AICP, Executive Officer
SUBJECT: Fort Ord Reuse Authority (FORA) Dissolution Process Update

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Commission:

1. Receive the Executive Officer's report;
2. Receive brief update from FORA staff;
3. Receive any public comments;
4. Provide for any questions or follow-up discussion by the Commission;
5. Affirm staff and counsel's analysis of LAFCO's roles and responsibilities under Government Code Section 67700, and adopt this as the Commission's position, and
6. Provide general direction to staff.

EXECUTIVE OFFICER'S REPORT:

Purpose

This report is part of a series of updates to provide the Commission with current information relating to the scheduled dissolution of FORA, and a related transition planning process. The dissolution task is a significant work program component of LAFCO. In addition to updated information, this report recommends that the Commission affirm staff and counsel's position regarding LAFCO's role under State law.

Background

LAFCO staff and counsel have been working with the FORA staff and Senator Monning regarding the scheduled dissolution of the Fort Ord Reuse Authority in 2020 and the transition plan that FORA is required to submit to LAFCO this month. Pursuant to the FORA Act, as amended by Assembly Bill No. 1614, the transition plan "shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of obligations." Also per AB 1614, this Commission's role is to act as an oversight body in order to "provide for the orderly dissolution of FORA."

Transition Plan Status

FORA is considering four draft alternative transition plans. A limited formal role for LAFCO will begin upon receiving an adopted transition plan in coming weeks. It is anticipated that further revisions and negotiations will take place in 2019, and that FORA will update and resubmit a transition plan to LAFCO for final review and adoption in Fall 2019. LAFCO monitoring and possible enforcement responsibilities will be determined as the transition planning process unfolds in 2019 and 2020.

Transition Plan Alternatives and Consensus Activities

FORA's draft transition plan has been modified as recently as November 9, and continues to propose an expansive role for LAFCO. LAFCO staff submitted a comment letter to the FORA Board on November 8 (Attachment 1), restating our concerns that LAFCO cannot impose requirements on FORA member jurisdictions. Three alternative plans were also introduced in early November – one by a group of FORA Board members, one by the City of Marina, and one is a hybrid alternative by the FORA staff. The four transition plans are available on the LAFCO website for public review: <http://www.monterey.lafco.ca.gov>.

To date, the FORA Board and most member jurisdictions have not taken positions on the draft plan alternatives. FORA referred all four plans for analysis and reconciliation to an attorney working group representing the land use jurisdictions. LAFCO general counsel is coordinating with the working group and FORA staff.

On November 28, the FORA Administrative Committee held a workshop to get consensus on certain policy issues in the transition plan. It is anticipated that the FORA Board may act on a transition plan at the next scheduled meeting on December 14. FORA intends to submit a transition plan to LAFCO by the December 30 deadline.

Implementing Agreements

All four transition plans will include the development of “Implementing Agreements” in 2019. These proposed local agreements will be among the FORA member jurisdictions and are intended to address issues such as base assets and liabilities, mitigation measures and the possible replacement of existing funding mechanisms and revenue sharing arrangements.

FORA will integrate any adopted local agreements into a revised transition plan for resubmittal to LAFCO for final review and action in Fall 2019.

Facilitation Process

FORA seeks a facilitator to assist FORA member jurisdictions in negotiating cooperative implementation agreements. The facilitator will be tasked to complete the agreements and to clear disputes relative to legal authority and assignability of FORA assets, resources, obligations, and liabilities. A significant area of uncertainty and controversy is the extent to which major projects (primarily roadways, water augmentation, and habitat conservation planning) in FORA's Capital Improvement Program are mandatory or discretionary for successor agencies. That issue will affect the outcome of member jurisdiction discussions in coming months. The facilitation contract, when executed, will be managed by FORA staff.

The FORA Board has extended an invitation to LAFCO to participate in the facilitation process. LAFCO staff will attend facilitated (and non-facilitated) local agency meetings as invited, to remain engaged and informed about the evolution of the transition planning process.

California Environmental Quality Act (CEQA) Determination

LandWatch of Monterey County has submitted three letters challenging FORA staff's recommendation that the FORA Board should determine the transition plan to be exempt from environmental review under CEQA. LandWatch asserts that the transition plan requires an environmental impact report. It appears likely that the organization will challenge the FORA Board (as the CEQA Lead Agency) throughout the transition planning process. If so, such challenge may affect LAFCO's processing of the transition plan (as a CEQA Responsible Agency) in 2019 and 2020. Keep Fort Ord Wild (KFOW) legal counsel has also submitted concerns about FORA's proposed CEQA determination.

FORA staff met with LandWatch on November 20 to discuss its concerns with the draft transition plan. LandWatch offered to propose specific changes to the November 8 hybrid transition plan alternative. In a letter dated November 27, LandWatch proposed changes that would address its primary concerns relating to road/transit projects and water supply allocations. These changes were discussed at the FORA workshop on November 28 (see above). Referenced letters are available on FORA's website (refer to the “Received Items” on the Meeting Schedule & Material webpage): <https://www.fora.org/board.html>

Potential Legislative Actions

On a parallel track to the transition and dissolution process, FORA is continuing to seek a legislative extension of its 2020 sunset date. Such an extension could retain FORA in the same or different form. For instance, an extension could include changes to FORA's governance structure and a mandatory ramping-down of its current operations and budget.

