

FORT ORD REUSE AUTHORITY BOARD REPORT		
BOARD STUDY SESSION		
Subject:	Transition Plan Study Session	
Meeting Date:	June 8, 2018	INFORMATION/ACTION
Agenda Number:		

RECOMMENDATION:

Receive Draft Transition Plan ("DTP") version 6/5/18 and attendant Chapter presentation. Provide questions, issues and discussion on Chapters.

BACKGROUND/DISCUSSION:

In December 2016, the FORA Board of Directors (Board) accepted recommendations from the 2016 Transition Task Force ("TTF") and Legislative Committee and directed that FORA pursue dual tracks for its transition planning. At the November 2017, the Board accepted recommendations from the 2017 TTF and directed that FORA pursue a single entity solution to complete the obligations remaining for FORA to complete. The Board also acknowledged that there were two key issues essential to successful completion: continuation of FORA financing and cross-boundary regional powers. Some contended that establishing a single entity to complete the FORA obligations was not a transition plan that was contemplated by Government Code section 67700 and instead contended that multiple entities would/should be assigned to complete the outstanding FORA obligations. In January 2018, the Board directed that a new multiple agency Transition Plan be prepared in order to compare that with the single entity approach to completing FORA's obligations. It was further observed that FORA extension served the same purpose of a single entity contrast as would creating a joint powers authority. The FORA Board Chair convened a Transition Ad Hoc Committee ("TAC") to work with staff in developing a side by side comparison of the two approaches (multiagency "assignment" vs. modified FORA extension).

The TAC met multiple times in 2018 beginning March 5, 2018 through May 31, 2018. The TAC received updated financial projections, analyses, and reports as well as updated contract lists and assignments. The 2018 Capital Improvement Program projects that post-2020 costs to complete CIP projects at \$194.5M. The TAC considered multiple different analyses and received a side by side comparison of both the breakdown of the FORA obligations to multiple organizations compared with extension of FORA. The background and materials considered by the 2018 TAC are found at: <http://www.fora.org/Transitiontaskforce.html>. Also, a link to the archive materials presented to the 2017 Transition Task Force and the 2016 Transition Task Force can be found on that same web page.

For the June 8, 2018 meeting, attached is the 6/5/18 DTP. It is expected that this DTP v. 6/5/18 will undergo multiple revisions over the next months as the Board begins to refine its policy direction, and agreements are made between jurisdictions culminating with a Transition Plan which will be presented to the Board for majority consideration and approval in the September – October 2018 timeframe. The DTP contains an Introduction, Executive Summary and chapters on the major contractual and subject matters affecting FORA from Administrative, Water/Waste Water, Transportation, Habitat, Environmental Services, Financial, and completing with a California Environmental Quality Act (CEQA) compliance chapter and Conclusions and Recommendations. There is a reference section which compiles the contracts and other helpful background documents.

Repeatedly arising are the following issues:

1. Revenue Generation (How to replace the FORA Community Facilities District Fees, Land sales revenues and property taxes);
2. Revenue Sharing (How to transfer replacement revenues to those jurisdictions receiving funding under the FORA CIP program);
3. Prioritization and revisions to the outstanding projects in the FORA CIP program;
4. Imposition of new fees on already entitled development;
5. Fair and equitable generation and application of fees to enable all land use jurisdictions to realize their vision of Fort Ord reuse.

Staff reiterates that this DTP v. 6/5/18 is a working draft document. It is intended for discussion and to facilitate the decisions that are required to be made by the Board in order to move toward finalization of a plan which will be submitted to the Local Agency Formation Commission.

FISCAL IMPACT:

Reviewed by FORA Controller 

COORDINATION:

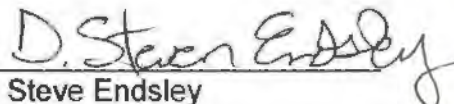
On June 5, 2018, the Administrative Committee was provided a copy of the Preliminary DRAFT Transition Plan.

On June 1, 2018, the Executive Committee considered the Transition Plan workshop and concurred in the recommendation to have a Study Session June 8, 2018, facilitated if possible and a subsequent workshop on July 13, 2018.

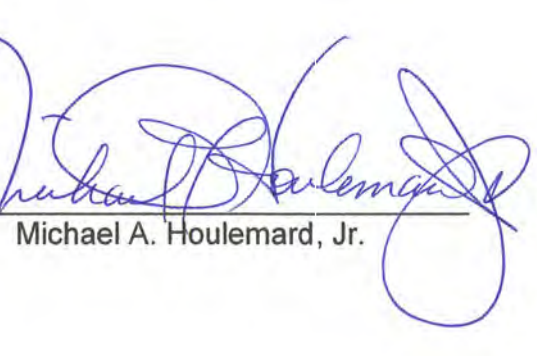
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Reviewed by


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Approved by


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FORT ORD REUSE AUTHORITY

Draft Transition Plan

6/5/18

This document has been prepared to enable the documentary framework to meet the legislative statute that the "Fort Ord Reuse Authority Board of Directors shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first." The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations. The transition plan shall be approved by a majority vote of the board. CHAPTER 7. Dissolution [67700- 67700.] (Chapter 7 added by Stats. 1994, Ch. 64, Sec. 1.) (Amended by Stats. 2012, Ch. 743, and Sec. 3. Effective January 1, 2013. Repealed as of January 1, 2021, by its own provisions. Note: Termination clause affects Title 7.85, commencing with Section 67650.)

Executive Officer Michael A. Houlemard, Jr.
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Background

On January 29, 1990, the Secretary of the U.S. Department of Defense officially announced proposals to realign defense installations and close military bases, which included the downsizing of Fort Ord. On April 12, 1991, the Department of Defense formally submitted the United States Army ("Army") Fort Ord Military Reservation ("Fort Ord") - along with many other Army, Navy, Air Force and Marine bases across the country - to the United States Congress for downsizing and closure under the Base Realignment and Closure Act. The downsizing process at Fort Ord began shortly thereafter and concluded in 1994. The most significant issues facing local communities (at that time) were how to address: a) the regional loss of jobs, b) the exit of a third (approximately 35,000 people) of the local population and \$500M (at least) in local economic contribution/vitality, c) a vacant island of dilapidated, contaminated buildings and substandard infrastructure in the 28,000 acre/45 square mile segment of the Monterey Region, and d) how best to replace the loss of jobs and contributions with a regional program. These issues required a substantial amount of planning and organization as to bringing the former base up to modern day codes and standards and to re-purpose the installation in a manner consistent with the regional economy and local desires to sustain the Monterey Bay quality of life.

On October 1, 1992, the Cities of Marina, Seaside, Del Rey Oaks, Sand City and Monterey and the County of Monterey organized the Fort Ord Reuse Group ("FORG") to begin planning for the reuse of the base. However, negotiations over the establishment of the Fort Ord Economic Development Authority (a Joint Powers Agency ["JPA"]) were stalled several times due to disagreements regarding authority over planning and zoning. Others recognized the importance of a coordinated area-wide effort to work through the former installation planning as a regional asset. They expressed concern that the reuse program would have significant regional impacts and, therefore, the recovery program should be regional in structure and nature. In response, state legislators and the local communities asserted that reuse planning and implementation would be best served by creating a single, unified, broadly representative regional decision making body that

would engage in regional recovery. The regional structure was unprecedented in California, when the Fort Ord Reuse Authority ("FORA") Act (SB899) was adopted by the Legislature and signed by the Governor.

The FORA Act authorized the creation of FORA to facilitate transfer and conversion of the former military base into civilian use. FORA was required to adopt a comprehensive land use plan, transportation plan, public facilities improvement program, and financing plan in order to ensure that the base was successfully converted in a manner that would facilitate economic recovery of the Monterey Bay region. To that end, FORA adopted the Fort Ord Base Reuse Plan ("BRP"), certified an environmental impact report, made overriding considerations under CEQA, adopted a Capital Improvement Program ("CIP") in 2001, and has continued to implement the BRP under State authorization. Although the initial legislation envisioned that reuse would be well underway by June 30, 2014, that effort was hindered by the complexities involved with legal challenges to the US Army remediation program, transitioning a superfund site with multiple remnant contaminated buildings, and the economic downturn of epic proportions in the last decade. This slowed down the cleanup of unexploded ordnance and munitions and deferred economic development to date. In part for those reasons, the legislature extended the FORA Act through June 30, 2020 and required a Transition Plan be submitted to the Local Agency Formation Commission eighteen months prior to that date.

FORA has been planning the transition for the past 2½ years. In February 2016, Assistant Executive Officer Steve Endsley circulated a Transition memoranda outlining the major issues to address in meeting the State Law requirement to present a plan to the Local Area Formation Commission ("LAFCO") by the end of 2018. Shortly after the February memo, the FORA chair empaneled a Transition Task Force (TTF) to engage transition issues. FORA staff compiled governing documents for review, submitted approaches and options for discussion, and presented evaluations of those options to the TTF. Two things became clear: 1) FORA's work in implementing basewide public facilities will not be completed prior to June 30, 2020, and 2) elimination of the primary financing mechanism for those basewide public facilities (FORA Community Facilities District "CFD") creates substantial financial risk and potential loss of millions of dollars for the recovery program.

