

RESOLUTION NO. 2018-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA  
APPROVING COMMENTS ON FORT ORD REUSE AUTHORITY'S PROPOSED  
TRANSITION PLAN AND FINDINGS

WHEREAS, the City Council of the City of Marina has reviewed and prepared a response to a "Resolution of the Governing Body of the Fort Ord Reuse Authority adopting a Transition Plan" set to be heard by the Fort Ord Reuse Authority Board on September 28, 2018;

NOW, THEREFORE IT BE RESOLVED that the City Council of the City of Marina does hereby:

1. Object to the proposed Transition Plan both as to its content and enforceability under the law; and
2. Oppose any actions by the Fort Ord Reuse Authority to extend the Fort Ord Reuse Authority ACT, the Fort Ord Reuse Authority, and/or its powers; and
3. Object to any acts by the Fort Ord Reuse Authority to seek legislative imposition of additional obligations and fees on land use jurisdictions; and
4. Adopt the findings and responses set forth in attached Exhibit A as the findings of the City of Marina in opposition to the "Resolution of the Governing Body of the Fort Ord Reuse Authority adopting a Transition Plan".

PASSED AND ADOPTED by the City Council of the City of Marina at a Special City Council Meeting duly held on this 25<sup>th</sup> day of September 2018 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

  
\_\_\_\_\_  
Bruce C. Delgado, Mayor

ATTEST:

  
\_\_\_\_\_  
Anita Sharp, Deputy City Clerk

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ABSENT, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

**THE COUNCIL makes the following findings and response to the draft FORA Resolution and Transition Plan:**

- A. FORA was created by state legislation adopted in 1994 (Fort Ord Reuse Authority Act, *Government Code* Sections 67650 et seq., referred to herein as the "Act") to address the significant impacts the closure of the former Fort Ord army base had on the Monterey Peninsula region. It is a governmental entity with a statutorily defined term of existence and with specific duties, powers, and responsibilities. Under the terms of the Act, FORA only has those powers that are specifically granted to FORA in the Act.
- B. FORA was created to facilitate the transfer and reuse of the base with "all practical speed"; to minimize the disruption caused by the base's closure; to provide for the reuse and development of the base in a way that enhances the economy and quality of life for the Monterey Bay community and to maintain and protect the unique environmental resources of the area. (*Government Code* § 67651).
- C. FORA, pursuant to the Act was charged with three primary functions:
  - A. To prepare, adopt, review and revise a base reuse plan (§ 67675);
  - B. To serve as the local public agent for the acquisition, lease and disposal of the former base property (§ 67678); and
  - C. To identify base-wide capital facilities and to undertake a plan for such facilities, including arranging financing and construction.
- D. The Act does not require FORA to undertake any activities other than the adoption of the base reuse plan, the arrangement for the transfer of the base property and the identification of the base-wide capital facilities and a plan for the funding of those facilities. All of FORA's other powers are permissive rather than mandatory except for the requirement to prepare a transition plan.
- E. The original language of the Act, which was carried forward in the amendment adopted in 2012 which extended FORA through June 30, 2020 requires FORA to dissolve when 80 percent of the territory within the base that is designated for development and reuse has been developed or reused. FORA was never intended to complete the reuse of the base but rather was established to provide the initial impetus necessary for the successful reuse of the former military installation.
- F. One of the express powers and duties of the Fort Ord Reuse Authority is the preparation and adoption of a plan for the future use and development of territory occupied by the United States Department of the Army (hereinafter "Army") and operated as the Fort Ord Military Reservation as of January 1, 1993. *Government Code* § 67675(a) authorized and directed the FORA Board shall:

... prepare, adopt, review, revise from time to time, maintain a plan for the future use and development of the territory occupied by Fort Ord as of January 1, 1993. The adopted plan shall be the

official local plan for the reuse of the base for all public purposes, including all discussions with the Army and other federal agencies, and for purposes of planning, design, and funding by all state agencies.

The elements of the Fort Ord Reuse Plan mandatorily included:

- (1) A land use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space, and other natural resources within the area of the base. The land use plan shall designate areas of the base for residential, commercial, industrial, and other uses, and may specify maximum development intensities and other standards and criteria. The land use plan shall provide for public safety.
  - (2) 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.
  - (3) A conservation plan for the preservation, development, use, and management of natural resources within the area of the base, including, but not limited to, soils, shoreline, scenic corridors along transportation routes, open spaces, wetlands, recreational facilities, historical facilities, and habitat of, or for, exceptional flora and fauna.
  - (4) A recreation plan for the development, use, and management of the recreational resources within the area of the base.
  - (5) A five-year capital improvement program that complies with the requirements of Section 65403. The program shall include an allocation of the available water supply, sewage treatment capacity, solid waste disposal capability, and other limited public service capabilities among the potential developments within the area of the base. The program shall also identify both of the following:
    - (A) Base-wide facilities identified pursuant to Section 67679.
    - (B) Local facilities that are in the county or a city with territory occupied by Fort Ord and that primarily serve residents of the county or that city.
- Government Code § 67675 (c).*

FORA prepared a Fort Ord Base Reuse Plan ("Reuse Plan") consistent with the required elements of a Fort Ord Base Reuse Plan as specified in the Act and on June 13, 1997 the Board of Directors certified the Final Environmental Impact Report and adopted the plan, stating in its Board Resolution:

The Reuse Plan, as evaluated through the FEIR, is a general planning document that preliminary reviews and considers the future reuse, use, and development of the former Fort Ord Military Reservation. The Reuse Plan does not directly approve any specific development project or improvement or any other plan, program, or project that involves physical development on property within the boundaries of the former Fort Ord Military Reservation.

