

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Transition Planning Process Update

**Meeting Date:** August 10, 2018

**Agenda Number:** 7f

**INFORMATION/ACTION**

### RECOMMENDATION:

Receive an update of the Fort Ord Reuse Authority (“FORA”) Transition Planning Process.

### BACKGROUND/DISCUSSION:

Under State Law, FORA is slated to sunset **June 30, 2020** and must submit a Transition Plan to the Local Agency Formation Commission no later than **December 30, 2018**. FORA has been engaged in transition planning activities since January 2016, empaneling and charging two Transition Task Force Committees, and one Transition Ad Hoc Committee. Reports, with associated analyses, data, statutory notations, and potential contract assignments have been provided to the Transition Ad Hoc Committee and the FORA Board of Directors (“Board”) since January 2018. The Board received a compiled report outlining the first draft of the Transition Plan and background materials on June 8, 2018 during a several hour Board Study Session. On July 13, 2018, a second Board study session was held to allow the Board to deliberate policy and programmatic issues to aid staff in preparing a Transition Plan for assignment of liabilities, obligations and assets. Senator Bill Monning attended the July 13, 2018 session, outlined limitations of the State legislative process, the importance of completing key elements of the recovery, and actively engaged in the discussion. There was particular interest in how the Transition Plan would be implemented, how specific policies would be enforced, and how building removal might be addressed. In this report, we provide an update on Transition Planning progress.

- First, is a link to the completed [EPS Memorandum \(Attachment A\)](#) offering their review of the financial implications associated with the pending transition for the Board’s use. This financial analysis evaluated the community facilities district fee calculation, the breakdown to a nexus program, and the property tax revenue issues over the Capital Improvement Program planning horizon.
- Second, FORA staff has met with County staff and City of Monterey staff and stand ready to meet with additional agency staff, working through any jurisdictional issues and questions. FORA staff have also communicated with LAFCO staff briefly about their process and LAFCO will be updating their board at the end of August.
- Third, multiple issues have arisen in the last month about how lack of knowledge of facts and coordination can cost the region substantial resources. Some of you might have read about easement issues (or lack thereof) and the requirement to obtain one at the cost of approximately a third of a million dollars. In fact, FORA obtained road and utility easements as a part of the Economic Development Conveyance, saving the region substantial dollars. In other cases, potential resolutions of pending litigation regarding building removal, water and roads may have significant regional impacts.

Finally, in preparation for the Transition Plan hearing in September or October, attached please find a draft of the findings and Transition Plan (**Attachment B**) to move forward.

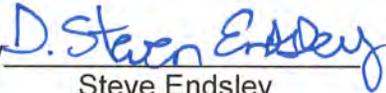
**FISCAL IMPACT:**

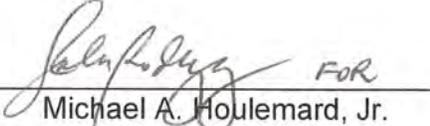
Reviewed by FORA Controller 

**COORDINATION:**

The EPS Financial Memorandum was posted on the FORA website on July 24, 2018 and on August 1, 2018, the Administrative Committee was provided a hard copy.

Prepared by   
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Reviewed by   
Steve Endsley

Approved by  FOR  
Michael A. Houlemard, Jr.

**FORT ORD REUSE AUTHORITY  
RESOLUTION NO. 18-xx**

*A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY  
Adopting a Transition Plan*

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. The Fort Ord Reuse Authority (“FORA”) was established in 1994 by state legislation and when each Jurisdiction voted to create the Fort Ord Reuse Authority in accordance with Government Code section 67700 and following (the “FORA Act”). FORA, as a regional agency, is authorized with a primary legislative directive to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to the governing local jurisdictions or their designee(s).
- B. FORA, under FORA Act authority, adopted a Fort Ord Base Reuse Plan (the “Reuse Plan”) on June 13, 1997, which identified (1) 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”). As a part of that approval, the Board certified an Environmental Impact Report and adopted a Statement of Overriding Considerations making the follow findings:
- The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;
  - The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside (“Seaside”) and Marina (“Marina”), thereby creating a housing stock with higher income families in these communities with larger disposable incomes;
  - The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
  - The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
  - The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
  - The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
  - The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks (“DRO”), Monterey (“Monterey”), Seaside, Marina, and the unincorporated areas of the County of Monterey (“County”) in the vicinity of Fort Ord;
  - The Reuse Plan will provide for additional and needed senior housing opportunities;