Other issues related to regional implementation of those public facilities were considered and ultimately, the FORA Board of Directors ("Board") directed dual tracks: extend FORA on the one hand, and continue transition planning for dissolution on the other.

During 2017, a subsequent Transition Task Force was appointed and looked at the two-pronged/dual-track approach to transitioning the FORA program as directed by Board action. The newly empaneled TTF explored issues related to:

- 1) what components of the FORA work program were to be completed post the 2020 sunset date,
- 2) how completion would be financed; and
- 3) the multiple issues related to ongoing Federal agency responsibilities and hazardous material remediation were addressed.

Similar to 2016, the conclusion of the majority of the task force was that a single entity would be best positioned to complete the outstanding FORA program. In the absence of legislation, the only single entity structure within the control of the local public agencies is a JPA (Government Code 6500). Under JPA law, two or more public agencies can create a JPA to run any program that the individual agencies could have run separately. However, the governing and financing details depend on what the member agencies agree to when they sign the joint powers agreement.

The two primary issues related to financing the remaining obligations for the single entity are:

- 1) Ability to assess fees/taxes to/on already entitled development; and
- 2) Sustaining a steady stream of financing to enable recovery obligations.

In the absence of extension of the FORA CFD, financing would have to be supplied by replacement funding by each jurisdiction through assignment of the underlying Implementation Agreements to the successor entity. In 2017, the FORA Board approved a single entity structure for the transition plan and directed that legislative extension of the FORA financing district be sought.

In early 2018, there was discussion at the FORA Board about whether or not the recommendation for a single entity as a "successor" to FORA constituted a "Transition Plan" under the definition in California Law - especially given

that extension of the FORA Act (in order to continue the CFD) was proposed. It was strongly suggested by FORA's State legislative members that rather than go through formation of a new JPA as the successor, that a side-by-side analysis be prepared contrasting the decommissioning of FORA with a focused extension. Accordingly, the FORA Chair charged a Transition Ad Hoc Committee ("TAC") to meet with rigor on creating this draft devolution transition plan with the side-by side analysis. The TAC was further charged with reviewing the continuing contractual and other obligations and attempting to reach consensus on:

- 1) What is required to be finished under the plan?
- 2) How to pay for it?
- 3) How to share the regional risks and/or maintain a fair and equitable distribution of revenues and costs which were established early in the FORA process?

The TAC was also asked to discuss what a FORA Act revision might look like should a compromise solution to post 2020 issues be found.

Executive Summary

Under State Law, the FORA Board is required to approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018. This executive summary outlines the potential pathways and transition approaches available for Board discussion/direction in the multiple chapters that follow – anticipating that direction and actions will form the final transition plan. During the 2 ½ years of Board directed transition planning, its ad hoc committees reached consensus on a limited basis. There was consensus on goals, but only general consensus on financing and assignment and even less on substantive issues. This Transition Plan is organized into 10 chapters and some additional sections that provide background, outline potential legislative action and, set forth some references. Source material will also be incorporated with internet links.

Notwithstanding the ongoing reporting and long-term management obligations to the U.S. Army and the complex pledges related to contractual obligations, the most repeatedly debated issue at the TAC is the ability of the underlying jurisdictions to successfully and comparably replace and impose a financial contribution equivalent to the FORA CFD on entitled developments. The projected obligations and liabilities are projected to be \$194.5 million dollars. This includes the importance of both the jurisdictions and the development projects contributing in a fair and equitable manner in order to complete the CIP.

The Board has identified the basewide costs and mitigation measures in its CIP components. FORA has implemented over \$100M of the CIP including, transportation network projects, habitat conservation, storm water, wildfire protection, transit and building removal. The post-2020 outstanding obligation program (FORA responsibilities) is defined as completion of the CIP. The remaining four CIP components are:

- completion of the transportation network;
- a basewide habitat protection plan;
- augmenting the water supply; and
- certain building removal.

TRANSPORTATION

Completing the roadway transportation system/network, that was originally adopted in support of the BRP, still remains. Capital support for transit has not been fully implemented. With respect to transportation, the TAC received information that three of the primary things the CFD and the CIP do are:

- 1) revenue generation;
- 2) revenue sharing; and
- 3) prioritization of the remaining projects.

After considerable review, presentations by the Transportation Agency of Monterey County ("TAMC") and exchange of information, the TAC did not come to consensus. However, it seemed plausible that TAMC could absorb the remaining off-base regional roads and assess new development accordingly. It was unclear, if assigning on-base regional obligations could be funded or undertaken by underlying jurisdictions or TAMC with adequate funding. It was also unclear whether entitled projects could be assessed their ongoing CFD obligations post-FORA sunset.

HABITAT CONSERVATION

The 1997 BRP Final Environmental Impact Report ("FEIR") described biological resources impact from the BRP as: "Loss of sensitive species and habitats addressed in the Habitat Management Plan ("HMP")." Although the BRP policies and programs and HMP are currently in effect, the United States Fish and Wildlife Service ("USFWS") and California Department of Fish and Wildlife ("CDFW") did not sign the HMP Implementing/ Management Agreement. Instead, they have directed FORA and former Fort Ord land owners to complete a Habitat Conservation Plan ("HCP") prior to issuance of Basewide Federal and State Incidental Take Permits. Therefore, FORA and Fort Ord Jurisdictions plan to complete an HCP in lieu of the HMP Implementing/Management Agreement. This has taken several forms over the 20+ years of effort but will require substantial additional work post 2020. In general, the TAC has focused on sustaining the basewide approach and toward creating a JPA for habitat purpose for post 2020 work.

WATER SUPPLY/ALLOCATION

In general there are three categories of obligations outlined in the contracts with FORA related to water/wastewater.

- 1) FORA received some infrastructure and certain water rights through agreements with the Army and entered into agreements with Marina Coast Water District ("MCWD") as a water purveyor. Many of FORA's water/wastewater rights and obligations were passed along to MCWD through Quitclaim Deed, but FORA retains first right of refusal to excess Army water/wastewater capacity. Of primary concern flowing from the Agreements with the Army are the requirements of providing fair and equitable water and wastewater allocations to former Fort Ord end users. Successors and assigns are required to comply with these provisions.
- 2) Second, there are water augmentation obligations which are set forth in the BRP and those, while underway will need to be completed.
- 3) Finally, there are reimbursement agreements which address backbone infrastructure pipeline obligations. It is projected that approximately \$17.1M dollars are anticipated post 2020 to contribute to augmented water supply.

In general the TAC agreed that some of these post 2020 obligations should and could be undertaken by MCWD. However, it was noted that issues related to annexation of former Fort Ord service areas (and attendant annexation fees) and imposition of fair and equitable assessments and charges (rates, assessments and capacity) between entitled and future development need to be addressed. These issues are heightened if entitled development exceeds MCWD current capacity.

BUILDING REMOVAL

It is noteworthy that building removal was not originally a part of the CIP or the public facilities plan that FORA was to finance. Instead, development was to bear the costs of building removal through recognition of the underlying expense in land sales valuation. That changed when the FORA Board agreed that certain jurisdictions would have a disproportionate share of the building removal burden and authorized use of FORA's land sales revenues for selected additional financial support/subsidy. Those deconstruction activities were added by FORA Board policy to State Law requirements, and as a result became a part of the "basewide cost"

obligations. It is important to note that building removal is barred from being financed with the special (Mello-Roos) tax FORA put in place. FORA has been successful in completing approximately 78 percent of building removal on the base through its use of the above land valuation recognition and land sales subsidy referenced above.

However, a few have opined that the only *obligations* remaining for FORA to complete are CEQA mitigation projects and contend that not all transportation projects contained in the CIP constitute CEQA mitigation. Related to completing the remaining projects in the CIP is the issue of priorities and timing of implementing projects. Finally, in the generation that has passed, many new faces to the recovery program believe that a different direction is in order. That belief is currently inconsistent with completing the reuse plan and fully implementing its promises to the Monterey Bay region enacted in the 1990s.

Recap of Transition Plan options. They are all part of the Transition plan, not as one option or the other but as approaches, in whole or part, to be decided by the Board and transmitted to LAFCO by December 2018, as required by state law.

Plan Devolution to multiple successors: Each individual jurisdiction would be assigned the projects located within that jurisdiction and fund obligations on a pro-rata basis. They would be free to replicate elements in the “Function Transfer” scenario by negotiation and agreement at a future date. This option offers a strong element of home rule but leaves negotiation between the remaining jurisdictions to the post-FORA period. Specific assignments of responsibilities would be the same as included in the material submitted to LAFCO with the exception of creation of any single entity successors (e.g. Habitat Cooperative, ESCA, etc.). These would have to be specifically agreed to by the multiple successors assumed under this scenario.

Plan Function Transfer to Single Entity Successors: Transfer all major FORA functions to individual successor agencies with appropriate subject matter expertise by June 30, 2020. The major function transfers would be as follows:

- ESCA to County/Seaside JPA. ESCA JPA is assigned remaining FORA ESCA dollars and insurance policies.
- HCP to Habitat Cooperative JPA. Habitat JPA assigned remaining FORA HCP dollars. Any shortfall would have to be financed by the cooperative. An alternative is to designate dollars collected to the escrow account if the Habitat Cooperative is not established.
- Water/Wastewater obligations to MCWD who would replace remaining FORA CFD fund need with capacity charges/hookup fees.
- Regional transportation to TAMC who would replace FORA CFD with TAMC nexus fees. All other road projects would be assigned to the jurisdictions in which the road is being built. Individual jurisdictions would set up their own financing districts and an escrow account would be established under the existing Implementation Agreements. Each jurisdiction would pay into the escrow account on a pro-rata basis to share revenues and equalize burdens. If state legislation is passed that extends the FORA CFD, the escrow account can be augmented with those revenues. This approach requires specific agreements between the jurisdictions and successor agencies to be in place by September 1, 2018 to be included in the plan for LAFCO's specific review.