This plan, referred to as the Fort Ord Base Reuse Plan, shall be the official local plan for the reuse of the Fort Ord property for

all public purposes, including all discussions with the Army and other federal agencies and for the purposes of planning, design, and funding by all state agencies once the Fort Ord Reuse Authority adopts the plan.

The Board of Directors has determined, on the basis of the FEIR prepared for the proposed Reuse Plan, that the policies contained in the Reuse Plan and subsequent environmental review of any future project as required by the California Environmental Quality Act (hereinafter "CEQA") will substantially lessen or avoid otherwise significant environmental impacts identified in the Final Environmental Impact Report. To the extent any impact remains significant, notwithstanding the application of such policies, the Board of Directors has determined that there are overriding economic and social considerations that justify the adoption of the Reuse Plan.

- G. At page 11 of the 1997 Reuse Plan the following statement is made: "The land supply is expected to accommodate growth for 40 to 60 years depending on the land use type and future market conditions." [Emphasis added.]
- H. The 1997 Reuse Plan has not been revised since its adoption by the FORA Board. The Final EIR for the Reuse Plan included 13 mitigation measures including one amendment to the Reuse Plan regarding FORA's fair-share contribution to regional roads projects. The plan was never amended. A Reassessment Report in response to the requirements of the Sierra Club Settlement and the Master Resolution was prepared in 2012 that addressed implementation of the Reuse Plan. It reported that 21% of general plan policies had not been implemented as of that date. There is no published update as to the completion of the general plan policies today.
- I. The adopted Reuse Plan serves as a guide for the local land use jurisdictions' general plans and zoning ordinances. All properties transferred by FORA to the local land use jurisdictions were transferred pursuant to a covenant that requires that development of the property is subject to the Reuse Plan and the local general plans to the extent that such general plans are consistent with the Reuse Plan. Except for the 2010 County General Plan, FORA has certified all of the local land use jurisdictions' general plans and zoning ordinances as consistent with the Reuse Plan evidencing that the land use jurisdictions are proceeding with reuse of the base consistent with the Reuse Plan. (The county has taken the position its earlier General Plan was determined consistent by FORA.)
- J. The Act is explicit that once the Reuse Plan is adopted and the local land use jurisdictions have conformed their general plans to the reuse plan as certified by FORA, the local land use jurisdictions exercise development review authority over development proposed within the former Fort Ord located within their jurisdictions (*Government Code* § 67675.6). The Act is clear that FORA was never intended to usurp the local land use

jurisdiction's authority over development but rather was intended to provide the guiding concepts for the reuse of the land and provide assistance to the local land use jurisdictions with the challenges of implementing reuse. FORA has accomplished those purposes and fulfilled the intent behind its creation.

- K. FORA successfully arranged for the transfer of all of the former federally owned property pursuant to economic development or public development conveyance agreements with the Army and all property has transferred from the Army to FORA, or to the extent not done, has the ability to do so by its sunset on June 30, 2020.
- L. *Government Code* § 67678 (b) (1) provides the FORA "board shall transfer all real and personal property received pursuant to this section and intended for municipal or county use, except for property subject to paragraph (4), within a reasonable period of time after receiving title to the property to the city or county with jurisdiction over the property, and all transfers pursuant to this paragraph shall be at no cost to the city or county except for the reasonable costs incurred by the board as a result of the transfer, management, servicing, maintenance, and enhancement of the property, and except for any payments required to be made to the federal government as a result of the transfer.

Pursuant to this statutory authority and Implementation Agreements, entered into between FORA and each of the land use jurisdictions, FORA has transferred most of the property to the underlying land use jurisdictions and successfully transferred the responsibility for disposition of the property to the private sector to the land use jurisdictions. To the extent there remains land to be transferred to the jurisdictions, FORA anticipates completing all transfers prior to June 30, 2020.

Until FORA sunsets on June 30, 2020, a jurisdiction's land sale revenues are subject to 50% of net sale proceeds to be paid to FORA.

- M. By statute FORA was empowered and did allocate the available water supply, sewage treatment capacity, solid waste disposal capability, and other limited public service capabilities among the potential developments within the area of the base. *Government Code* § 67675 (c) (5).
- N. A required Reuse Plan element was a five-year capital improvement program (CIP) that complies with the requirements of *Government Code* § 65403 and identifies base-wide facilities pursuant to *Government Code* § 67679.

Pursuant to *Government Code* § 67679 (a) (1) the FORA Board was obligated to identify base-wide public capital facilities.

The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational

facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

*Government Code* § 65403 (b) requires the five-year capital improvement program shall indicate the location, size, time of availability, means of financing, and estimates of operation costs for all proposed and related capital improvements; and § 65403 (c) provides for annual review, revision and updates of the capital improvement program. The current Capital Improvement Plan identifies Capital Improvement Funds as (a) Tax Increment in excess of \$1.3 million; (2) Community Development Fees (CFD); and (c) Land Sale revenues.

Some of the basewide capital facilities have been completed. Others are not scheduled for completion for some time as the need for the improvements may change depending upon the pace and type of development that occurs, and when and if funding revenues are available. The 2018-19 CIP provides expenditures of \$29.7 million which includes \$9.6 million for completion of FORA's building removal obligations; mandated/obligatory habitat management responsibilities; development of transportation; and water augmentation. FORA has limited its responsibilities as to building removal by policy decisions.

Completion of any portion of base-wide capital facilities prior to sunset is dependent upon the rate of growth. Neither FORA nor the land use jurisdictions are required to incur debt to fund the CIP.

