

Monterey County

Meeting dates and locations are on the next page.

county



Meeting Agenda - Final

Thursday, August 23, 2018 9:00 AM

Friday, August 24, 2018 9:00 AM

SPECIAL MEETING

Fort Ord Committee

Special Fort Ord Committee Meeting Dates, Times, and Locations:

*August 23, 2018 9AM-1PM
Monterey County Government Center
Monterey Conference Room 2nd Floor
168 W. Alisal St.
Salinas, CA 93901*

*August 24, 2018 9 AM-1PM
Monterey County Government Facility
Thyme Conference Room 2nd Floor
1441 Schilling Place, Salinas, CA 93901*

The August 23, 2018 Special Meeting of the Fort Ord Committee will adjourn at 1pm and will reconvene as another Special Meeting at 9:00 am on August 24, 2018.

Call to Order**Additions and Corrections**

The Commission Clerk will announce agenda corrections, deletions and proposed additions, which may be acted on by the Fort Ord Committee as provided in Sections 54954.2 of the California Government Code. Regular Agenda, or at any other time during the course of the meeting announced by the Chairperson of the Board.

Public Comment Period

This is a time set aside for the public to comment on a matter that is not on the agenda.

Regular Agenda

1.
 - a. Consider options for the Fort Ord Reuse Authority Draft Transition Plan relative to:
 1. Financial Assets and Liabilities;
 2. Environmental Services Cooperative Agreement;
 3. Habitat Management;
 4. Transportation;
 5. And other topics and options discussed in the Fort Ord Reuse Authority Draft Transition Plan; and
 - b. Provide direction to staff for scheduling the Draft Transition Plan for Board of Supervisors' consideration, including but not limited to Committee recommendations regarding the Draft Transition Plan and the transition planning process;

Attachments: [Att1-Financial Assets Discussion](#)

[Att2-ESCA Discussion](#)

[Att3-BBKnowledge JPA in California](#)

[Att4-Memo from County Counsel](#)

Adjournment

DOCUMENT DISTRIBUTION: Documents relating to agenda items that are distributed to the Fort Ord Committee less than 72 hours prior to the meeting are available for public inspection at the front counter of the Resource Management Agency, Monterey County Government Center, 1441 Schilling Place – South, 2nd Floor, Salinas.

Documents distributed by County staff at the meeting of the Fort Ord Committee will be available at the meeting.

If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC Sec. 12132) and the federal rules and regulations adopted in implementation thereof. For information regarding how, to whom and when a person with a disability who requires a modification or accommodation in order to participate in the public meeting may make a request for disability-related modification or accommodation including auxiliary aids or services or if you have any questions about any of the items listed on this agenda, please call the Monterey County Resource Management at (831) 755-4800.



COUNTY OF MONTEREY - BOARD OF SUPERVISORS

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Please note: this meeting's minutes have not been finalized yet. Actions taken on legislation and their results are not available.

Details

Meeting Name: Fort Ord Committee Agenda status: Final
Meeting date/time: 8/23/2018 9:00 AM Minutes status: Draft
Meeting location: Meeting dates and locations are on the next page.
SPECIAL MEETING
Published agenda: [Special Meeting Agenda, August 23 & 24, 2018](#) Published minutes: Not available
Meeting video: Not available

Attachments:

Meeting Items (1)

File #	Agenda #	Name	Type	Title	Action	Result	Action Details	Video
<u>18-858</u>	1.		General Agenda Item	a. Consider options for the Fort Ord Reuse Authority Draft Transition Plan relative to: 1. Financial Assets and Liabilities; 2. Environmental Services Cooperative Agreement; 3. Habitat Management; 4. Transportation; 5. And other topics and options discussed in the Fort Ord Reuse Authority Draft Transition Plan; and b. Provide direction to staff for scheduling the Draft Transition Plan for Board of Supervisors' consideration, including but not limited to Committee recommendations regarding the Draft Transition Plan and the transition planning process;			Not available	Not available