Plan Modified Extension: Extend the FORA Act for a limited, specified time frame to enable continuity of revenue sources in order to ensure all obligations can be funded. This action would be in addition to the above, and would "ramp down" of FORA operations and staffing as functions are transferred or completed. A clear hand off to successor agencies is included in Plan Modified Extension so the LAFCO process does not have to be repeated if the extension does not take place or if the adopted Transition Plan calls for a short extension. This relieves individual pressure to make all handoffs by June 30, 2020, and allows the Board and LAFCO to explicitly default to one of the other two options once any modified extension lapses.

CHAPTER 1

Administration

SUMMARY OF OBLIGATIONS AND SOURCE

At Board direction, FORA has taken on obligations that are categorized as “Administrative” as they fall within functions necessary to manage/oversee State Law or other designated responsibilities. The most significant administrative FORA liabilities are:

- 1) California Public Employees Retirement System Contract unfunded terminated agency liability (est. \$6.6-8.8M); and
- 2) Local Agency Formation Commission indemnification requirements.
- 3) Other assets/liabilities are comprised of:
 - a) a set of insurance policies which cover a variety of matters;
 - b) attendant funds for unfunded terminated agency liabilities; and
 - c) FORA’s post sunset disposition of plant and facilities (e.g. furniture/equipment, etc.).

EXISTING CONTRACTS AFFECTING ADMINISTRATION

Please see Attachment A. Note: Specific multi-agency assignments are found in Attachment A under the column labeled “Assignments.”

NOTATIONS

- The CalPERS contract requires resolution of intent to terminate and a minimum one year notice to CalPERS. There may also be notices and actions required to assign CalPERS contract obligations.
- LAFCO Indemnification Agreement obligations and potential liability could be substantial if LAFCO’s approval of the transition plan is challenged. (Estimated at \$300,000 per year.)

The TAC met on May 9, 2018, on this chapter. Some key issues discussed:

- 1) What is the potential California Public Employees Retirement System (“CalPERS”) liability for successors to FORA?

- 2) Who manages LAFCO/real Party in interest litigation on Transition Plan if litigation continues beyond 2020?
- 3) Who assumes responsibilities under potential settlement agreements or court judgments?
- 4) Can/Should FORA seek extension of various insurance policies in order to provide gap/statute of limitations coverage?
- 5) Who receives/maintains FORA records repository/website?

The TAC generally came to consensus on one issue: ensure that the CalPERS liability is addressed, minimized, and/or eliminated. This is consistent with FORA Board actions of the past three years to assure sufficient funds are in reserve to pay for these anticipated costs, and consistent with recent Board action to enable a Section 115 Trust under the Public Agency Retirement Services for this purpose. The TAC recommended termination of the existing CalPERS contract and/or amendment to ensure obligations at sunset are fully addressed.

Other ideas discussed by TAC included trying to procure an insurance policy on the litigation costs associated with the Transition Plan. Currently, the Board has set aside \$300,000 for potential LAFCO Transition Plan indemnification associated costs. Predominant TAC concerns were reducing/eliminating the risk of liabilities on their general funds to pay for unknown costs.

CONSIDERATIONS

The Board should consider the following, with respect to Administrative liabilities/obligations:

- 1) The Administrative liabilities/obligations are assigned as identified in the attached spreadsheet on a voting percentage basis;
- 2) PERS obligations to be pre-paid to the extent possible;
- 3) FORA should assign existing insurance policies and any related dollars being held for those purposes. Policy renewals to be the responsibility of successor agencies;
- 4) FORA records to be provided to local libraries; and
- 5) Extension of FORA with provisions to limit future CalPERS liability for past and future board members.

CHAPTER 2

Water/Wastewater

SUMMARY OF OBLIGATIONS AND SOURCE

Water and wastewater are complex subject matters. In general there are three categories of obligations outlined in the contracts with FORA related to water/wastewater.

- 1) FORA received some infrastructure and certain water rights through agreements with the Army. FORA entered into agreements with Marina Coast Water District as a water purveyor and MCWD requested a public benefit conveyance and then converted its request to an Economic Development Conveyance for water and wastewater rights and systems. Many of FORA's water/wastewater rights and obligations were passed along to MCWD through Quitclaim Deed. FORA additionally retains its first right of refusal to excess water/wastewater capacity through its agreements with the Army. Of primary concern flowing from the Agreements with the Army are the requirements of providing fair and equitable water and wastewater allocations to the end users of the former Fort Ord property. Successors and assigns are required to comply with these provisions.
- 2) Second, there are water augmentation obligations which are set forth in the Base Reuse Plan. It was always contemplated and a part of the ongoing collections for the base wide benefits of augmented water to complete the Base Reuse Plan.
- 3) Finally, there are reimbursement agreements which address backbone infrastructure pipeline obligations. It is projected that approximately \$17.1M dollars are anticipated post 2020 to contribute to augmented water supply.

EXISTING CONTRACTS AFFECTING WATER

Please see Attachment A. Note: Specific multi-agency assignments are found in Attachment A under the column labeled "Assignments."

NOTATIONS

- MCWD ANNEXATION: All infrastructure and water rights were provided to MCWD to provide for a fair and equitable water allocation on base. Can MCWD later only annex a portion of the former Fort Ord? Is this consistent? Does LAFCO need to consider and abide by the Fort Ord Reuse Plan when considering MCWD annexation? As of April 4, 2018, there are CEQA challenges pending against the MCWD annexation application to LAFCO.
- In the event of a water shortage how will MCWD provide a “fair and equitable” water supply to the former Fort Ord? Will only entitled projects receive water? Will only the projects with a water supply assessment receive water?
- How will jurisdictional water allocations be enforced?
- Although water and wastewater issues have been discussed during the past two year process, the 2018 TAC met and considered water/waste water issues on May 9, 2018, focusing their discussions on the following issues:
 - 1) How do you provide public representation of the Ord Community without the 1998 Facilities Agreement if no MCWD annexation prior to 2020?
 - 2) How do adjustments to water allocation occur in order to ensure a fair and equitable allocation of water?
 - 3) How do you define, approve, and pay for the Augmented Water project (a required CEQA mitigation in the BRP) currently in planning?
 - 4) How do you ensure future water service and annexation of the entire Ord Community?
- The TAC considered information from representatives of MCWD as to how if FORA didn't complete its contribution of \$17.1M toward augmented water supply, it intended to collect those fees. They opined that continuing FORA's CFD is great and will lower fees to be

assessed by MCWD. However, if not, MCWD's vehicle for collection of fees for water stems from capacity fees, rates, and connection fees. Its intent would be to capture the FORA contribution in the imposition of capacity fees on new development. There would also be a fee on future annexations for lands not currently served by MCWD. MCWD opined that it could impose a new capacity fee on already entitled development. However, this shift in collection of fees for the augmented water supply, will result in a shift of how much capacity fees are collected by land use. In other words, as the program shifts, job generating uses will pay more because of the way MCWD is required to impose its fees (i.e. nexus v. special tax).

CONSIDERATION

The Board should consider the following with respect to Water/Wastewater liabilities/obligations:

- 1) The Water/Wastewater liabilities/obligations are assigned as identified in the attached spreadsheet;
- 2) The Implementation Agreement requirements that each land use jurisdictions must comply with the FORA water allocations is hereby assigned to MCWD;
- 3) MCWD be required to provide water service contracts to all FORA members who are not currently annexed into the MCWD territory;
- 4) The Right of First Refusal in the Army Memorandum of Agreement with FORA shall be assigned to those land use jurisdictions with unentitled future development: Seaside, Del Rey Oaks and City of Monterey;
- 5) Augmented water project activities not completed or funded by June 30, 2020 are assigned to MCWD; and
- 6) Future annexation assigned to LAFCO.
- 7) Alternatively, extend FORA in order to continue to raise revenues for augmented water, thus reducing the capacity fees shifted to new development.

CHAPTER 3

Transportation

SUMMARY OF OBLIGATIONS AND SOURCE

FORA was required by the Authority Act to plan and adopt a transportation network as well as a public financing plan. As a part of the Base Reuse Plan, FORA adopted a transportation network and incorporated those elements into a Capital Improvement Program ("CIP") as a part of its financing program. As codified in the CIP, FORA's obligations are monetary in the form of reimbursement agreements or financial contributions to regional roadway projects or actual construction. The 1997 BRP FEIR described a Traffic and Circulation impact from implementation of the BRP as: "Increased travel demand on Regional Transportation System" (FEIR pg. 4-108). The FEIR noted that implementation of BRP policies and programs for transit, transportation demand management, and non-vehicular circulation "would help reduce impacts, but would not be sufficient to eliminate significant impacts due to deterioration of Levels of Service ("LOS") on regional roadways" (FEIR pg. 4-112). The FEIR identifies two mitigations for this impact:

- 1) Add wording to Streets and Roads Policy A-1.2 requiring FORA to review options for distributing its financial contributions to off-site transportation improvements to maximize effectiveness in reducing regional roadway system traffic impacts; and
- 2) FORA shall establish a Development Resource and Management Plan ("DRMP") to establish programs and monitor Fort Ord development to assure that development does not exceed resource constraints from transportation facilities and water supply (FEIR pg. 4-111 and pg. 4-112).