- O. FORA was granted authority to enter into contracts for the mitigation of impacts of the reuse of the base including the impacts on rare and endangered species and to study, evaluate and recommend cleanup of toxic and explosive substances to the Army and the State of California.
- P. FORA is mandated by *Government Code* § 67683 to pursue all possible federal funding for the transfer, cleanup, and reuse of Fort Ord., including funding to pay for costs of public capital facilities and to attract and encourage the development of private businesses and public universities within the base. Through a contract with the Army FORA obtained federal funding of \$98 million for FORA Environmental Services Cooperative Agreement (ESCA) Remediation Program. In 2017 an additional \$6.8 million of federal funding was obtained to cover the anticipated remainder of the costs of this program. A portion of

these funds are applied to administrative costs, inclusive of personnel.

- Q. FORA's successful efforts to date have placed the base reuse in a state where the need for a regional body overseeing the future development of the remaining undeveloped property results in duplication of local land use jurisdictions administrative costs.

FORA's 2018-19 Adopted Budget anticipates *non CIP expenditures* of \$5.5 million: \$2.9 million in salaries and benefits; \$536,025 for supplies and services; and \$2.1 million in contractual services (authority counsel, auditors, legislative consultants, consultants, etc.). Revenues to cover the \$5.5 million include membership dues, franchise fees, rental income; and \$1.3 million in property tax revenue (tax increment).

FORA's membership dues total \$310,928. Until FORA sunsets, each agency represented by a board member annually contributes dues of \$14,000 for each board member that the agency appoints. Each public agency which is represented on the board by an ex officio member contributes \$7,000. By contract, Marina Coast Water District pays dues of \$86,928 in addition to franchise fees from sewer and water operations on Fort Ord, projected to be \$721,557 for 2018-19. Beyond annual membership dues of \$14,000, the cities of Carmel, Pacific Grove, Salinas and Sand City, make no financial contributions to FORA or the base-wide CIP.

When FORA sunsets each jurisdiction retains 100% of rents within its boundaries, now shared equally with FORA.

Although the State of California abolished redevelopment agencies, thereby depriving the local land use jurisdictions of a valuable source of funds for Base Reuse, FORA continues to collect its share of tax increment. With increasing development on Fort Ord, the amount of tax increment collected by FORA has and will continue to increase annually. In 2015-16 FORA collected \$1.6 million in property tax. FORA's 2018-19 budget projects property tax revenues of \$2,974,613. Property tax revenues are allocated \$1.3 million to the general fund and any amount in excess of \$1.3 million (currently \$1.6 million) are committed to funding the Capital Improvement Program (CIP) budget. When FORA sunsets, to the extent these taxes have not been encumbered, the tax increment will revert to the taxing authorities. A portion of these tax dollars are restored to K-14 education and a large portion of this tax increment will be redistributed to the County of Monterey. The County projects it will collect \$23 million by 2028. Other taxing agencies and land use jurisdictions will also receive a portion of this redistribution.

- R. By Board policy, land sale revenues are used first to complete FORA's building removal obligations and thereafter to fund other CIP projects. FORA has determined that its remaining building removal obligations are (1) removal of the stockade in Marina; (2) a contribution of \$5.4 million to Seaside for removal of a portion of its buildings; and (3) a contractual obligation for reimbursement of demolition costs to Marina Community Partners (balance of approximately \$21 million remains to be paid upon invoicing). FORA has budgeted \$9.6 million in its 2018-19 CIP to satisfy the first two of these financial obligations.

There is no further funding allocated by FORA to building removal prior to its sunset.  
There is no further building removal obligation if FORA is extended.

If FORA sunsets the jurisdictions will retain 100% of land sale revenues; presumably increasing a jurisdiction's ability to fund further building removal.

- S. The funding mechanisms available to FORA for establishing a fair and equitable funding structure for base-wide public capital facilities are enumerated in *Government Code* § 67679 (d). Until the sunset of the Act (January 1, 2021) land use jurisdictions have no ability to levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board.

The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

- (1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).
- (2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).
- (3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).
- (4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).
- (5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).
- (6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).
- (7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).
- (8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).
- (9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).
- (10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).
- (11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.
- (12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy

authorized assessments or special taxes in order to pass through funding for these services to the local agencies. **Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675. Government Code § 67679 (d), emphasis added.**

The FORA Board chose to create a base-wide community facilities district under authority of the Mello-Roos Community Facilities Act of 1982. An obligation is imposed on the developer to pay a set development fee for each residence built and for commercial space. 100% of development fees are used for capital improvement projects, inclusive of a 30% allocation to the habitat management planned endowment. FORA's base-wide CFD will not generate adequate funding from both the already entitled projects and the planned projects to complete the listed projects in the CIP regardless of when FORA sunsets.

Continuation of FORA will result in prejudicial constraints on the ability of the land use jurisdictions to enact and implement the replacement taxes necessary to generate adequate funds to pay for the impacts of development, inclusive of transportation mitigations and habitat protections.

The funding mechanisms available to FORA, as enumerated in Government Code § 67679 (d) may be utilized by the land use jurisdictions upon FORA sunset and repeal of the Act. Multiple funding options will exist for the local land use jurisdictions and regional agencies to replace the revenues streams and likely to result in a more efficient use of public funds and developer fees.

- T. The 1994 Act establishing FORA provided the Act shall become inoperative when the board determines that 80 percent of the territory that is designate for development or reuse in the plan has been developed or reuse, or June 30, 2014, whichever occurs first. In 2012, the legislature extended the Act. The Act shall become inoperative when the board determines that 80% of the territory that is designated for development or reuses has been, or June 30, 2020. *Government Code § 67700.*
- U. FORA's successful efforts to date have placed the base reuse in a state where the need for a regional body overseeing the future development of the remaining undeveloped property (a) undermines local control over the next phase of development at the base; (b) perpetuates FORA's inadequate CFD financing; (c) impairs jurisdictions' ability to secure financing for building removal; and (d) detrimentally delays the regional and local benefits of the Reuse Plan.
- V. The FORA Transition Plan consists of a proposed resolution to be adopted by the FORA Board. Marina finds certain of the statements set forth in the facts and circumstances are inaccurate, and the proposed findings are not supported by fact or law, for the reasons

set forth below.