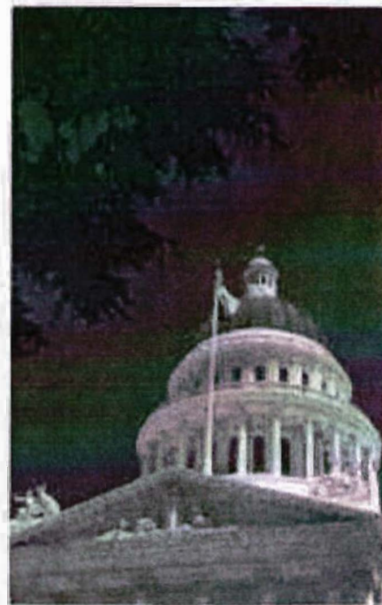
<https://www.bbknowledge.com>

The Ins and Outs of Joint Powers Authorities in California

Date: January 14, 2016

Author(s): Paula C. P. de Sousa Mills

(<http://bbknowledge.com.staging.tenrec.com/https://www.bbknowledge.com/author/paula-c-p-de-sousa-mills/>)



(<http://bbknowledge.com.staging.tenrec.com/https://www.bbknowledge.com/wp-content/uploads/2014/11/State-Capitol.jpg>) **Joint Powers Authorities** are legally created entities that allow two or more public agencies to jointly exercise common powers. Forming such entities may not only provide a creative approach to the provision of public services, but also permits public agencies with the means to provide services more efficiently and in a cost-effective manner.

The Joint Exercise of Powers Act, as codified in California Government Code section 6500, governs JPAs. Under the Act, JPAs are restricted to use by public agencies only. However, the term public agency is defined very broadly. A public agency can include, but is not limited to, the federal government, the state or state department, mutual water companies, public districts and recognized Indian tribes.

The Act authorizes two kinds of JPA arrangements. The first allows two or more public agencies to contract to jointly exercise common powers. The second allows two or more public agencies to form a separate legal entity. This new entity has independent legal rights, including the ability to enter into contracts, hold property and sue or be sued. Forming a separate entity can be beneficial because the debts, liabilities and obligations of the JPA belong to that entity, not the contracting parties.

To enter into a JPA (either to jointly exercise common powers or to form a separate legal entity), the public agencies must enter into an agreement. This agreement must state both the powers of the JPA and the manner in which it will be exercised. The governing bodies of all the contracting public agencies must approve the agreement.

A 2007 Senate Local Government Committee Report noted that JPAs have played an increased role in California's governmental services, with more than 1,800 JPAs and counting. Thus, a JPA arrangement could be an advantageous avenue for public agencies when exploring better ways to provide public services.

Tags: [Joint Exercise of Powers Act](#)

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Comments are closed.

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MONTEREY COUNTY



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Wendy S. Strimling
Senior Deputy County Counsel

MEMORANDUM

DATE: August 21, 2018
TO: Fort Ord Committee of the Board of Supervisors
FROM: Wendy S. Strimling, Senior Deputy County Counsel
SUBJECT: FORA Transition: Transportation

The Fort Ord Committee has requested legal analysis of several subjects to assist the Committee to evaluate and make recommendations to the Board of Supervisors concerning the potential dissolution of Fort Ord Reuse Authority (FORA) on June 30, 2020 and the transition planning. FORA must submit a transition plan to the Local Agency Formation Commission (LAFCO) on or before December 30, 2018, pursuant to Government Code section 67700. This memo focuses on the transportation topic.

FORA's Draft Transition Plan (dated June 5, 2018) states that "to the extent roads are to be constructed by FORA, those obligations are required to be assigned to a successor, whose responsibility will be to complete the construction in accordance with the timelines set forth for completion." (Plan, at 16-17.) The Fort Ord Committee has asked County Counsel to analyze the following questions:

1. Whether and to what extent does a legal obligation exist to complete the roadway improvements in the FORA Capital Improvement Program (CIP) if FORA is dissolved?
2. Do the roadway improvements listed in FORA's Capital Improvement Program constitute "mitigation measures" under the California Environmental Quality Act, and if yes, does CEQA legally obligate completion of those roadway improvements if FORA is dissolved?