The DRMP includes the following Fair Share Financing Program: "FORA shall fund its "fair share" of "on-site," "off-site," and "regional" roadway and transit capital improvements, based on the nexus analysis of the TAMC regional transportation model" (BRP pg. 195). The DRMP also requires FORA to "annually update its CIP to reflect proposed capital projects," including on-site, off-site, and regional roadways (BRP pg. 202). To the extent the 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. The anticipated costs associated with post-2020 transportation projects is approximately \$132.3M.

EXISTING CONTRACTS AFFECTING TRANSPORTATION

Please see Attachment A. Note: Specific multi-agency assignments are found in Attachment A, under the column labeled "Assignments."

NOTATIONS

The 2018 TAC met on May 23, 2018, and considered the Transportation contracts and liabilities and considered the following issues:

- 1) Who completes FORA lead agency improvements?
 - a) South Boundary Road Upgrade.
 - b) Inter-garrison Road.
 - c) GJM Boulevard.
 - d) NE-SW Corridor.
 - e) Gigling Road.
 - f) Eucalyptus Road.
- 2) What is the schedule for FORA project completion?
- 3) What is the schedule for FORA Network completion?
- 4) How do we ensure Fort Ord Zone network obligations are met and monitored/reassessed?
- 5) How do we ensure network obligations are funded equitably?
- 6) How do we handle cost overruns from MEC unknowns?

The TAC considered information from the Executive Director of the Transportation Agency of Monterey County ("TAMC") about the Regional Transportation Improvement Program and its application to the Fort Ord zone. Much discussion was had about the timing and funding and potential competing funding obligations. In particular, how revenues which would have been generated and transferred to other land use jurisdictions were accomplished by the FORA CFD and CIP, and the potential losses by jurisdiction if the FORA CFD is terminated.

CONSIDERATION

The Board should consider the following with respect to Transportation liabilities/obligations:

- 1) The Transportation liabilities/obligations are assigned as identified in the attached spreadsheet;
- 2) Upon termination of FORA, FORA's regional monetary obligations are transferred to TAMC and funded by TAMC's fee structure;
- 3) FORA off-site reimbursement obligations are transferred to the jurisdiction where the project is located;
- 4) FORA lead agency improvements are transferred to the jurisdiction where the project is located ; and
- 5) Jurisdictions create their own financing districts to pay for their own projects and deposit funds into escrow account to complete/share revenue for projects.

CHAPTER 4

Habitat

SUMMARY OF OBLIGATIONS AND SOURCE

When the Army began its disposal process for the former Fort Ord, it was required to comply with Federal regulations (Endangered Species Act). As part of the disposal process, the Army took into consideration the local planning efforts at the time, which set aside a significant amount (70%) of the approximately 28,000 acres for habitat protection and recreational use. During that process, the Army, FORA, BLM, State Parks, CalTrans, UCSC, County of Monterey, UCNRS, MPRPD, and City of Marina executed a Fort Ord Installation Wide Multi-Species Habitat Management Plan ("HMP") with the USFWS. The applicable measures set forth in the HMP must be complied with by all real property recipients on the former Fort Ord. The 1997 BRP FEIR described a biological resources impact from implementation of the BRP as: "Loss of sensitive species and habitats addressed in the HMP" (pg. 4-164). It is noted that this impact is considered less than significant through implementation of BRP Biological Resources policies and programs, the HMP, and the HMP Implementing/Management Agreement (pg. 4-173). Although the BRP policies and programs and HMP are currently in effect, USFWS and CDFW did not sign the HMP Implementing/Management Agreement. Instead, they have directed FORA and former Fort Ord land owners to complete a HCP prior to issuance of Basewide Federal and State Incidental Take Permits. Therefore, FORA and Fort Ord Jurisdictions plan to complete an HCP in lieu of the HMP Implementing/Management Agreement. The long-term management and funding of those protected areas (Est. at \$46M post-2020) are to be addressed in the base wide documents which have not yet completed the federal and state public review process, which is expected to take place August 2018.

EXISTING CONTRACTS AFFECTING HABITAT

Please see Attachment A. Note: Specific multi-agency assignments are found in Attachment A under the column labeled "Assignments."

NOTATIONS

The 2018 TAC met and discussed the habitat obligations in detail on May 16, 2018. The TAC considered a brief history of the habitat item and then focused on the following issues:

- 1) What happens if USFWS/CDFW do not approve Basewide HCP/2081 permit prior to FORA Transition?
- 2) Who is the successor to a Basewide HCP/2081 permit if no Habitat Cooperative is formed?
- 3) How is remaining funding (approximately \$45M) collected and allocated and/or how is the endowment funded without the FORA CFD fees?
- 4) What are the obligations under the HMP?
- 5) Is it feasible to process individual take permits with USFWS/CDFW?
- 6) What are the time/development costs and can or should those costs be shifted as habitat conservation is a basewide cost/regional asset?
- 7) How do jurisdictions finance removal of invasive species and habitat restoration?
- 8) Should the Board consider offloading habitat responsibilities to developers and creating a loan pool from collected funds?

The TAC focused on the three key functions that FORA performs:

- 1) habitat management;
- 2) habitat management funding, and
- 3) habitat preservation/protection planning.

Currently, the Fort Ord HCP remaining funding obligation is projected post-2020 at \$45.1M. The basewide HCP would most likely not be completed prior to December 2018. There seemed to be consensus that if a joint powers agency (JPA) was going to be named successor to FORA for long term management and planning and funding of habitat, that the jurisdictions would need to create that JPA in advance of the HCP. Given the escalated costs associated and planning with the basewide HCP, discussion was had about potential options if no HCP is ultimately adopted. Accordingly, the majority of the TAC recommended that a workshop on the HCP and

potential options for the HCP be brought back to the Board as soon as possible.

CONSIDERATION

The Board should consider the following with respect to Habitat liabilities/obligations:

- 1) The habitat liabilities/obligations are assigned as identified in Attachment A;
- 2) Form the Joint Powers Authority now, in order to undertake the obligations/responsibilities; **Note, LAFCO may not assign successor liability to a JPA which is not in legal existence at the time of the order of succession and successor status will be as identified above in the HMP;*
- 3) If the JPA is not formed prior to LAFCO action, designate successor entities which have habitat management areas will be responsible for long term management of those areas, with provision that they may limit individual liability by participation in a future JPA for habitat management;
- 4) Jurisdictions deposit pro-rata share of HCP Endowment shortfall into escrow account;
- 5) HCP Basewide NEPA/CEQA to be completed by USFWS and FORA;
- 6) FORA provide staffing to the Habitat Cooperative until dissolution of FORA; and
- 7) Should the HCP not be approved and/or the Habitat Cooperative, dollars collected by FORA through 6/30/2020 (estimated at \$21 million) the FORA Board should consider establishing a loan pool from the collected funds to address habitat responsibilities on a project-by-project basis and a portion of the funds to establish an endowment for use by the jurisdictions required to perform long term management of habitat management areas.

CHAPTER 5

Financial Assets

SUMMARY OF OBLIGATIONS AND SOURCE

FORA has three main statutory financial resources, Community Facilities District (Developer Fees), 50-50 split with Jurisdictions of land sale and rental receipts, and Property taxes. FORA utilizes these revenues pursuant to state law primarily for Base Reuse Plan mitigations and Base wide facilities (Transportation/Transit/Water, Augmentation/Habitat Conservation and Building Removal). These financial resources are identified and authorized pursuant to the Authority Act and codified in contractual agreements with the underlying land use jurisdictions in the form of the Implementation Agreements. The CFD expires upon expiration of FORA, unless extended by an election and concomitant legislative changes are made to the Mello-Roos laws allowing for transfer of the existing FORA CFD. Should FORA sunset, its right to land sales and property tax dollars default to existing state law and would not be available to regional purposes except by agreement.

EXISTING CONTRACTS AFFECTING ASSETS

Please see Attachment B-1. Note: Specific multi-agency assignments are found in Attachment B-1 under the column labeled "Assignments."

NOTATIONS

Implementation Agreement assignability and the legal meaning of the terms post FORA Act are the subject of a legal memorandum provided by Authority Counsel.

Should the Implementation Agreements be determined not to be assignable or create obligations with the underlying jurisdictions, then the funding and completion of the remaining Base Reuse Plan CIP obligations will be jeopardized.

Likewise, should the Community Facilities District not be assignable or transferrable, then issues related to new replacement revenue streams and application to already approved development projects is a potential issue.