1. THE "BASEWIDE MITIGATION MEASURES" AND THE "BASEWIDE COSTS" ARE NOT MITIGATION MEASURES REQUIRED BY CALIFORNIA ENVIRONMENTAL QUALITY ACT OR THE REUSE PLAN.

The resolution states that the Base Reuse Plan identified environmental actions required to mitigate development and redevelopment of the former Fort Ord (the "Basewide Mitigation Measures") and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the "Basewide Costs"). The resolution also states that FORA is obligated by the California Environmental Quality Act and the Act to implement the Basewide Mitigation Measures and incur the Basewide Costs.

These statements of fact are erroneous and FORA's terminology creates confusion regarding what obligations might continue upon FORA's dissolution. The Environmental Impact Report that was prepared in conjunction with the Base Reuse Plan ("EIR") included only 13 mitigation measures necessary to mitigate the environmental impacts of the Base Reuse Plan, all of which consisted of FORA or the local land use jurisdictions adopting policies and programs. No physical improvements are included in the mitigation measures adopted as part of the EIR. As noted in the findings adopted by the Board when adopting the Base Reuse plan, the expectation was that the land use jurisdictions would use the Base Reuse EIR to tier off project specific EIR's when contemplating development projects. It is these project specific EIRs, certified by the local land use jurisdictions and their mitigation monitoring and reporting programs, adopted by the local land use jurisdiction, rather than FORA that may include physical mitigation measures such as road and infrastructure improvements necessary to serve the development project.

The FORA Board's finding "that all the projects contained in the CIP are basewide costs and/or basewide mitigation measures and required to be addressed as assets, liabilities or obligations pursuant to Government Code Section 67700 by this Transition Plan" is an erroneous conclusion. The FORA CIP projects are not basewide mitigation measures. The mitigation measures for reuse of the territory are specifically stated in the FEIR. The projects included in FORA's CIP are discretionary decisions subject to board review and revision annually. Government Code Section 65403(c). As provided by law, the capital improvement program is modifiable.

FORA itself is not required pursuant to CEQA or the Reuse Plan to implement any specific basewide mitigation measures or incur any basewide costs. The Reuse Plan, in the Business and Operations Plan, prepared and adopted by FORA, designates that it is the local land use jurisdictions that are responsible for construction of the capital improvements with FORA having oversight. (See page 12 of the Business and Operations Plan).

**2. FORA IS NOT OBLIGATED BY THE ACT TO INCUR BASE-WIDE COSTS OR COMPLETE BASE-WIDE PUBLIC FACILITIES.**

Nor does the Act obligate FORA to incur base-wide Costs as stated in Paragraph F of the FORA resolution. The Act, at § 67679 requires FORA to identify the base-wide public capital facilities that could most efficiently or conveniently be planned, negotiated, financed, constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board is to undertake to plan for and arrange for the provision of the facilities including arranging for the financing and construction. "The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate those powers to one or more member agencies." (*Government Code* § 67679(a) (1), emphasis added). It is significant that the Legislature chose to use the word "may" with regard to the actual planning, design, construction and financing of the public capital facilities and the word shall with respect to the board's obligation to arrange for the financing and construction of the public facilities. It is also significant that the language of this section of the Act allows the board complete discretion in determining which public facilities would be most efficiently or conveniently planned, negotiated, financed, or constructed by FORA. Nothing in statute obligates FORA to complete any public facilities. Rather FORA's primary function is to serve as an oversight agency to arrange for the appropriate mechanisms for these facilities, once identified, to be completed. FORA appears to recognize this in its adopting the Business and Operations Plan, wherein FORA designates the local land use jurisdictions as the entities primarily responsible for constructing the improvements with FORA responsible for planning for the improvements.

**3. THE REUSE PLAN DID NOT IDENTIFY FORT ORD PROPERTY TAX AS A PRIMARY SOURCE OF FUNDING TO IMPLEMENT BASE-WIDE MITIGATION MEASURES.**

FORA misstates the source of revenue to be available for the implementation of the Reuse Plan in paragraph G. Although the Business and Operations Plan discussed the use of Fort Ord property tax (identified as property tax increment in the Business and Operations Plan), the Plan does not identify it as a source for Base-wide Mitigation Measures and Base-wide Costs. In fact, the Business and Operations Plan specifically excludes tax increment from any projections for funding because an analysis of the impact of use of property tax increment on Marina, Seaside and the County, determined that adoption of redevelopment plans by those jurisdictions would result in the jurisdictions' general funds being unable to provide the public services needed to serve the projected development within the former base. (See page 5-3 of the Public Facilities Implementation Plan of the Business and Operations Plan contained in Volume 3 of the Reuse Plan). Although the cities of Seaside and Marina and the County of Monterey ultimately elected to adopt redevelopment plans for areas within the former Fort Ord which provide property tax increment to FORA, it is incorrect to state that the Reuse Plan identified this as a source of funds for the Base-wide

## Mitigation Measures and the Base-wide Costs.

4. FORA MUST SPECIFICALLY IDENTIFY CONTRACTUAL OBLIGATIONS AND THE BASIS FOR THE ASSUMPTION OF AN OBLIGATION FOR THE TRANSITION PLAN TO BE MEANINGFUL.

FORA states in Section 2 of the Resolution that many of the contractual obligations that FORA entered into will survive the FORA dissolution and must be assigned. However, FORA fails to identify those contractual obligations or to specify what right or obligation FORA has to assign unidentified obligations. Without specificity regarding which contractual obligations FORA refers to and the provisions of those obligations that allow for or require assignment upon the dissolution of FORA, this statement cannot be considered a fact supporting the transition plan.