This memo outlines the legal framework to assist in addressing these questions. We begin with the observation that FORA is a separate legal entity with its own counsel to advise FORA as to its legal obligations, and FORA may be subject to obligations stemming from contracts and grants which we have not reviewed or of which we are not

aware. Accordingly, this memo is not intended to be a comprehensive analysis of FORA's obligations with respect to roadway improvements. Rather, this memo is intended to provide background and a general analysis to assist the Fort Ord Committee in making policy recommendations relating to the FORA transition.

A. Background

1. Authority Act

The Fort Ord Reuse Authority Act (Government Code section 67650 et seq.) required the FORA Board to "prepare, adopt, review, revise from time to time, and maintain a plan for the future use and development of the territory occupied by Fort Ord as of January 1, 1993." (Gov't Code sec. 67675(a).) The Reuse Plan must include, among other things, a "transportation plan for the integrated development of a system of roadways, transit facilities, air transportation facilities, and appurtenant terminals and other facilities for the movement of people and goods to, from, and within the area of the base." (Id. sec. 67675(c)(2).) The plan must also include a five-year capital improvement program that identifies base-wide facilities and local facilities. (Id. sec. 67675(c)(5).) "Basewide public facilities" include roads that will serve future residents of the former army base and "could most efficiently or conveniently be planned, negotiated, financed, constructed or repaired, remodeled, or replaced by the board to further the integrated use of the base." (Id. sec. 67679(a)(1).) The Authority Act makes FORA responsible to "undertake to plan for" and arrange financing and construction of these basewide facilities, although it authorizes FORA to delegate these powers to a member agency. (Id.) Basewide facilities are distinct from "local public capital facilities" which are the responsibility of the city or county with land use jurisdiction. (sec. 67679(a)(2).) } delegat

FORA adopted the Fort Ord Reuse Plan ("Reuse Plan") in 1997, following certification of Fort Ord Reuse Plan Environmental Impact Report (EIR).

2. Base Reuse Plan EIR

The Fort Ord Reuse Plan EIR, certified by FORA on June 13, 1997, found that the "reuse of former Fort Ord along with growth throughout the remainder of the region would place increased demands on the roadway system." (EIR, at 4-99.¹) The traffic analysis was based on a twenty-year horizon, through the year 2015. The EIR assumed an "Optimistic Financing Scenario" for road improvements on the former Fort Ord within FORA's control, but assumed a "Constrained Financing Scenario" for impact of the Reuse Plan on regional roads, recognizing that "to the extent that mitigating measures built into the plan for off-site improvements lie within the jurisdictions of agencies outside FORA's control," the regional road improvements "cannot be assumed by FORA." (EIR at 4-107.)

The EIR concluded that projected development under the Reuse Plan through 2015 would result in a significant unavoidable impact to the regional roadway system because funding for improvements to all off-site regional roadway and transit operations is not assured. (EIR at 4-111 and 5-7.) However, while mitigation would not reduce the

¹ The EIR is published as Volume 4 of the Fort Ord Reuse Plan.

impact fully, the following mitigation strategy related to roadway improvements was proposed:²

- Streets and Roads Policy A-1: The EIR noted that the draft Reuse Plan includes policies requiring FORA and each jurisdiction with lands at former Fort Ord (including the County, Seaside and Marina) to coordinate with TAMC in “providing funding for an efficient regional transportation system.” (EIR at 4-109.) This strategy includes developing funding mechanisms “to pay for Fort Ord’s share of impact on the regional transportation system” and supporting and participating in “regional and state planning and funding programs to provide an efficient regional transportation effort to access former Fort Ord.” (Ibid.)
- The EIR suggested adding policy language to enable FORA to distribute financial contributions to selected off-site transportation improvements to maximize effectiveness of the funding to reducing traffic impacts to the regional roadway system. (EIR at 4-111.)
- The EIR suggested adding policy language to require for FORA to establish a “Development and Resource Management Plan (DRMP) to establish programs and monitor development at Fort Ord to assure that it does not exceed resource constraints posed by transportation facilities and water supply.” (EIR at 4-111.)