Affirming LAFCO's Roles and Responsibilities

An issue that continues to be raised by FORA staff is LAFCO's role and authority post-FORA. Of the four transition plans in circulation, only the November 9 plan developed by FORA staff would require this Commission to enforce assignments and obligations to proposed successor agencies. Since January 2018, LAFCO staff has indicated to FORA, through correspondences and staff reports, that neither the FORA Act or the Cortese-Knox Herzberg Act direct LAFCO to enforce any actions outlined in a transition plan. Instead, Government Code Section 67700 specifically requires LAFCO to provide for the orderly dissolution of FORA. Processing the dissolution – based upon, and in accordance with, the transition plan to be adopted by the FORA board – is the only FORA-related role established for LAFCO under state law. Our interpretation, in consultation with legal counsel, is that the Legislature created a process outside of CKH that gave LAFCO a limited role, and not a substantive one to make decisions where FORA and the Plan did not. Staff recently reiterated this position in a letter dated November 8, 2018 to the FORA board (see Attachment 1).

With multiple transition plans in circulation, staff recommends that the Commission affirm and adopt the following positions previously discussed and outlined in LAFCO reports and letters:

1. LAFCO has a limited role of oversight regarding the implementation of a transition plan;
2. FORA dissolution is pursuant to the FORA Act, as modified by AB 1614. The provisions of Cortese-Knox-Hertzberg do not apply to the FORA transition planning and dissolution process. Accordingly, LAFCO urges that any transition plan specifically assign assets, liabilities and obligations (in accordance with GCS 67700) in order that LAFCO can oversee its implementation; and
3. A transition plan that leaves contingencies and unresolved issues for LAFCO decision does not meet the letter or the intent of GCS 67700. However, any transition plan submitted to LAFCO in December 2018 will remain subject to further negotiation and revision.

Enforcement responsibilities between FORA member jurisdictions and successor agencies, in conjunction with LAFCO's defined role and limited enforcement powers under state law, continue to evolve in discussions and in draft transition plans. Ultimately it will be the responsibility of FORA, not LAFCO, to impose responsibilities and assign obligations to the proposed successor agencies. By affirming the positions listed above, the Commission will provide clarity on LAFCO's limited role and authority to the FORA Board as it assigns responsibilities among its member agencies, and to the attorney working group that is tasked to assess, combine, and produce a revised transition plan based on four substantially different versions before the December deadline.

Next Steps

Under state law, LAFCO's formal role will begin once a transition plan is submitted. However, staff and legal counsel have been actively providing assistance outside the scope of the dissolution process. For example, LAFCO counsel and staff are in continuing discussions with FORA and Senator Monning with respect to LAFCO's role and the FORA transition planning process. General areas of discussion include the possible continuation of FORA's existing Community Facilities District development impact fees, continuation of property tax increment financing, and the status of the Base Reuse Plan post-FORA sunset. Legislative action, if any, is expected to run concurrently with the transition planning process in 2019.

FORA staff anticipate submitting a transition plan to LAFCO by December 30. In addition to the CEQA considerations discussed above, the seating of new FORA Board members following the November 6 elections may affect the FORA Board's considerations. While we expect to receive a transition plan this month, we also expect that the plan will continue to evolve to reflect cooperative local agreements and any legislative actions in 2019.

After FORA submits a transition plan to LAFCO, the plan will be posted on the LAFCO website and considered by the Commission in early 2019. If the Commission finds that the transition plan does not meet the prescribed requirements of the FORA Act, then LAFCO may find it necessary to provide preliminary comments and send the plan back to FORA for revision and resubmittal to LAFCO. FORA and LAFCO staff are now targeting Fall 2019 for resubmittal of a revised transition plan for final review and adoption by LAFCO.

Regular communication between LAFCO staff and the Commission and affected parties will be critical as certain concerns remain unresolved, the statutory deadline to submit a transition plan quickly approaches, and potential monitoring and limited enforcement responsibilities for LAFCO are identified in the evolving transition planning process. LAFCO staff will continue to work with FORA, Senator Monning's office and other stakeholders to assist in the successful completion of the transition plan and dissolution process.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Prepared by: Joe Serrano, Senior Analyst

Attachment:

1. LAFCO Letter to FORA Board, dated November 8, 2018

UNITED VETERANS COUNCIL



220 TWELFTH ST.
MARINA, CALIFORNIA 93933
831-384-9400
P.O. Box 184
Seaside, CA 93955
www.uvc-mc.com

Fort Ord Reuse Authority
Attn: Josh Metz
920 2nd Avenue, Suite A
Marina, CA. 93933

June 25, 2020

Subject: Thank You

Dear Mr. Metz,

On the occasion of the last meeting of the FORA Veteran Issues Advisory Committee I would like to take a moment to express the sincere gratitude of the United Veterans Council of Monterey County and the veteran community as a whole to the Fort Ord Reuse Authority staff past and present and to the many iterations of the FORA Board over the years.

Over these many years the Staff, under the guidance of both you and Mr. Houlemard, have supported veterans and our causes. They have provided guidance, helped us to get the word out concerning events and issues, established the VIAC, led in the groundbreaking ceremonies for the cemetery, helped the Veterans Transition Center obtain water for its expansion and myriad other concerns including continued development of the cemetery and conduct of the Heroes Open fundraising golf tournament. With careful wording and explanation from you and your predecessor the Board has been supportive of our concerns throughout culminating in the vote last week to support the continuation of the VIAC under the County Military and Veterans Affairs Office.

Please accept this letter in the spirit it is written and pass it on to your Board, Staff and to any previous staff and Board members you may still have contact with. Every one of these dedicated individuals have shown the county veteran community that they are supported when the "rubber hits the road". Thank you for your 20 plus years of support to veterans and to the redevelopment needs of Historic Ft. Ord.

Sincerely,

James Bogan, President

" S e r v i n g T h o s e W h o S e r v e d "