The transition plan must specifically identify any contractual obligations, the substance of those obligations, and the provisions of the agreement that would necessitate assignment. If contractual obligations need to be assigned before FORA dissolves as opposed to being terminated, it is incumbent upon FORA to negotiate with the appropriate entity to accept assignment of those contractual obligations as part of the transition process. FORA has yet to set forth in any of its draft transition plans the mechanics of assignment, or its authority to unilaterally assign or impose obligations on other public entities.

The latest draft of the Transition Plan Resolution proposed that if FORA cannot negotiate Transition Plan Implementation Agreements that the obligations be imposed pursuant to Government Code Section 56886 and Government Code Section 67700. However, FORA has been informed by LAFCO that Section 56886 does not apply to FORA and that LAFCO has no authority to impose assignments on any public agencies related to FORA's dissolution. Rather than continue to cite to inapplicable statutes, FORA should be determining which contractual obligations can and should be terminated prior to its dissolution.

5. FORA MISSTATES THE REQUIREMENTS OF THE EDC AGREEMENT WHICH ONLY RESTRICTS THE USE OF SALE AND LEASE PROCEEDS FOR A LIMITED TIME PERIOD.

Paragraph I accurately identifies the EDC agreement but it should be noted that the requirements under the EDC agreement to use sale and lease proceeds from the property conveyed pursuant to the EDC agreement is in effect only for the "Reporting Period" which is identified as the 7 years after the property is conveyed from the federal government to either FORA or the underlying land use jurisdiction. (See Section 2.01(D) of the EDC Agreement.

6. CONTINUATION OF THE IMPLEMENTATION AGREEMENT POST FORA DISSOLUTION IS UNNECESSARY AND ILLOGICAL.

FORA's statement in paragraph J regarding the implementation agreements entered into with each land use jurisdiction is confusing, if not inaccurate. It is not clear what "addressing those contracts in the Transition Plan for the mutual benefit of the Monterey Bay Region and to the mutual benefit of all successors in interest of FORA" refers to although based on Section 1 of the Transition Plan it appears that FORA interprets the Implementation Agreements as obligating the local land use jurisdictions to fund Base-wide Mitigation Measures and Base-wide Costs. This misconstrues the provisions of the Implementation Agreements.

7. THE FORA CFD REVENUES CAN BE REPLACED WITH A VARIETY OF REVENUE GENERATING TOOLS ONCE FORA SUNSETS AND THE ACT IS REPEALED ON 1/1/2021.

In paragraph K FORA correctly states the FORA sunset terminates the FORA CFD and replacement fees may be imposed on future development by the jurisdictions. FORA implies in paragraph K that any replacement for the FORA CFD cannot allocate the regional costs of base development in a manner similar to that adopted with the FORA CFD; which imposes a greater burden on residential development rather than job generating development in an effort to encourage job generating uses. This is not necessarily so. It would be true if the land use jurisdictions were limited to replacement of the FORA CFD with *only* development impact fees requiring a nexus study. The land use jurisdictions have many options for the replacement of the FORA CFD, including establishment of a CFD similar to the FORA CFD with the same allocation of the financing burden. Jurisdictions will no longer be blocked from utilization of any of the 12 funding mechanisms identified in *Government Code* § 67679 (d) when FORA sunsets.

Additionally, jurisdictions have the ability to secure funding revenues through contractual terms with developers of future projects and those previously entitled.

8. FORA COMPLETED REMEDIATION INVESTIGATION AND FIELD WORK OF ESCA AND THE ADMINISTRATIVE AND OVERSIGHT DUTIES REMAIN POST 2020.

In paragraph L FORA recites (1) the entire former Fort Ord is a Superfund Site due to contamination; (2) the Army is obligated to remediation of the former Fort Ord by state and federal law including the removal of munitions and explosives; and (3) FORA elected to enter into an agreement known as the Environmental Services Cooperative Agreement (ESCA) on March 30, 2007 to expedite the transfer of property from the Army to FORA. Under this ESCA agreement, FORA committed to take responsibility for the cleanup of approximately 3,340 acres and the Army provided approximately \$100 million to FORA. FORA spent \$95 million on an insurance policy with AIG Insurance, which became responsible for contracting for and guaranteeing the remedial work to protect human health and the environment with respect to munitions and explosives of concern (MEC) based on future land uses. AIG Insurance became liable for costs up to \$128 million and the Army remains liable for excess costs to \$143 million. These facts are not disputed.

The statement “The remediation will be ongoing post dissolution of FORA” is unclear. On December 7, 2017, FORA stated “the remedial investigation and other field work is now complete under the initial ESCA terms, and the field work is now being confirmed through the regulatory approval process. Once munitions remediation responsibilities receive regulatory approval, the ESCA property will be transferred from FORA to local jurisdictions.” Additionally, “FORA will receive a \$6.8 million ESCA amendment from the Army to pay for munitions removal reporting and related long-term stewardship. The ESCA amendment will fund administrative and regulatory oversight costs for 2 years and Army post-transfer munitions obligations through 2028.”

The administrative and regulatory oversight duties will remain post 2020 through 2028. The ESCA contract is assignable together with the unspent portion of \$6.8 million to cover the costs of oversight and reporting responsibilities when FORA sunsets.

**9. THE FORA BOARD ERRS IN ITS PROPOSED FINDING THAT THE FORA COMMUNITY FACILITIES DISTRICT IS THE BEST FUNDING VEHICLE TO ENSURE LONG TERM REVENUE GENERATION AND REVENUE SHARING.**

As noted above, the Reuse Plan does not require any particular physical improvements but rather sets forth a proposed program for reuse of the Base with capital improvements that might be needed should the base develop as suggested in the Reuse Plan.