- The Reuse Plan will assist the communities of Seaside and Marina in the transition of their respective community images from dependent, military base extensions with transient military personnel to vital, independent, and self-actuated communities populated with permanent residents with long-term interests in the well-being of their respective communities.
  - The Reuse Plan will encourage development that will enhance the continued viability of California State University at Monterey Bay and the open space areas retained by the federal government through the Bureau of Land Management and conveyed to the California Department of Parks.
- C. FORA is obligated by the California Environmental Quality Act, the Reuse Plan and the Authority Act (Government Code Section 67670 and following) to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA arranged for a public financing mechanism to apply to all former Fort Ord properties.
- D. In the Reuse Plan, FORA identified land sale and lease (or “property based”) revenues, FORA share of Fort Ord property taxes, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.
- E. To implement its obligations under the Authority Act and transition the base as quickly as possible, FORA sought funding, entered into multiple agreements with local, state, and federal entities, established a community facilities fee and a capital improvement program. Many of those contractual obligations will survive FORA dissolution and must be assigned.
- F. On or about June 7, 2000, FORA entered into a Memorandum of Agreement (MOA) for the No-Cost Economic Development Conveyance (“EDC”) of former Fort Ord Lands. This document was recorded on June 23, 2000 at Series No. 2000040124 in Monterey County records. The MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. Under the Federal legislation any Sale or Lease Proceeds are to be applied to the economic development of the former Fort Ord.
- G. In 2001, each underlying Land Use Jurisdiction and FORA entered into Implementation Agreements or other Agreements to provide for orderly transfer of EDC property and the allocation of a fair and equitable share of Basewide Costs and Mitigation Measures. The Army required that water be allocated in a fair and equitable manner amongst all property recipients. It is intended that those contracts be addressed through this Transition Plan Agreement for the mutual benefit of the Monterey Bay region and to the mutual benefit of all other successors in interest to FORA.
- H. On or about 2001, FORA established a Community Facilities District (“CFD”), which collects a special tax on all properties to be developed. The tax is due and payable on issuance of a building permit for the property. That tax adjusts annually and cannot be legally challenged. The CFD is structured to promote business/job generating uses on the base. When the FORA legislation sunsets that CFD may no longer be collected. If

the CFD is replaced with a nexus fee, it is likely the underlying taxation will be shifted to job generating uses paying more and housing paying less. Replacement fees may be imposed on future development.

- I. On or about \_\_\_\_\_ the entire former Fort Ord was designated as a Superfund Site due to contamination. The Army is obligated to remediate the former Fort Ord by state and Federal law, including the removal of munitions and explosives. The timeline for the Army cleanup was based in part upon the contingent nature of funding and Department of Defense priorities for funds. Accordingly, in order to receive the properties early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement. Through a series of agreements between Army, FORA, Environmental Protection Agency, and Department of Toxic Substance Control, FORA has proceeded pursuant to an Army grant to remediate the former Fort Ord. The remediation obligations will be ongoing post dissolution of FORA.
- J. The Board wishes to continue orderly reuse, and to provide for the orderly transition of FORA's assets, liabilities, pledges, obligations and a schedule of those obligations to complete the FORA basewide costs and mitigation measures.
- K. Government Code section 67700 requires that FORA sunset when eighty percent (80%) of the base has been reused or on June 30, 2020 and that FORA file a transition plan with the Local Agency Formation Commission ("LAFCO") on December 31, 2018 or eighteen months prior to expiration of FORA.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Board hereby makes the following findings:

Section 1. Basewide Costs and Basewide Mitigation Measures:

The Board hereby finds that the Basewide Costs and Basewide Mitigation measures are as reflected in the Capital Improvement Program. Basewide Costs and Basewide Mitigation measures are defined as follows:

- Basewide Costs means the estimated costs identified in the Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Reuse Plan.
- Basewide Mitigation Measures means the mitigation measures identified in the Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs; habitat management capital and operating costs; water augmentation and storm drainage costs; FORA public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1(f), the Development and Resource Management Plan, and the Findings attached to the Reuse Plan.