The EIR concluded that the project would have a less than significant impact to the roadway system within the former Fort Ord based on the Reuse Plan’s proposed policies and programs. (EIR at 4-118.) In addition to transit and pedestrian and bike policies, the EIR took note of proposed Streets and Roads Policy C-1, applicable to the County, Marina and Seaside, which requires each jurisdiction to design the street system in conformance with the Reuse Plan design standards, including to “design and construct the roadway network consistent with the phasing program identified in the Fort Ord Business and Operations Plan (Appendix B in the Reuse Plan.)” (EIR at 4-115.) The Business and Operations Plan suggested phasing infrastructure improvements, including circulation improvements, over the twenty-year planning period (1995-2015) to maximize the ability to pay for the improvements. (Reuse Plan at 4-189 to 4-190.)

3. Fort Ord Reuse Plan and FORA’s Capital Improvement Program

Consistent with the Authority Act and the EIR, the Reuse Plan’s “Circulation Concept” is to balance building/improving the roadway network with managing/minimizing the demand for vehicle trips. (Reuse Plan at 12, 112.) The Reuse Plan contains a proposed roadway network comprised of a list of potential improvements to regional roadways and to the internal roadway network on the former army base. The “Eastside Road” is listed among the proposals for on-site road improvements. (Reuse Plan at 113 to 120, 293 to 297.) The Plan also recognized that funding for most of the envisioned improvements was not yet secured. (Reuse Plan at 113 to 120.)

² In addition to addressing roadway improvements, the EIR analyzed the Reuse Plan policies related to transit, transportation demand management, and pedestrian and bicycle facilities and noted that they would help reduce impacts but “would not be sufficient to eliminate significant impacts due to deterioration of LOS on regional roadways.” (EIR at 4-111.) These components are beyond the scope of this memo.

Ultimately, the Reuse Plan incorporates a growth management approach to roadway improvements, with the Capital Improvement Plan as the primary tool for growth management. (Reuse Plan at 191.) The Reuse Plan sets a guiding level of service standard of LOS D for the Capital Improvement Plan for road network improvements within the former Fort Ord, with timing of construction to occur so that LOS “does not degrade below the bottom end of LOS D.” (Reuse Plan, Table 3.11-1, at 192.) The envisioned phasing is to start by improving the existing transportation network first, so that the most expensive improvements would be postponed until funds were available. (Reuse Plan, at 190.)

Incorporating the mitigation measure proposed by the EIR, the Reuse Plan also includes a Development and Resource Management Plan (DRMP) Policy “to restrain development to available resources and service constraints.” (Reuse Plan, Policy 3.11.5, at 194.) The DRMP includes the following financial programmatic policies to fund transportation improvements:

- FORA must fund its “fair share” of on-site, off-site, and regional roadway improvements based on a 1997 TAMC nexus analysis.
- FORA retains the flexibility to build on-site and off-site roadway improvements to serve development on the former Fort Ord and will participate in reimbursement programs to recover expenses beyond its fair share;
- FORA intends to participate in a regional transportation financing mechanism or will collect and contribute to construction of the roadway improvements. “FORA’s participation in the regional improvements program constitutes mitigation of FORA’s share of cumulative impacts.” (Reuse Plan, at 195.)
- Monitoring is required to “prevent development from exceeding FORA’s Level of Service Standards.” (Reuse Plan, at 196.)

FORA has adopted, and over the years updated, an annual Capital Improvement Program (CIP) which implements these Reuse Plan directives and includes FORA’s financial transportation obligations. (Capital Improvement Program, FY 2017/18 through 2027/28.) FORA characterizes its CIP as necessary to fulfill mitigation obligations under the Base Reuse Plan. (CIP, at p. 1.)

4. County Policies

The Reuse Plan EIR also recognized that the policies of the Reuse Plan mitigate the transportation impacts. The structure of the Reuse Plan makes the Streets and Roads policies applicable not only to FORA but also to the land-owning jurisdictions, including the County. This sharing of responsibility is accomplished by the requirement that jurisdictions amend their general plans to be consistent with the Reuse Plan. For example, the Reuse Plan requires FORA and each jurisdiction with lands at the former Fort Ord to provide a funding mechanism to pay for former Fort Ord’s share of impact on the regional transportation network. (e.g., Reuse Plan, Streets and Roads Policy A-1 and the Programs listed thereunder, at 300.) For roads within the former Fort Ord, each jurisdiction is required to design and construct the roadway network consistent with the twenty-year phasing plan. (Reuse Plan, Streets and Road Policy C-1 and Programs

listed thereunder, at 301.)