- i. The Capital Improvements necessary to implement reuse of the Base need to be considered in light of current circumstances and development patterns.

The first assumption underlying FORA's finding is that those capital improvements set out in FORA's latest capital improvement program represent capital improvements that are necessary to the successful completion of the Base Reuse. FORA cites to no studies to demonstrate that this list of improvements are the necessary improvements or how the list was derived in the first place. As required by law, the Capital Improvement Program has been reviewed annually and revised over the past years. Marina agrees there are still regional improvements that are necessary or desirable for the successful reuse of the Base, but the determination of what those improvements should be needs to be based on current circumstances and the pattern of development occurring at the Base currently rather than a development scenario that was only comprehensively considered over 20 years ago. There is no guaranty that the current list of capital improvements in the CIP will be the improvements necessary to serve future development. As projects proceed through entitlement after FORA's dissolution, the appropriate course of action for determining the needed capital improvements is for each land use jurisdiction to address the issue as part of the entitlement process and environmental review of the project, as currently occurs. Funding for the improvements can be addressed in a variety of ways as discussed further below.

- ii. The continuation of the FORA Community Facilities District is not necessary to create a regional funding source for capital facilities necessary to implement base reuse.

The CFD adopted by FORA has provided a source of revenue to FORA for base-wide public facilities projects through the imposition of one-time fees on new development within the Base. The CFD funds are designated for particular roads, water augmentation and habitat management responsibilities. Marina acknowledges that the FORA CFD has provided a valuable source of funding for base-wide improvements, but disagrees that it is the best vehicle to ensure long term revenue generation and sharing for base-wide mitigation measures. Even FORA's aggressive assumptions used to fund the CIP cannot demonstrate full funding of the CIP. The insufficiency of revenues under the FORA CFD supports sunset of FORA and the enabling of land use jurisdictions determining how much and by what means to secure payment from developers.

It is undisputed that even if FORA continues *and full build out of the Reuse Plan is achieved*, the FORA CFD revenues will be insufficient to complete the projects included in FORA's capital improvement program. FORA staff has repeatedly presented projections of a maximum of \$127.4 million CFD revenues post 2020; \$67 million less than FORA's budgeted project costs of \$194.5 million. The gap between CFD revenues and costs for roads will continue to expand over the next decade and beyond as the costs of projects increase with time. With the termination of FORA and the termination of the base-wide CFD, each jurisdiction will be able to assess new and more realistic funding mechanisms.

The current FORA CIP program will reimburse Marina a total of \$12 million for the totality of Marina road responsibilities, regardless of costs. Cost estimates for the extension of Del Monte Road to Second Avenue, extension of Eighth Street between Second Avenue and Intergarrison, and other road obligation within Marina boundaries are significantly greater than the \$12 million reimbursement. Timely completion of these roads is critical to address current development impacts on traffic circulation. Timely completion is dependent upon securing funding greater than the allocated \$12 million reimbursement.

As part of its findings on the CFD, FORA states that imposing new financing on already entitled development creates risk of loss to the region of approximately \$72 million. The \$72 million figure is premised upon full build out of the 6 projects entitled prior to June 30, 2020. Three of those entitled projects are in Marina: the Dunes, Sea Haven and Cypress Knolls. FORA assumes these three projects will build out completely (and within the next ten years), generating \$55 million. Although the City of Marina has issued entitlements for the property, as FORA is well aware, there is no developer for Cypress Knolls and realization of an estimated \$17.5 million in CFD fees from this project will not occur by 2028.

Moreover, FORA assumes that the FORA CFD cannot be replaced by the land use jurisdictions. Marina has demonstrated that with respect even to already entitled

projects, there is a path forward that will replace the FORA CFD funds completely. Marina has successfully negotiated an amendment to the Development Agreement with the Sea Haven developers that requires the developers to pay a comparable fee to the FORA fee upon the dissolution of FORA. The Development Agreement amendment provides maximum flexibility to the City for addressing a replacement to the FORA CFD fee, including requiring the developers to vote their property into a new CFD if the City of Marina or its regional partners elect to proceed with that method of financing. The bottom line of the Sea Haven Development Agreement amendment is that the developers have contractually committed to payment of an equivalent amount to the FORA CFD fee with that fee to be used for the same purposes for which the FORA CFD is used. Marina is pursuing a similar amendment to the Dunes Development Agreement. These funds will continue to be available to address habitat management and base wide capital improvements.

FORA's findings suggest that the land use jurisdictions could create new revenue sharing agreements to address completing base-wide capital facilities necessary to complete base reuse. The use of reimbursement agreements among the land use jurisdictions will result in a more efficient use of any fees collected by eliminating duplicative administrative structures and provide the land use jurisdictions with greater flexibility to address the ever-changing development landscape at the former base. Although the negotiation of these agreements will take some time, FORA's efforts with regard to the transition process would be better spent assisting the land use jurisdictions in this negotiation process rather than attempting to justify FORA's continued existence.

- iii. The Implementation Agreements with the Land Use Jurisdictions do not require the Land Use Jurisdictions to fund base-wide costs and mitigations measures.

FORA states in its findings that the Implementation Agreements with the land use jurisdictions all require that they continue to fund the base reuse until all base-wide costs and mitigation measures have been retired. There is no such obligation in the Implementation Agreements. The Implementation Agreements require that the jurisdictions cooperate with FORA in the collection of development fees established by FORA. Section 6(f) of the Implementation Agreements provides that if FORA is unable to pay Basewide Costs and undertake Basewide Mitigation Measures, then FORA may request the land use jurisdiction to initiate a process to consider its own financing mechanisms but "Nothing in this Section 6(f) requires the Jurisdiction to adopt any specific financing mechanism or contribute any funds to alleviate FORA's funding insufficiency."