The Board finds that the FORA Community Facilities District funding mechanism provides the best vehicle to ensure long term revenue generation and revenue sharing to complete the

basewide mitigation measures in the Capital Improvement Program. The Board makes this finding knowing that imposing new financing mechanisms on already entitled development creates risk of loss to the region of approximately \$72 million dollars towards completing the remaining Basewide Mitigation measures. As a part of this transition, the Board strongly encourages all underlying jurisdictions with future prospective development to form Community Facilities Districts (or other replacement mechanisms) to replace the revenues which would have been raised by the FORA CFD. Additionally, the Board encourages member jurisdictions to include in future projects language which will obligate future development projects to pay a FORA/Basewide Mitigation/Basewide Cost fee (or equivalent replacement fees). The Board recognizes that replacement financing mechanisms will require new revenue sharing agreements between those that generate the revenues and those that are completing the Basewide mitigation measures. The Board further finds that the Implementation Agreements with Marina, Seaside, City of Monterey, City of Del Rey Oaks and the County all require that they continue to fund the base reuse until all basewide costs and mitigation measures have been retired. The Board hereby assigns and requests that LAFCO impose revenue generation obligations, pursuant to Government Code section 56886, on the member jurisdictions in accordance with the formulas set forth in the Implementation Agreements. That revenue generation shall be paid into a fund/escrow account established for the purpose of sharing revenues, unless revenue sharing agreements are finalized and presented prior to LAFCO approval of this Transition Plan.

Section 2. Assignment of liabilities/obligations:

FORA has two types of liabilities/obligations: **real property related** liabilities and obligations (Basewide Mitigation Measures, Basewide Costs, Contractual, and ESCA obligations) and **administrative** liabilities and obligations (E.g. CalPERS, Administrative, costs not flowing from the ownership, control, management or transfer of real property). Each type of obligation will have a unique assignment as a part of transitioning the Agency. In general, administrative liabilities and obligations will be assigned base upon FORA Board voting percentage as outlined herein below. Unless otherwise specified, Real property related liabilities and obligations shall be assigned to the underlying jurisdiction, unless there are agreements changing that allocation.

**Administrative**

|                                | VOTING (13) |
|--------------------------------|-------------|
| City of Monterey 1/13          | 7.69%       |
| City of Marina 2/13            | 15.38%      |
| City of Del Rey Oaks 1/13      | 7.69%       |
| City of Monterey 1/13          | 7.69%       |
| County of Monterey 3/13        | 23.1%       |
| City of Pacific Grove 1/13     | 7.69%       |
| City of Carmel-by-the-Sea 1/13 | 7.69%       |
| City of Sand City 1/13         | 7.69%       |
| City of Seaside 2/13           | 15.38%      |
|                                | 100%        |

## **Contractual Obligations.**

The Board hereby finds that the FORA contractual obligations have been collected and reflected on the attached Exhibit A. To the extent that any contractual obligation is discovered after LAFCO approval of this transition plan, those contractual obligations shall be assigned as follows:

- If the obligation is related to underlying use of property, it shall be assigned to the underlying land use jurisdiction;
- If the obligation is an administrative liability/obligation it shall be assigned/addressed jointly and severally in conformance with the voting percentage obligation;

### Section 3. Transition Plan Subject matters:

- A. **Habitat.** The Board hereby finds that integrated basewide habitat protection is best funded by the FORA CFD. By Board policy the Board has identified and set aside approximately 30% of collected CFD fees to be put towards a basewide habitat management and conservation plan. It is the Board's intent that if/once a joint powers agency/authority is formed for the purposes of basewide habitat management and conservation, that the habitat management and conservation obligations shall be assigned/transferred to that entity. If the FORA CFD is continued, it shall continue to keep basewide habitat conservation as one of the funding requirements and shall transfer funds to the JPA for purposes of management of habitat in perpetuity. The attendant funds on hand at FORA sunset shall be provided to that entity to be held in trust solely for the purposes of long term management of habitat management areas and assistance for other projects requiring site specific habitat conservation plan and take permits. If no JPA is formed, then long term habitat management shall be borne by the underlying land use jurisdictions. Prior to FORA Board sunset, the Board shall review the basewide habitat funding policies to determine whether those funds shall be transferred/provided to underlying jurisdictions at FORA sunset or allocated to other basewide costs and mitigation measures.
- B. **Roads.** The Board hereby finds that completion of the on-base Fort Ord Transportation Network projects that have been identified in the Capital Improvement program are essential to the long term success of the economic recovery of the reuse. The Board further finds that extension of the FORA CFD for the purpose of revenue generation and revenue sharing would be the best long term way to collect and share revenues to fund the transportation network for the on-site and off-site projects and the regional projects to the extent that a replacement regional transportation fee may not be imposed on already approved development projects. For all those projects in which FORA is not the designated lead agency, which is not yet completed, the responsibility to generate and/or collect revenues from the other member agencies will rest with the lead agency. For those projects in which FORA is the lead agency which have not yet been completed, the

Board request that LAFCO assign obligation to the Transportation Agency of Monterey or that it remain under the obligation of a modified extension of the FORA Act.