The 2018 TAC met on May 16, 2018 to consider and discuss the financial implications/obligations/assets. They considered a brief history and focused their discussions on the following issues:

- 1) Post 2020 how are revenues generated to ensure completion of BRP obligations/liabilities?
 - If new financing mechanisms are required, how do we capture and assess already entitled development? (Approximately \$70M)
- 2) If replacement CFD revenues are generated, how are revenue transfers handled to compensate/reimburse surrounding jurisdictions for their portions of the basewide costs and mitigation measures?
- 3) Can the development fee be assigned to successor for the areas not covered by the CFD?
- 4) Can the Implementation Agreements be assigned and do they require the jurisdictions by contract to finish the Basewide Costs and Mitigation measures as identified in the CIP?
 - Does assignment require the Land Use Jurisdictions to adopt new development fees and/or mechanisms to replace the Property Tax and Development Fees collected by FORA?

CONSIDERATION

The Board should consider the following with respect to financial liabilities/obligations:

- 1) The Financial assets/liabilities/obligations are assigned as identified in the attached spreadsheet;
- 2) Any financial shortfalls related to completion of the FORA BRP/CIP are under the existing Implementation Agreements assigned to the jurisdictions on a pro-rata basis;
- 3) An escrow account will be set up and the former FORA land use jurisdictions will deposit their pro-rata share of basewide obligations in the escrow account and jointly administer disbursements;

- 4) Should the FORA CFD or other financing streams be extended for any period of time, any resultant revenues would be deposited into the escrow account, reducing jurisdictional obligations by their pro-rata share; and
- 5) Jurisdictions or successor Board would be free to negotiate any future revenue sharing agreements.

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CHAPTER 6

Environmental Services/Clean Up

SUMMARY OF OBLIGATIONS AND SOURCE

Environmental cleanup (especially military munitions) of Fort Ord lands is an extensive and complicated task. The environmental issues run the gamut from regulatory Superfund site designation (and delisting) of the entire former Fort Ord lands to removal and long term monitoring of munitions and explosives of concern ("MEC"). There are state and federal regulatory and contractual assets/liabilities and obligations running between multiple parties, e.g. Army to FORA, Army to Department of Toxic Substance Control and Environmental Protection Agency to FORA and multiple jurisdictions. In exchange for property transfer to local hands and to align clean up with local and regional demands, FORA and the Army entered into a cleanup agreement in which the Army paid for cleanup services. FORA just entered an amended agreement in which additional funds from the Army are provided to complete the reporting and additional regulatory requirements going forward to 2028. This includes how to proceed should activities in the future discover unexpected MEC, which will expose the property owner/developer of land to potential liabilities and determinations (creating lengthy delays, injury or impossibility of affecting ultimate end use plans).

EXISTING CONTRACTS AFFECTING ENVIRONMENTAL SERVICES/CLEAN UP

Please see Attachment A. Note: Specific multi-agency assignments are found in Attachment A under the column labeled "Assignments."

NOTATIONS

The AOC can be assigned, but it is subject to Army/Regulator review of assignee(s) technical, managerial and financial ability to perform remaining obligations.

AOC 5.2.2. Requires the Monterey County LAFCO to designate FORA's successor and limits the successor to the following municipal entities:

- 1) Monterey County
- 2) Seaside
- 3) Marina
- 4) A Joint Powers Agency if created under California law for the purpose of succeeding FORA's obligations, liabilities, and duties.

AOC 5.2.3. If the FORA dissolves or terminates, the designated successor shall become the Recipient hereunder, and shall assume all liabilities, obligations and responsibilities under this Agreement regardless of whether there is Finding of Default under the AOC due to the Recipient's inability to obtain EPA's acceptance of the designated successor to FORA under the AOC. *Also see Kutak Rock memorandum on contractual ESCA issues, pages 4-6.*

The 2018 TAC met and considered the associated contracts and obligations for Environmental Services in detail on April 25, 2018. They were presented with a brief history and focused on the following issues:

- 1) How will the ESCA resources and responsibilities be distributed?
- 2) What agreements need establishment to "share" the ESCA resources?
- 3) Will the successor(s) need new procedures/format to manage the ESCA?
Will there be an additional cost burden to ESCA funds?
- 4) ESCA office location for appropriate access?

The TAC considered multiple issues for a single entity point of contact for Army, state and federal regulatory agencies, given the limitations on successor in the ESCA and AOC. To who and how will clean up obligations be enforced/invoked when the Army must remediate?

CONSIDERATION

The Board should consider the following for ESCA liabilities/obligations:

- 1) The Environmental assets/liabilities/obligations are assigned as identified in the attached spreadsheet;
- 2) County/Seaside form ESCA JPA as single contact with Army;
 - JPA receives remaining FORA funds, contractual reimbursement agreements with Army, or insurance policies; and/or
- 3) FORA extension with limited ESCA function to complete Army contract.

CHAPTER 7

Miscellaneous Contracts

SUMMARY OF OBLIGATIONS AND SOURCE

FORA has multiple miscellaneous contracts, obligations or documents that do not neatly fall into other categories. Currently identified are obligations stemming from lawsuits: settlement agreements and discharge of writ and building removal obligations. Some of those obligations are assets as well as liabilities. This list will be augmented as necessary to accommodate additional items. Contracts related to building removal are contained in this section. Although, the Board has directed that some building removal costs are basewide costs, it was never anticipated that the Board would pay all building removal costs. It is anticipated that FORA's current obligations to deconstruct buildings will be completed prior to 2020.

EXISTING CONTRACTS AFFECTING MISCELLANEOUS DOCUMENTS/CONTRACTS

Please see Attachment C-1. Note: Specific multi-agency assignments are found in Attachment C-1 under the column labeled "Assignments."

NOTATIONS

The 2018 TAC met and considered the miscellaneous contracts chapter on May 16, 2018. They discussed the following key issues:

- 1) Who will be FORA's successor for purposes of monitoring Settlement Agreements/writ compliance?
- 2) Who will pay Litigation/Attorneys' fees and costs awarded subsequent to 6-30-2020?
- 3) What happens to pending litigation post- 2020?
- 4) Who manages pending litigation post 2020?

The TAC considered among other things, establishment of an Indemnification fund for post 2020 litigation/attorneys' fees and costs. They

also considered a potential “escrow” holder who would manage pending litigation post 2020. At least one contract related to building removal is in litigation.

CONSIDERATION

The Board should consider the following with respect to miscellaneous liabilities/obligations:

- 1) The Miscellaneous assets/liabilities/obligations are assigned as identified in the attached spreadsheet;
- 2) Upon dissolution, any unspent FORA indemnification reserve accounts will be transferred to a post-FORA indemnification fund to be administered by the former FORA jurisdictions;
- 3) Any additional FORA dollars may be transferred from the escrow account to the indemnification fund by the former FORA land use jurisdictions; and
- 4) Any obligations/liabilities (e.g. litigation defense, settlement agreements, writ) that exceed the amount of funds available to the indemnification fund would become the responsibility of the former FORA jurisdictions.

CHAPTER 8

Transition Staffing

SUMMARY OF OBLIGATIONS AND SOURCE

The FORA Board has engaged a policy of completing as much as possible of the overall program prior to FORA's scheduled 2020 sunset. Occasionally, the Board has also added staff to address regional issues which the underlying jurisdictions do not have either staff complement or ability to coordinate regional efforts to address issues (e.g. Veteran's affairs/prevaling wage/economic development). In general, FORA staff resources are assigned by function. The chart below illustrates the full time equivalents ("FTEs") as currently assigned. Note, 1) the need for FTEs is reduced as workload or the FORA functions are completed and/or transferred and 2) the need for staff support assumes some functions cannot be absorbed given recent reductions in staff or declarations about workload within the member jurisdictions. However, an appropriate study (inter-agency staffing review) would be needed to verify if jurisdictional absorption with associated functions might result in a potential (7-12%) staffing reduction.

Given time limitations, such is not assumed in the chart on the next page, which demonstrates/ illustrates that FORA staff is performing more than their FTE. This is partially addressed in the Board approved incremental increase in staffing to address the gap in the 2018-19 budget cycle, to be assigned primarily to Transition support/Public Records Requests. The TAC generally recognizes that completing the program requires sustaining existing staffing and retaining incumbents as the best way to achieve maximum accomplishments by 2020. However, it is also clear that a looming sunset will mean personal interests will overtake those goals and individuals will move on to other options for security and career reasons. Therefore, the TAC has suggested/recommended that the Executive Officer work closely with a human resource professional to design a retention and eventual separation program that includes incentives and rewards – as well as a program for re-assigning and motivating work load reduction.