Section 9 of the Implementation Agreements sets out the jurisdictions' responsibilities which are to pay for development costs "except for Basewide Mitigation Measures and Basewide Costs", including non-basewide construction, property clearance, site preparation, project-specific demolition and other project-specific development costs. "Nothing in this Agreement requires the Jurisdiction to undertake any development of the Jurisdiction property or to be responsible for payment of any taxes or fees that would

normally be paid by developer or property owners."

- iv. Neither FORA nor LAFCO have authority to impose revenue generating obligations on the Land Use Jurisdictions.

FORA states in the Transition Plan that it is assigning the revenue generation obligations in the Implementation Agreements to the land use jurisdictions and calls for LAFCO to impose revenue generation obligations pursuant to *Government Code* § 56886 on the land use jurisdictions. As noted above the Implementation Agreements do not impose revenue generation obligations on the land use jurisdictions and in fact are explicit that the land use jurisdictions have no obligation to adopt any specific financing mechanism so it is not clear what revenue generation obligations FORA believes it is assigning.

FORA requested that the LAFCO assign these obligations pursuant to the Cortese Knox Act but LAFCO has determined that FORA is not subject to the Cortese Knox Act and that LAFCO does not have the power to impose any FORA obligations on any other public agencies. As LAFCO noted in its staff report of August 27, 2018, "FORA must plan to take responsibility both for identifying successor agencies and for arranging and negotiating to actually transfer its existing roles and responsibilities ...." Clearly FORA, in order to provide for its orderly dissolution, should be proceeding with negotiation with the various land use jurisdictions rather than attempting to dictate to these jurisdictions the future of the base.

#### 10. FORA ERRS IN ASSUMING THAT ITS POWERS INCLUDE THE POWER TO UNILATERALLY ASSIGN LIABILITIES AND OBLIGATIONS.

Section 2 of the Transition Plan seeks to assign assets/liabilities/obligations to the member jurisdictions. Marina agrees to accept what are its obligations supported by law and its contracts. Marina has no ability to fund FORA administrative liabilities from its general fund and does not find legal authority for this to occur. The liabilities to be assigned by formula are unidentified and open ended. Marina objects. Marina and the other member jurisdictions have no liability for the legislative acts of FORA and unless parties to pending litigation have no liability or burden to defend FORA.

The most significant administrative liability is funding of the FORA's employees' retirements. FORA has estimated the amount necessary to fully fund this liability and has set aside funding to do so. Requirement for member jurisdictions to assume FORA CalPERS pension liability may not be supported by current case law. It is more appropriate for the transition plan to require FORA to marshal the assets it currently has and will continue to collect before dissolution to fully fund this obligation.

To the extent insurance coverage is available to FORA post 2020 for liabilities prior to June 30, 2020 and FORA's current insurance policies do not provide insurance on a claims occurred basis, FORA should purchase such insurance part of the transition plan, e.g., workers' compensation insurance coverage through the statute of limitations period.

FORA proposes to assign real property obligations to the underlying land use jurisdictions which may be a reasonable process, but as noted above, until FORA provides a complete inventory of what these obligations are, the land use jurisdictions have no way of knowing what obligations they may be assuming and whether there is any particular obligation to be assumed.<sup>1</sup> FORA's transition plan should provide this inventory and regularly update it during the transition planning process.

**11. FORA ERRS IN ASSUMING THAT BASEWIDE HABITAT PROTECTION IS BEST FUNDED WITH THE FORA CFD.**

The Transition Plan, at Section 3(A) assumes that the FORA CFD is the best method for funding base-wide habitat protection yet also identifies the option of forming a joint powers authority that would include all affected entities to address ongoing issues related to habitat conservation and management. FORA has spent its entire lifespan attempting to obtain approval of a habitat conservation plan (HCP) yet to date has been unable to complete this task. Although Marina recognizes that habitat conservation is a challenging issue and the plan encompasses a variety of regulatory processes, there is nothing to indicate that prior to FORA sunset it will have achieved approval of the HCP. The cost estimates necessary for the HCP have been reported at vastly varying amounts over the years. The amounts collected to date are \$13.8 million and there is no clear answer to the total necessary for the HCP.

As noted elsewhere, FORA has no authority to assign costs to the land use jurisdictions as suggested by the Transition Plan or to require that land use jurisdictions adopt any revenue generating measures. The costs associated with habitat conservation must first be appropriately determined and then the impacted agencies can make a determination of the best method to proceed for funding of such costs.

Notwithstanding the lack of information and finality of the HCP, the Habitat Management Plan (HMP) is an existing liability to be addressed.

Member agencies and the land use jurisdictions in particular, possess powers similar to FORA with respect to the creation of a community facilities district that could replace the existing FORA CFD if that is the chosen method for proceeding with habitat conservation and management. The continuation of FORA for the sole purpose of addressing habitat conservation and management results in unnecessary duplication of functions.

**12. FORA ERRS IN FINDING THAT THE COMPLETION OF THE CIP TRANSPORTATION NETWORK IS ESSENTIAL TO THE LONG-TERM SUCCESS OF ECONOMIC RECOVERY OF THE REUSE.**

In Section 3(B) of the Transition Plan, the Board makes a finding that the completion of Fort Ord Transportation Network projects identified in the Capital Improvement Program

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<sup>1</sup> The resolution refers to an Exhibit A listing the obligations but no Exhibit A is currently attached.

are essential to the long-term success of the economic recovery for reuse of the territory. As noted above, the projects and programs in the CIP have varied over time and the selection of which projects are to be included in the CIP results as much from politics as necessity.