Chapter 8 of the Fort Ord Reuse Authority Master Resolution, which was added pursuant to a settlement agreement between FORA and the Sierra Club, requires each member land use agency to include policies and programs in its general plan to “help ensure an efficient regional transportation network” to provide access to the former Fort Ord, which must include the following policies:

“(1) Establishment and provision of a dedicated funding mechanism to pay for the ‘fair share’ of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of [FORA]; and

(2) Support and participate in regional and state planning efforts and funding programs to provide an efficient regional transportation effort to access Fort Ord.”
(Master Resolution Section 8.02.020(n).)

The Master Resolution also requires all general plans within the Fort Ord territory to be consistent with the Reuse Plan and requires FORA to record a notice on all property within Fort Ord that development of property within Fort Ord is subject to and limited by the Reuse Plan. (Master Resolution, Section 8.01.010(c),(j),and (k).)

In accordance with these requirement, the County has adopted Reuse Plan policies into County's General Plan.³ Thus, the County's General Plan itself requires the County to provide a funding mechanism to pay for former Fort Ord's share of impact on the regional roadway system, to participate in the establishment and provision of a dedicated mechanism to pay for the “fair share” of the impact of development on the regional roadway system, and to prepare and implement a monitoring program to ensure that development does not exceed resource constraints consistent with the DRMP. (See Streets and Roads Policy A-1 and its programs, excerpt of Final Circulation Element of County's General Plan amendment, attached.) For internal roads within the former Fort Ord, the County adopted a policy to coordinate with FORA to “design and provide an efficient system of arterials consistent with Figures 4.2-2 (in the 2015 scenario) and Figure 4.2-3 (in the Buildout scenario) in order to connect to the regional transportation network.” (Program B-1.1, attached.) (The referenced Figures from the Base Reuse Plan list regional and on-site roadway improvements.) County also adopted a policy to “design and construct the roadway network consistent with the phasing program identified in the Fort Ord Business and Operations Plan.” (See Street and Roads Program C-1.4, attached.)

B. Analysis

As shown above, the Reuse Plan does not require any specific roadway improvement. Rather, to summarize broadly, the Reuse Plan requires adoption of a Capital Improvement Plan to govern roadway improvements and requires adherence to various policies that support establishment of “fair share” regional transportation funding

³ On November 20, 2001, the County amended its General Plan to incorporate various policies of the Fort Ord Reuse Plan. FORA certified that County's General Plan amendment as consistent with the Reuse Plan. County's 2010 General Plan included a Fort Ord Master Plan that was very similar in substance to the 2001 amendment; however, the FORA Board, on a tie vote, did not certify the 2010 Fort Ord Master Plan. Accordingly, the 2001 General Plan amendment governs. An excerpt of the 2001 General Plan amendment containing the referenced Streets and Road policies is attached.

mechanisms and commitment to design and construct on-site roadway improvements consistent with the Reuse Plan. Accordingly, to return to the question of whether roadway improvements listed in the FORA CIP are legal obligations that must be assigned if FORA is dissolved, the answer is complex.

First, to the extent the CIP carries out mitigation required by the Reuse Plan EIR, the California Environmental Quality Act (CEQA) does not preclude a governing body from deleting or amending mitigation measures if the governing body states a legitimate reason, supported by substantial evidence, for doing so. As the court of appeal has explained,

[W]e find nothing in established law or in logic to support the conclusion that a mitigation measure, once adopted, never can be deleted. Nonetheless, when an earlier adopted mitigation measure has been deleted, the deference provided to governing bodies with respect to land use planning decisions must be tempered by the presumption that the governing body adopted the mitigation measure in the first place only after due investigation and consideration. We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 359 (2001).)

Accordingly, from a legal perspective – if not from a practical perspective, as part of the FORA transition planning, FORA could in a public process legally alter the mitigation, provided that the proposed revision would be subject to environmental review and any such revision would be based on a stated legitimate reason and supported by substantial evidence.