<i>Full Staffing</i>	<i>FUNCTIONS</i>	<i>FTE</i>
Administration (5)		
	Board Packets/Minutes/Agendas/Committees	1
	Phone/Reception/Support/etc.	1
	Records Management/Archiving/PRA's	0.5
	Facilities Management (office supplies, utilities , service contracts)	0.25
	IT/Website/Communications (video audio meeting support and conferencing)	1
	Grants/Ext-Int Mgt/Fed-state interaction/Board meetings	1
	Dept-Supervision/E/O back up	1
	Veterans Issue Advisory / Military Veteran Community Relations	0.25
Accounting/HR (3)		
	Budget/A/R-A/P/Banking/Investments/Audit/Reporting	1
	Payroll/Benefits	1
	Personnel/Policies/Guidelines/Community information /OSHA	1
Econ Development(1.5)		
	Real Estate/Housing/Business Development/Reporting	1
	Coordination/Regional Collaboration/Website/GIS interface	0.5
PW/Risk Coordinator (1)	Coordinate Outside Counsel/Internal document/policies review	0.5
	Collect/Coordinate/Board Reports	0.25
	TIF Committee/Outside coordination/Contract compilation/ Contract Compliance and Review/Board Presentations	0.5
	Prepare Transition Plan/LAFCO Coordination	
ESCA (2)	MEC Find Assessments/Grant Management/DTSC/EPA Coordination/Training	2
	Construction Support/ROE/Public Outreach	
Planning (3)		
	BRP/Consistency Determinations	0.25
	CFD Billing Determinations	0.25
	Oak Woodlands	0.25
	ESP Environmental Review	0.5
	BRP Reassessment (Cat 1-5)	0.25
	HCP	0.5
	CIP Reporting/preparation Board	0.25
Project Management/Building Removal (FORA) (1)		
	Building Removal	0.5
	Road Projects (3)	
	ESP	0.1
	South Boundary/Eucalyptus	0.4
	CIP Preparation	0.25
	Water Augmentation/Coordination	0.25
Totals: (16.5)		17.75

EXISTING CONTRACTS AFFECTING STAFFING

No contracts affecting staffing post 2020.

NOTATIONS

The 2018 TAC considered the staffing ramp down associated with the FORA sunset on May 23, 2018. They focused their discussions on the following issues:

- 1) When does Staffing ramp down begin and how?
 - a) Review Work Plan eighteen months prior to sunset
 - b) Decide which tasks to remain in Sunset Work Plan. Each task inquiry will be: Can it be completed prior to sunset? If yes, continue. If no, will the task reduce obligations/liabilities at sunset with clear handoff? If yes, task remains. If no remove.
 - c) For removed tasks, review function area and consider potential consequences and/or potential assignment to successor (i.e. Veteran's Issues)
 - d) After consensus on revised work plan go to Step 2.
- 2) Direct Executive Officer to prepare a staffing plan based upon revised work plan.
- 3) How are key employees retained to accomplish the Sunset Work Plan?
 - a) Consider a retention/severance program.
 - b) Employees completing key functions shall receive a retention bonus for completing work during last work year prior to Sunset.
 - c) Functions which are no longer required, consider an early departure severance.
- 4) How will post Sunset ramp down be accomplished? (e.g. Who handles revenue collection of revenues and distribution and accounting? Audit? Payroll records-W-2, etc.)

The 2018 TAC had a spirited conversation about these items. There seemed to be an unwillingness to engage in the work plan/policy shifts required and, instead, seemed to be consensus around hiring a professional to engage in the staffing reduction.

Depending upon the FORA Board selected course of action and/or state legislative action, the following are proposed to be addressed by the Executive Officer and a human resource professional.

- a) Temporarily increase the use of interim staffing in order to sustain and deliver services prior to shut down on June 30, 2020. Such course of action will work to assure the maximum amount of work accomplishment and limiting transfer of incomplete obligations.
- b) Take precise action in spring of 2019 to focus on remaining work that can be reasonably accomplished prior to June 30, 2020. Accordingly, make appropriate staffing reductions during the course of the year and assign obligations and responsibilities in accord with LAFCO determinations in 2019.
- c) If entire departments or functions are not eliminated, and those functions need to be sustained, consider a retention package as incentive for employees to complete those functions. Given the circumstances and an unknown employment market in the 2020 calendar year, a minimum of six (6) months' salary is suggested.
- d) The Board might consider:
 - i. retention of career counseling services to assist in employee transition;
 - ii. encouraging member agencies to consider existing FORA staff to undertake their portion of assigned/agreed obligations; and
 - iii. potential links for openings that may occur if member agencies have a need for additional staff.
- e) Retain through December 30, 2020 the Accountant and FORA CFO (.5 FTE) for collection of final bills, accounts payable, preparation of close-out audit, bank account monitoring and full closure of the office, along with payroll W-2 preparation December 30, 2020. It is suggested that the Accountant and FORA CFO work primarily out of the County accounting office with appropriate level budget allocated from FORA's 2019-2020 budget to accommodate costs.

Should FORA be extended, the same or similar reduction in staffing could occur as functions are completed and/or transferred to successor entities.

CONSIDERATION

The Board should consider the following with respect to reduction in workforce concomitant with FORA Sunset:

- 1) Follow the steps as outlined in 1-5 herein (above) until FORA dissolution. Staffing to be managed by the Executive Officer with periodic recommendations to the Board; and
- 2) Upon FORA dissolution, overall staffing falls to 2 FTE's for 6 months to complete essential accounting functions, W-2's, etc. Alternative is to contract with an accounting firm to cover any vacancies.

CHAPTER 9

California Environmental Quality Act

Part 1: CEQA Compliance

LAFCO has identified that FORA shall be the lead agency for purposes of making any required CEQA findings for the adoption of the Transition Plan required by California Government Code section 67700(b). Government Code section 67700(b) (2) states as follows:

“The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations. The transition plan shall be approved only by a majority vote of the board.”

CEQA guidelines clarify that a “project” does not include financial organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. (14 CCR 15378(b)). The adoption of the Transition Plan is not a project subject to CEQA.

CEQA applies to discretionary projects proposed to be carried out or approved by public agencies. (Cal. Pub. Resources 21080(a); 14 CCR 15004) CEQA does not apply to ministerial projects carried out or approved by public agencies. Government Code section 67700(b) (2) does not provide that the FORA Board may exercise its discretion and not adopt the Transition Plan. Therefore, the adoption of the Transition Plan is a ministerial act and not subject to CEQA.

It is fully anticipated that any project level environmental analysis will be performed and/or completed by the successor entity(ies), to the extent any additional environmental review is required pursuant to state or federal law.

CHAPTER 10

Conclusions/ Considerations

These “Conclusions/Considerations” are drafted by FORA staff to provide the Board with Transition Plan options to consider. They are not intended at this point to reflect the consensus or even majority viewpoint about addressing the approaching (2 years) legislative sunset of the Fort Ord Reuse Authority. Further, staff has used information assembled in support of the TAC deliberations as the basis of producing these approaches for Board consideration. It is likely that they (or some revised version of the following) will encompass the Board action and will be presented to LAFCO this fall as required by state law. It may be that the Board may choose to adopt a hybrid of these options that may surface during Board deliberations.

Function Transfer to Existing Agency Member(s) or Anticipated Joint Powers Authority Successor(s): As noted in this Transition Report, there are significant obligations that cannot be completed prior to June 30, 2020. Those obligations occur within individual jurisdictions and one option would be to transfer all major FORA functions to existing or created successor agencies with the appropriate subject matter expertise by June 30, 2020.

The major function transfers would be as follows:

- ESCA long term stewardship obligations to be assigned to a JPA, most likely formed by County/Seaside. Since the regulatory agencies and the US Army have “sign off” authority for the successor to FORA for these obligations, and have indicated they seek a single entity, a JPA would need to be formed rather than losing Army funding and obligations. ESCA JPA would be assigned any remaining FORA ESCA dollars and insurance coverage.
- Habitat Conservation responsibilities would be assigned to the proposed Habitat Cooperative JPA along with any funds in FORA’s accounts for this purpose. Depending on the means of replacing the FORA CFD revenue stream, any endowment shortfall would have to be financed by the cooperative. An alternative is to designate the dollars already collected to the escrow account or the “modified

extension” pathway noted below, for example if the Habitat Cooperative is not established.

- Water/Wastewater obligations to MCWD. Completing FORA funding of Regional Urban Water Augmentation would be undertaken by MCWD through an alternative method such as a capacity charge/hookup fee program.
- Reimbursement for the FORA share of regional transportation obligations would become the purview of TAMC by replacing the FORA CFD with TAMC nexus fees.
- “On-base” road projects would be assigned to the jurisdictions in which the road is being built. Individual jurisdictions would set up their own financing districts and an escrow account would be established under the authority of the existing Implementation Agreements. Each of the underlying jurisdictions would pay pro-rata fair share contributions into the escrow account to share revenues and equalize burdens. If state legislation is passed that extends the FORA CFD the escrow account can be augmented with any excess revenues. This approach requires specific agreements between the jurisdictions and successor agencies to be in place by September 1, 2018, to be included in the plan for LAFCO’s review.

Devolution to multiple individual successors: As noted above, significant obligations cannot be completed prior to June 30, 2020. Those obligations occur within individual jurisdictions and one option would be to transfer all major FORA functions to individual underlying successor agencies. In many cases, FORA revenue sources would partially accrue to these underlying jurisdictions (land sales revenue/tax increment) after June 30, 2020 (or maybe January 1, 2021).

Each individual jurisdiction would be assigned the projects located within that jurisdiction and fund obligations on a pro-rata basis. They would be free to replicate elements noted above in the “Function Transfer” scenario by negotiation and agreement at a future date. This option offers a strong element of home rule, but leaves negotiation between the remaining jurisdictions to the post-FORA period. Specific assignments of responsibilities would be the same as included in the material submitted to LAFCO with the exception of creation of any single entity successors (e.g. Habitat Cooperative, ESCA JPA, etc.). This would likely mean that the County of

Monterey would be assigned the ESCA long term obligations and funding as the only entity with some cross jurisdictional authority. It is uncertain if all entities are ready and able to accept these assignments and some have opined that assignment, even if approved by LAFCO, may be challenged. Adjudicating such challenges would be the responsibility of the post-FORA jurisdictions to work out.