The FORA CFD will not generate sufficient funds to complete the CIP transportation network *and water augmentation, and HMP/HCP*. As discussed above, Marina has crafted a solution for replacement of the FORA CFD on a local level and is open to negotiating with its neighbor land use jurisdictions revenue sharing agreements to use any collected development fees to pay for improvements that provide regional benefit.

FORA does not have authority to assign costs associated with the road network to the land use jurisdictions and has no authority to require land use jurisdictions to adopt or impact any revenue generating measures on development. Marina remains committed to fulfillment of the regional and local mitigations required in the Traffic and Circulation Plan and the FEIR.

**13. FORA CORRECTLY FINDS THAT THE CONTINUED PRESENCE OF ARMY STRUCTURES IS A BARRIER TO RECOVERY AND RESUE BUT FAILS TO MAKE BLIGHT REMEDIATION A PRIORITY BEFORE SUNSETTING.**

Marina agrees with FORA that the former Fort Ord remnant army structures are a barrier to recovery and reuse of the base and a nuisance to quiet enjoyment of the region's assets. However, this does not justify the extension of FORA and indeed FORA's current building removal policy would do nothing to alleviate the blight that results from the continued presence of the Army structures. FORA's website on building removal indicates that FORA's remaining building removal obligations are limited to the stockade in Marina, and monetary contribution to Seaside Surplus II, which removal is currently in process

Given that FORA assumes no further obligation for building removal, the need to remove the remaining Army structures at Fort Ord does not serve as a basis for the continuation of FORA. FORA should in its remaining term move forward with blight removal using all available resources.

**14. FORA IS NOT THE APPROPRIATE ENTITY TO DETERMINE THE NEED FOR ESTABLISHMENT OF A BASEWIDE FUNDING ESCROW ACCOUNT**

FORA, at Section 3€ of the Transition Plan, finds that a unified funding mechanism for handling indemnification, litigation and other expenses related to Basewide Mitigation Measures and Basewide costs is necessary and proposes that an escrow account be established with jurisdictions contributing either based on their voting percentages if the obligation is administrative or if the obligation is related to real property, based on the location of the property. These proposed findings are based upon assumptions that are not in evidence in the Transition Plan, including that:

- Basewide Costs and Mitigation Measures must be funded and completed
- litigation currently pending against FORA will continue post-dissolution
- indemnification obligations will be significant and require pre-funding
- administrative costs cannot be completely funded by FORA prior to FORA's dissolution.

Many of these erroneous assumptions have been discussed above and need not be addressed here. However, it is important to note that FORA's continued reliance on these assumptions appears solely geared to reaching a conclusion that FORA must continue so the land use jurisdictions can avoid assuming obligations and incurring costs. As discussed above, there are numerous options open to the land use jurisdictions to fund any regional costs that may be identified as necessary to the successful completion of the base reuse. The land use jurisdictions may determine that the use of an escrow account for the deposit of fees collected is a reasonable option, but it is important for the land use jurisdictions and the regional agencies impacted to make this decision amongst themselves rather than have FORA attempt to impose some structure on future activities post FORA.

#### 15. TRANSFER OF THE OBLIGATIONS TO FINANCE WATER AND WASTEWATER INFRASTRUCTURE TO MARINA COAST WATER AGENCY ADDRESSES THE ONGOING WATER AND WASTEWATER ISSUES POST-FORA DISSOLUTION

The Board in Section 3(F) makes several findings regarding the allocation of water and wastewater, including the need to enforce the allocations made pursuant to the Implementation Agreements. MCWD is the appropriate entity to administer the water and wastewater allocations and to enforce these allocations.

MCWD has the ability to impose and collect revenues through capacity fees that will adequately replace the FORA CFD and ensure that the cost of providing water and wastewater infrastructure is equitably distributed to the developments using the services. FORA finds that the continuation of the FORA CFD allows funds to reduce connection and other costs imposed by MCWD but that should not be a goal of FORA. The reduction of connection costs only means that not all development is paying its fair share but rather some development are subsidizing others through the use of the CFD funding mechanism.

#### CONCLUSION

FORA has presented a Transition Plan that fails to meet the requirements of *Government Code* § 67700.

The proposed plan falls far short of the mark of what is necessary for the successful termination of FORA and the full assumption by the land use jurisdictions of the

implementation of the reuse of the Base. Rather than carefully considering strategic options for transitioning base reuse to ensure a smooth transition, FORA has presented a Transition Plan that argues for the continuation of FORA using misleading conclusory statements to justify that conclusion.

The result of FORA's lack of diligence to consider what is best for the region rather than what is best for FORA is a hastily prepared and ill-conceived document that does not address the real issues that should be addressed in order for FORA to sunset as required by the Act.

FORA's primary premise for the need for FORA to be extended is repeated multiple times in the Transition Plan – the continuation of the FORA CFD provides a funding vehicle for various projects and programs. The reality of the FORA CFD is that it will be decades before it is fully collected; even if full build-out of the Reuse Plan is achieved, the CFD fees will not fund the totality of the CIP projects and reimbursements; and land use jurisdictions are precluded from utilizing the funding sources identified in *Government Code* § 67679 as a means to fund its portion of the costs.

Marina continues to desire to work with its regional partners to ensure the continued success of the reuse of the base and to work with FORA staff and its Board to develop a viable transition plan supported by law.

Marina contends the return of tax increment to the jurisdictions and restoration of the powers denied by the Act and *Government Code* § 67679 are necessary to the implementation and funding of the Reuse and mitigations on the former Fort Ord.

**For all of the foregoing findings of fact herein and reasons stated, the City of Marina respectfully objects to the adoption of the proposed transition plan by the FORA Board and opposes any extension of the FORA Act.**