Assuming no such change and assuming the CIP remains in place until FORA is dissolved, the CIP involves discretionary decisions within the parameters set by the Reuse Plan. While the specifics of the CIP are beyond the scope of this memo, the statements in the CIP appear to indicate that FORA has exercised discretion with respect to the list of roadway improvements and priorities of the CIP. As explained by the CIP, the CIP sets project priorities based on various factors, including protocols adopted by the FORA Board, revenue forecasts, and land use projections. (See, e.g., CIP at p. 1-2.) Additionally, inclusion in the CIP does not guarantee construction of the improvements if the proposed improvement requires further environmental review and further discretionary approvals. Currently, the CIP includes a ten-year plan, beyond the June 30, 2020 FORA dissolution date, to complete roadway improvements for which FORA is lead agency or for which FORA has contractually agreed to provide reimbursements to the County or City of Marina where they are acting as lead agency (e.g., County construction of Davis Road improvement). If the County were to desire as a policy matter to request FORA to modify the CIP as part of the transition process, we would recommend further examination of each of the roadway improvements currently listed in the CIP to determine the exact obligations associated with each.

Lastly, a regional cost-sharing approach to transportation improvements on the former Fort Ord is embedded in the County's General Plan inasmuch as the County

adopted Reuse Plan policies into its General Plan. Therefore, absent a General Plan amendment which would require a public process and appropriate environmental review, the County's governing legal framework includes a regional cost-sharing approach and commitment to roadway improvements on the former Fort Ord. That said, the issue of how to implement this regional approach -- whether to extend FORA in its current or different form or assign regional transportation to a different regional entity -- involve policy decisions.

C. Conclusion

Given the complex legal and factual issues associated with proposed roadway improvements on the former Fort Ord and the evolving transition planning for FORA, we provide this advice with the caveat that it is based on our legal analysis and review of the documents to date within the time available. We would be happy to provide additional analysis of these issues as the FORA transition planning proceeds.

cc: Melanie Beretti, RMA
Nick Chiulos, Assistant CAO



County of Monterey

FORT ORD GENERAL PLAN AMENDMENT

Adopted November 20, 2001

ATTACHMENT B

COUNTY OF MONTEREY FORT ORD CIRCULATION ELEMENT

The Monterey County Fort Ord Circulation Element is part of the Greater Monterey Peninsula Area Plan and the Monterey County General Plan. It consists of those portions of the Circulation Element of the Reuse Plan adopted by the Fort Ord Reuse Authority (FORA) on June 13, 1997, that pertain to the areas of Fort Ord currently under the jurisdiction of the County and located east of Highway 1. Those relevant portions of the adopted Reuse Plan are hereby incorporated into the Monterey County Fort Ord Circulation Element by this reference. For convenience relevant Goals, Objectives, Policies and Programs pertaining to the subject area are provided herein.

*CIRCULATION ELEMENT
POLICIES AND PROGRAMS PERTAINING TO
MONTEREY COUNTY*

Streets and Roads Policies and Programs

Objective A: Develop an efficient regional network of roadways that provides access to the former Fort Ord.

Streets and Roads Policy A-1: FORA and each jurisdiction with lands at the former Fort Ord shall coordinate with and assist TAMC in providing funding for an efficient regional transportation network to access former Fort Ord.

Program A-1.1: FORA and each jurisdiction with lands at Fort Ord shall provide a funding mechanism to pay for former Fort Ord's share of impact on the regional system.

Program A-1.2: The County shall participate in the establishment and provision of a dedicated mechanism to pay for the "fair share" of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of FORA.

Program A-1.3: FORA and each jurisdiction with lands at former Fort Ord shall identify specific transportation issues that affect former Fort Ord and support and participate in regional and state planning efforts and funding programs to provide an efficient regional transportation effort to access former Fort Ord.

Program A-1.4: The County shall prepare and implement a monitoring program that ensures that development does not exceed resource constraints posed by transportation facilities consistent with the Development and Resource Management Plan adopted by FORA.

Objective B: Provide direct and efficient linkages from former Fort Ord Lands to the regional transportation system.

Streets and Roads Policy B-1: FORA and each jurisdiction with lands at former Fort Ord shall design all major arterials within former Fort Ord to have direct connections to the regional network (or to another major arterial that has a direct connection to the regional network) consistent with the Reuse Plan circulation framework.