Modified Extension: Extend the FORA Act for a limited, specified time frame to enable continuity of revenue sources and ensure all obligations can be funded. A legislative extension of the FORA CFD may be the most efficient way to implement the remaining program, which includes roadways, habitat protection and augmented water supply funding. This requires the carrying of legislation by area legislators, passage by the State legislature, and signature by the Governor. This action could complement what is proposed above, and consistent with requests that an extension of FORA contrast to a devolution. Such an extension can address representation/membership, limits of authority, sustaining certain funding benefits, and an orderly “ramp down” of FORA operations and staffing as functions are transferred or completed. A clear hand off to successor agencies is included with this option so the LAFCO process would not have to be repeated in the future either way. This also relieves individual pressure to establish all elements and agreements associated with the assignments (make all handoffs) by June 30, 2020. In other words, modified extension can be followed by multi-agency and function transfers, regardless of the sunset date.

Draft Legislative Actions

The primary interest in state legislation stems from the fact that the FORA CFD, and property tax go away or are redistributed away from the recovery program if FORA sunsets. Simple extension of FORA with modifications would eliminate this as an issue, regardless of whatever chosen sunset date. Transition including multiple agency and function transfers would take place upon FORA dissolution or even be accelerated pre-dissolution.

Voting structure may or may not require formal legislation as the existing FORA Act includes provisions for membership, and voting changes. Some policy issues can be put into effect by the continuing Board of Directors and/or by negotiation between the jurisdictions. An example might be transferring the funding of regional transportation projects to the Transportation Agency of Monterey County, setting up the Habitat Cooperative, etc.

On May 23 and 30 2018, the 2018 TAC considered potential legislative amendments to the FORA Act. The TAC considered the following issues:

- 1) Board Composition. Same or amended?
- 2) Voting: Unanimous first vote or simple majority?
- 3) Functions:
 - Munitions covenant monitoring, "permit" processing, long term stewardship?
 - CFD Financing District?
 - CIP implementation?
 - Policy Compliance
 - Prevailing Wage Requirements?
 - BRP Consistency Determinations?

The TAC engaged in limited discussion about potential FORA Act amendments. As to Board composition, one suggestion was for only land use jurisdictions and larger entities to have a larger voting percentage. It was suggested that Seaside, Marina and the County each receive two votes and Del Rey Oaks and City of Monterey one vote each. As to the voting

requirement, there seemed to be consensus favoring a simple majority vote and eliminating the unanimous first vote. Participating members of the public opined that without a continuing FORA Financing District, the future financing may face some potentially insurmountable challenges. However, the TAC did not form consensus on modification of the FORA Act to reshape its functions.

CONSIDERATION

Consider extending the FORA Act to sustain the ongoing regional financing benefits while offering opportunity to carry on munitions response and other obligations by subject matter appropriate single entities. Negotiate additional modifications to FORA policies and structure separately as state legislation is not needed for most changes.

Existing Contracts Summary Charts

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
CalPERS Contract	1997	http://b77.402.myftpupload.com/wp-content/uploads/1-CalPERS-Contract.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
CalPERS Contract Amendment 1	1999	http://b77.402.myftpupload.com/wp-content/uploads/2-CalPERS-Contract-Amendment-1.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
CalPERS Contract Amendment 2	2003	http://b77.402.myftpupload.com/wp-content/uploads/3-Cal-PERS-Contract-Amendment-2.pdf	Liability	All Voting Members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
LAFCO Indemnification Agreement	2018	http://b77.402.myftpupload.com/wp-content/uploads/4-Indemnification-Agreement-LAFCO-and-FORA-DRAFT-02-28-18.pdf	Liability	All Voting Members	May require a substantial contribution should LAFCO be sued on transition plan
General Umbrella Policy	Annual		Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
Commercial Property/Premises Liability	Annual	http://b77.402.myftpupload.com/wp-content/uploads/6-Commercial-Property-Premises-Liability.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
Worker's Compensation Policy	Annual	http://b77.402.myftpupload.com/wp-content/uploads/7-Workers-Compensation-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
Director's Liability Policy	Annual	http://b77.402.myftpupload.com/wp-content/uploads/8-Directors-Liability-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
Crime Bond Policy	2006	http://b77.402.myftpupload.com/wp-content/uploads/9-Crime-bond-Policy.pdf	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period

Financial Assets

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
County of Monterey Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/mttycty_ia.pdf	Asset	County of Monterey/MCWD/Habitat Cooperative/TAMC	1
Del Rey Oaks Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/dro_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC	1
City of Marina Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/marina_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/DRO/City of Monterey/Seaside	1
City of Marina IA - Amendment #1: Establishing Development Fee Policy Formula	2013	http://fora.org/Reports/ImplementAgreements/marina_ia_amend-9-14-13.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/DRO/City of Monterey/Seaside	1
City of Monterey Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/monterey_ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC	1
City of Seaside Implementation Agreement	2001	http://fora.org/Reports/ImplementAgreements/seaside-ia.pdf	Asset	MCWD/Habitat Cooperative/TAMC/County of Monterey/Seaside	1
CFD-Notice of Tax Lien	2002	http://b77.402.myftpupload.com/wp-content/uploads/Notice-of-CFD.pdf	Asset	Terminates on FORA sunset unless vote and/or extension	2
CFD-First Amended Notice of Tax Lien	2005	http://b77.402.myftpupload.com/wp-content/uploads/First_Amended_Notice_of_Tax_Lien.pdf	Asset	Terminates on FORA sunset unless vote and/or extension	
Development Fee Resolution	1999	http://b77.402.myftpupload.com/wp-content/uploads/99-01.pdf	Asset	Seaside? Some areas on Base still covered by Development Fee Resolution	3
FORA-UCSC Agreement Concerning Funding of Habitat Management Related Expenses on the Fort Ord Natural Reserve	2005	http://fora.org/Reports/TTF/101405_agreement_Habitat_UMBEST.PDF	Liability	Continues until replaced by HCP	
Pollution Legal Liability Reimbursement Agreement (DRO)	2015	http://b77.402.myftpupload.com/wp-content/uploads/DRO-Reimbursement-Agreement.pdf	Asset	DRO	3

Pollution Legal Liability Insurance Agreement (MST)	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MST-PLL-Insurance-Agreement.pdf			
Pollution Legal Liability Insurance Agreement (TAMC)	2014	http://b77.402.myftpupload.com/wp-content/uploads/FORA-TAMC-PLL-Insurance-Agreement.pdf			
Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmittal-summary-policy010215.pdf		County of Monterey/Seaside/Monterey/Marina	4
<div>1. Implementation Agreements require ongoing completion of Base Reuse Plan obligations. Land sales revenues, development fees/CFD fees/ and Property tax revenues committed until CIP fully implemented. See attached legal memorandum on these issues.</div> <div>2. CFD only assignable if extended by vote and changes to state Mello Roos Act allowing transfer to JPA/Successor. If no CFD, then Jurisdictions required to replace pursuant to Implementation Agreement formula</div> <div>3. DRO owes FORA for their proportional share of the PLL Insurance Contract and some costs on the prior South boundary Road Improvement project.</div> <div>4. Pollution Legal Liability Insurance Contract provides that upon FORA sunset, jurisdictions become successor beneficiaries.</div>					

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
FORA-City of Monterey ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/121107_MOA_FORA-ESCA_City%20of%20Monterey.PDF	Asset/Obligation	Dependent upon Property transfer	N/A
FORA-City of Monterey ESCA Property Management MOA-Amendment #1	2018	http://b77.402.myftpupload.com/wp-content/uploads/05092018_Executed_2007_MOA_FORA_Monterey.pdf			
US EPA-Army-State of CA Federal Facility Agreement	1990	http://fora.org/Reports/TTF/111990_Federal_Facilities_Agreement_Amendment.pdf	Obligation/Liability		County
Pollution Legal Liability Insurance (PLL) - ESCA Insurance Policy Coverages A, B & C	2007	http://fora.org/Reports/TTF/ESCA_Insurance_Policy-PLL-5-15-07.pdf	Asset		
FORA-County ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/121807_MOA_FORA-ESCA_Monterey%20County.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-County ESCA Property Management MOA-Amendment #1	2018				
FORA-CSUMB ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/101507_MOA_FORA-ESCA_CSUMB.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-CSUMB ESCA Property Management MOA-Amendment #1					
FORA-DRO ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/112607_MOA_FORA-ESCA_Del%20Rey%20Oaks.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-DRO ESCA Property Management MOA-Amendment #1	2018				
FORA-Seaside ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/092007_MOA_FORA-ESCA_Seaside.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-Seaside ESCA Property Management MOA-Amendment #1	2018				