- C. **Environmental Services**. The Board hereby finds that the long term stewardship obligations and related monitoring activities identified by the United States Army for its munitions removal obligations are crucial to the future success of the recovery program. The Board further finds that the current staffing of the Environmental Services Cooperative Agreement (“ESCA”) be continued and sustained either through an extension of a modified FORA through ESCA contract terminus in 2028 or assignment to Seaside upon the dissolution of FORA. The Board also finds that the funding associated with the performance of the terms of the contract be negotiated for assignment at the point of dissolution.
- D. **Building Removal**. The Board hereby finds that former Fort Ord remnant US Army structures not obligated to be removed under the FORA CIP are a barrier to the recovery and reuse overall program and a nuisance to quiet enjoyment of the region assets. The Board also finds that an extension of the FORA Act to sustain resources that can be applied to this significant barrier to recovery is an important transition component. The Board, therefore, further requests legislative consideration of an extension to meet this blight eradication need as well as other resource demands noted in A & B herein.
- E. **Establishment of a Basewide Funding Escrow Account**. The Board hereby finds that a unified funding mechanism for handling Indemnification, Litigation and other expenses related to Basewide Mitigation Measures and Basewide Costs is necessary and appropriate. The unified fund may be either managed by a successor Jurisdiction willing and able to hold these funds in a special account solely for the purpose of administering the Basewide Mitigation Measures and Basewide Costs or an escrow account established for the sole purpose of holding and administering Basewide Mitigation Measures and Basewide Costs. The administrative overhead for holding and managing either of these mechanisms shall be treated as a real property related cost. Litigation management shall be pursuant to unanimous agreement of all affected parties, unless otherwise agreed in writing. Any additional funds required for administrative type liabilities/obligations shall be funded in accordance with the voting percentages of the FORA Board member jurisdictions. Any additional funds required for real property type liabilities/obligations shall be borne jointly and severally by the underlying land use jurisdictions, unless such basewide mitigation measure or costs is a project in which an underlying jurisdiction is the lead agency.
- F. **Water/Wastewater**. The Board hereby finds that it has made water allocations in accordance with the Implementation Agreements and those Agreements may need to be enforced should any jurisdiction’s approved developments exceed their water allocations. In such a case, the remedy shall be [\_\_\_\_\_]. The Board further finds that transferring the obligation to finance water and wastewater infrastructure to Marina Coast Water District to implement the Reuse Plan is appropriate at FORA sunset. To the extent that Marina Coast is unable to impose and/or collect revenues to replace the revenues

generated by FORA's CFD, the Board finds that continuation of the CFD allows for funds to reduce connection and other costs imposed by MCWD.

The Board's intent is that **MCWD?/Successor** may adjust water allocations in accordance with the provisions set forth in the Implementation Agreements and in particular Section 3.11.54 of the Development Resource Management Plan (DRMP) includes procedures for adjusting water allocations. That reallocation procedure is subject to FORA's general operating procedures in Chapter 8 of the FORA Master Resolution. The Board finds MCWD shall be its successor with respect to the reviewing body for water allocations.

- G. **Policy Issues.** The FORA Board hereby finds that the policies contained in the Master Resolution should be enforced upon FORA dissolution and hereby direct staff to record the Master Resolution in its entirety one month prior to the dissolution. In particular, the Board finds that the prevailing wage policy established in 1996 to promote an equitability and fairness to all workers on the former Fort Ord shall be sustained in the completion of the former Fort Ord recovery program. The Board further finds that the State of California should provide legislative clarity regarding the authority of the Department of Industrial Relations, underlying land use jurisdictions or the Fort Ord Reuse Authority to monitor and establish a procedure for compliance with this policy.

**Section 4. California Environmental Quality Act:**

The Board hereby finds that it adopting this Transition Plan in response to Government Code section 67700 and solely allocates assets, liabilities and obligations of the Fort Ord Reuse Authority in advance of its ultimate dissolution. Nothing herein approves any change in land use or underlying land use jurisdiction, or makes any changes to project-specific review by lead agencies for those projects located within their respective boundaries, including but not limited to those projects contained in the Capital Improvement Program. As such the Board hereby finds that this Transition Plan is not a project under CEQA and/or is exempt as an organizational reorganization.

**Section 5. LAFCO Review and Approval:**

If LAFCO finds that any portion of this plan is insufficient or must be modified prior to the FORA expiration on June 30, 2020, in accordance with Government Code section 67700, this Board is to review and approve any modifications.

Signature block for Resolution  
Attachment: Contract assignment list