Program B-1.1: Each jurisdiction shall coordinate with FORA to design and provide an efficient system of arterials consistent with Figures 4.2-2 (in the 2015 scenario)

and Figure 4.2-3 (in the Buildout scenario) in order to connect to the regional transportation network.

Program B-1.2: *Each jurisdiction shall identify and coordinate with FORA to designate local truck routes to have direct access to regional and national truck routes and to provide adequate movement of goods into and out of former Fort Ord.*

Objective C: Provide a safe and efficient street system at the former Fort Ord.

Streets and Roads Policy C-1: *Each jurisdiction shall identify the functional purpose of all roadways and design the street system in conformance with Reuse Plan design standards.*

Program C-1.1: *Each jurisdiction shall assign classifications (arterial, collector, local) for each street and design and construct roadways in conformance with the standards provided by the Reuse Plan (Table 4.2-4 and Figure 4.2-4).*

Program C-1.2: *Each jurisdiction shall preserve sufficient right-of-way for anticipated future travel demands based on Buildout of the FORA Reuse Plan.*

Program C-1.3: *Each jurisdiction shall assign an appropriate threshold performance standard for its roadway system in order to measure the impacts of future growth on the system.*

Program C-1.4 *Each jurisdiction shall design and construct the roadway network consistent with the phasing program identified in the Fort Ord Business and Operations Plan (Appendix B of the Reuse Plan).*

Program C-1.5: *Each shall designate arterials and roadways in commercially zoned areas as truck routes.*

Streets and Roads Policy C-2: *Each jurisdiction shall provide improvements to the roadway network to address high accident locations.*

Program C-2.1: *Each jurisdiction shall collect accident data, identify and assess potential remedies at high accident locations and implement improvements to lower the identified high accident rates.*

Objective D: Provide an adequate supply of on-street parking.

Streets and Roads Policy D-1: *Each jurisdiction shall provide a program of on-street parking.*

Program D-1.1: *Each jurisdiction shall provide on-street parking, as appropriate, with design and construction of all urban roadways.*

ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) DISCUSSION

BACKGROUND:

FORA entered into an Environmental Services Agreement with the Army in 2007, whereby the Army granted FORA about \$98 Million and FORA agreed to do the environmental remediation, involving the removal of unexploded ordnance from potentially contaminated properties destined to be transferred from the Army to the various jurisdictions within the FORA territory. FORA used most of the funds to purchase an insurance policy from AIG which provided stop-gap coverage for the remediation work to be completed. The environmental work has been completed and the transfer of the properties to jurisdictions is underway and expected to be completed before the dissolution of FORA in 2020. The AIG insurance policy will expire at the end of March of 2019.

More recently, FORA negotiated with the Army a new amendment to the ESCA, in the amount of approximately \$6.9 million to complete the property transfer process and to perform the required long-term land management tasks, including inspections, enforcement, monitoring, and reporting, through 2028. As part of the negotiations with the Army, the contractual enforcement and reporting period for FORA was shortened from 2037 to 2028. The new funds are granted via an amendment to the original ESCA, which terms remain in effect through the new, shortened, period.

In 2014, FORA and some of the jurisdictions purchased a Pollution Liability Policy (PLL), providing \$50,000,000 in coverage. The County participates in this policy, which expires in 2025 and is not renewable. There have been no claims against this policy or its predecessor policy.

ISSUE:

What are the exposures, both legal and financial, for the County in the event of FORA's dissolution, prior to 2028?

DISCUSSION:

The contract with Army requires that a single entity will assume FORA's responsibility until the ESCA contract expires in 2028. That entity could be a JPA, The County, Seaside, or Marina. Whoever assumes responsibility will be tasked with performing the obligations under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98 Million contract will have been accomplished prior to FORA's dissolution. FORA's Executive Director stated that there are some delays in meeting certain obligations that should have been completed by March 30, 2019 and that he is negotiating with the Army for additional Funds to cover those delays. He also stated that the Army has been flexible and cooperative in handling such issues in the past.

The funds approved under the amendment cover on-going efforts, activities after the expiration of the AIG policy, and future activities through June 30, 2028. Michael Houlemard, FORA Executive Director, who negotiated the amendment, feels that the funds secured should be enough to fulfill the requirements of the amended ESCA, except for unforeseen circumstances, such as finding significant previously unknown environmental hazards on the transfer properties. While any such "finds" would, most likely, be the responsibility of the Army, there would be a considerable effort and resource demands on FORA staff for the process of dealing with the find and negotiating with the Army. Up to now, all such negotiations have been handled, primarily, by the Executive Director, with staff support.

Funding approved under the amendment assumed of 2 full-time staff, without administrative oversight by the Executive Director, but with allowances for indirect administrative overhead. Up until now, the Executive Director estimates that 20 to 25% of his time is spent on ESCA activities. He anticipates that the new contract will represent a reduction of his effort to between 10 and 15%, declining in the future. He also stated that, should the existing staff assigned to ESCA be absorbed by the successor to FORA, the skills required to complete the work would be available from existing FORA staff, should the successor wish to absorb the staff and the staff be willing to transfer to a new employer.

FORA budgeted \$1,129,167 in 2018-19 for ESCA. This budget includes funds for compensation, operations, and consulting services, mostly for regulatory agency compensation and related consulting work, including special counsel. Funds available for Long-Term management and LUC management post June 30, 2020 are \$3,705,791, or an average of \$463,000 per year, from June 30, 2020, through 2028. These figures come from FORA's staff analysis and were approved by the Army. FORA staff is confident that the funds allocated are enough. Please note that these funds are available on a quarterly reimbursement basis.

Should the County assume the ESCA, or should it participate in a JPA, County resources will be impacted. Administrative oversight, overhead support (Human Resources, Finance, etc.), space, etc. will be required. The County will need to assess its capability to absorb the new responsibilities. Given the past use of outside legal counsel by FORA, the potential impacts on County Counsel, should be assessed carefully. Even if outside Counsel is retained, considerable effort by County Counsel may still be needed. Failure to comply with ESCA can result in penalties, oversight agency service charges, and deed reversals.

Another potential area of exposure to the County is liability that may arise from environmental contamination on properties transferred from the Army to the County. FORA and several jurisdictions purchased a Pollution Legal Liability (PLL) Policy in 2015 to replace the previous PLL. Because there had been no claims filed under the previous policy, the new policy was obtained at considerably lower cost than the original policy. The PLL policy offers the County protection against claims for incidents related to environmental pollution covered under the policy. The PLL policy expires in 2025 and The FORA Executive Director has recommended that a new PLL policy be obtained from 2025 through 2028. Given that no claims have been filed and that the period would be shorter, such a policy should be available at lower cost. FORA paid for part of its share of the PLL policy with funds approved by the Army under the original ESCA. It should be noted that currently, there is no dedicated funding for a new PLL policy.

After 2028, when the properties have transferred and obligations under ESCA cease, the exposure to the County should be lower, according to Barry Steinberg, an attorney who specializes in environmental pollution, retained by FORA. This should be particularly the case for County lands where disruption activity should be minimal. Properties transferred from the Army to Jurisdictions and from jurisdictions to private property owners carry extensive deed restrictions, providing for specific steps that a property owner must take to disturb the soil on these properties. The responsibility for compliance with the deed restrictions is transferred to the property owner. Mr. Steinberg suggested that the successor to FORA should be careful in crafting the assignment agreement, protecting itself from actions done during FORA's administration. The County should evaluate whether it is warranted to extend PLL protection beyond the expiration of the ESCA.

Conclusion:

ESCA implementation has been FORA's responsibility since its inception. FORA staff understand the process of dealing with the Army, know the regulatory environment, have established working relationships with various agencies and contractors, and have the technical skills for operating in a complex regulatory environment. FORA's dissolution would represent a steep learning curve to any agency taking over ESCA responsibilities, even if the FORA staff assigned to the day-to-day management of the ESCA were absorbed by the successor. Failure to comply with provisions of the ESCA could have significant consequences.

While the activities required under ESCA and the land covered represent a legal risk, it is possible to understand these risks and to take necessary steps to reduce exposure. However, resources, not funded currently, will be needed to address these risks.