ESCA Cooperative Agreement Award (End date amended 2017)	2007	http://fora.org/Reports/TTF/033007_Coop_Agreement_Award_ESCA.pdf	Asset/Liability	2037	County***
FORA-LFR Fort Ord Remediation Services Agreement	2007	http://fora.org/Reports/TTF/033007_RSA_ESCA.pdf	Asset/Liability	?2019/2020?	County***
US EPA Administrative Order on Consent	2007	http://fora.org/Reports/TTF/ESCA-0099_AOC.pdf	Liability/Obligation		County/Seaside/Monterey/ Del Rey Oaks Marina/CSUMB/UC/MPC/MCWD
FORA-MPC ESCA Property Management MOA	2008	http://fora.org/Reports/TTF/121708_MOA_FORA-ESCA_MPC.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-MPC ESCA Property Management MOA - Amendment #1	2018				
MOA Jurisdictions and DTSC Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord	2008	http://b77.402.myftpupload.com/wp-content/uploads/16_022708moaEnviroRestricts.pdf		No End Date	County/Seaside/Monterey/Del Rey Oaks/Marina, CSUMB/UC/MPC
MOU Regarding Development of the Central Coast Veterans Cemetery	2009	http://b77.402.myftpupload.com/wp-content/uploads/18_050509mouVetCem.pdf	Liability/Obligation		County/Seaside
Remedial Design/Remedial Action, Land Use Controls Implementation, Operations and Maintenance Plan, Parker Flats MRA Phase I*	2009	http://b77.402.myftpupload.com/wp-content/uploads/21_080409PFlatsPh1LUCIPOMP.pdf		No End Date	County of Monterey
Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmittal-summary-policy010215.pdf	Asset/Liability/Obligation		
ESCA Cooperative Agreement Award-Amendment 1	2017	tan	Asset/Liability	2028	County***
ESCA Cooperative Agreement Award-Amendment 2	2017	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			
G1 Land Use Covenant Implementation Plan and Operations Maintenance Plan (LUCIP/OMP)	2018**	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
G2 LUCIP/OMP	2018**	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
G3 LUCIP/OMP	2018**	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
G4 LUCIP/OMP	2018**	"Not available. Under Regulatory review. Estimated issue date 2018/early 2019."	Obligation	No End Date	Enforcement by Successor
FORA-Seaside ESCA Property Management MOA	2007	http://fora.org/Reports/TTF/092007_MOA_FORA-ESCA_Seaside.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-Seaside ESCA Property Management MOA-Amendment #1	2018				
ESCA Cooperative Agreement Award (End date amended 2017)	2007	http://fora.org/Reports/TTF/033007_Coop_Agreement_Award_ESCA.pdf	Asset/Liability	2037	County***
FORA-LFR Fort Ord Remediation Services Agreement	2007	http://fora.org/Reports/TTF/033007_RSA_ESCA.pdf	Asset/Liability	?2019/2020?	County***
US EPA Administrative Order on Consent	2007	http://fora.org/Reports/TTF/ESCA-0099_AOC.pdf	Liability/Obligation		County/Seaside/Monterey/ Del Rey Oaks Marina/CSUMB/UC/MPC/MCWD

FORA-MPC ESCA Property Management MOA	2008	http://fora.org/Reports/TTF/121708_MOA_FORA-ESCA_MPC.PDF	Asset/Obligation	Dependent upon Property transfer	
FORA-MPC ESCA Property Management MOA - Amendment #1	2018				
MOA Jurisdictions and DTSC Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord	2008	http://b77.402.myftpupload.com/wp-content/uploads/16_022708moaEnviroRestricts.pdf		No End Date	County/Seaside/Monterey/Del Rey Oaks/Marina, CSUMB/UC/MPC
MOU Regarding Development of the Central Coast Veterans Cemetery	2009	http://b77.402.myftpupload.com/wp-content/uploads/18_050509mouVetCem.pdf	Liability/Obligation		County/Seaside
Remedial Design/Remedial Action, Land Use Controls Implementation, Operations and Maintenance Plan, Parker Flats MRA Phase I*	2009	http://b77.402.myftpupload.com/wp-content/uploads/21_080409PFlatsPh1LUCIPOMP.pdf		No End Date	County of Monterey
Pollution Legal Liability Insurance (PLL) CHUBB	2015	http://fora.org/Reports/TTF/PLL-Chubb-Policy-transmital-summary-policy010215.pdf	Asset/Liability/Obligation		
ESCA Cooperative Agreement Award-Amendment 1	2017	tan	Asset/Liability	2028	County***
ESCA Cooperative Agreement Award-Amendment 2	2017	http://b77.402.myftpupload.com/wp-content/uploads/Fully_signed_ESCA_Grant_Amendment_12-20-17.pdf			
REFERENCE MATERIALS/WEBSITES Kutak Rock letter dated [] Army Base Realignment And Closure Administrative Record website http://www.fortordcleanup.com/ Notes: * Agreement will be replaced with new LUCIP Agreement/Restriction ** LUCIP/OMP agreements are expected to be finalized in 2018					

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
Habitat Management Plan	1997	http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1787/bw-1787.pdf	Obligation/Liability	Marina/Seaside/County/City of Monterey/MPC/CSUMB/All property recipients	
USFWS EG-PF Biological Assessment Concurrence Letter	2002	http://fora.org/Reports/TTF/USFWS_EG- PF_LandUseModificationAssessment_ConcurrenceLetter_2002.pdf			
Del Rey Oaks-FORA-Developer Endangered Species MOA	2005	http://fora.org/Reports/TTF/092705_MOA_Endangered_Species_DRO.PDF	Obligation/Liability	County/Habitat Cooperative	
FORA-UCSC Agreement Concerning Funding of Habitat Management Related Expenses on the Fort Ord Natural Reserve	2005	http://fora.org/Reports/TTF/101405_agreement_Habitat_UMBEST.PDF	Obligation/Liability/Asset	Habitat Cooperative/County?	This Agreement may be replaced by the basewide HCP when adopted.
FORA-UCSC FONR-Extension of Funding	2007	http://b77.402.myftpupload.com/wp-content/uploads/FORA-UC-FONR- Extend-Funding-signed072707.pdf	Obligation/Liability	Habitat Cooperative/County?	In effect until basewide HCP
Parker Flats - East Garrison biological assessment	2002	http://fora.org/Reports/TTF/EG-PF_BiologicalAssessment_BW- 2180_2005.pdf			
County-FORA-Developer Endangered Species MOA	2005	http://fora.org/Reports/TTF/100605_MOA_Endangered_Species_East- Garrison-County.PDF	Obligation/Liability	County/Habitat Cooperative	
Proposed East Garrison-Parker Flats Land Use Modification MOU	2005	http://fora.org/Reports/TTF/EG-PF_LandUse_Modification_MOU_BW- 2180A-1_2005.pdf			
County-FORA-EG Partners LLC Funding Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/MOA_MoCo- FORA-EG-Partners-LLC_Basewide-Funding-Obligations-signed2.28.06.pdf			
FORA-MPC Reimbursement Agreement		http://b77.402.myftpupload.com/wp-content/uploads/FORA-MCP-LLC- Reimbursement-Agmt_signed-01-26-2006.pdf			

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES
Marina Redevelopment Agency, Marina Community Partners and FORA MOA on University Villages Building Removal	2005	http://fora.org/Reports/TTF/FORA-MRDA-MCP-building-removal-MOA-082905.pdf	Asset/Liability	Marina Successor Agency	
Marina Community Partners and FORA Reimbursement Agreement on University Villages Building Removal	2006	http://b77.402.myftpupload.com/wp-content/uploads/FORA-MCP-LLC-Reimbursement-Agmt_signed-01-26-2006.pdf	Liability	Marina	
County-FORA-EG Partners LLC Funding Obligations	2006	http://b77.402.myftpupload.com/wp-content/uploads/MOA_MoCo-FORA-EG-Partners-LLC_Basewide-Funding-Obligations-signed2.28.06.pdf	Liability/Asset	County/Marina	Security Parcel for any debt obligation
FORA-Seaside-County-Cemetery Foundation	2012	http://b77.402.myftpupload.com/wp-content/uploads/012812-MOU-VetsCem-signed.pdf	Liability	County/Seaside/Foundation	
Army-FORA Memorandum of Agreement - Amendment #6	2014	http://b77.402.myftpupload.com/wp-content/uploads/072914_MOA_Army_FORA_Amend_6.pdf			
Army-FORA Water Quitclaim Deed- Veteran's Cemetery					
FORA-City of Marina Quitclaim Deed					
Stipulation to Discharge Peremptory Writ of Mandate (CSUMB)	2009	http://fora.org/Reports/TTF/091409_Report_Stipulation-to-Discharge.pdf	Asset	All voting members/MCWD/TAMC/HCP Cooperative	Enforcement obligations as to ongoing habitat and contributions toward road and other infrastructure
Settlement Agreement and Mutual Release (Sierra Club)	1998	http://www.fora.org/Planning/113098_SierraClub_Agreement.PDF	Liability	Marina/Seaside/County/City of Monterey/Del Rey Oaks	Deed Restrictions/Resource Constraints
PENDING LAWSUITS					
MCP v. FORA, Monterey County Superior Court	2017	N/A	Asset/Liability		
KFOW v. FORA, Monterey Superior Court	2017	N/A	Asset/Liability		

Transportation

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI- AGENCY	MULTI-AGENCY NOTES
FORA-City of Marina reimbursement agreement for Abrams, Crescent, 8th Street, and Salinas Roads	2007	http://fora.org/Reports/TTF/040307_Reimbursement_Agreement_FORA-Marina.pdf	Liability/Obligation:	City of Marina: Obligation Other Cities Liability:	[1]
FORA-County of Monterey reimbursement agreement for Davis Road Improvements	2005	http://fora.org/Reports/TTF/101905_Agreement_Reimbursment_FORA_MoCo.PDF	Liability/Obligation:	County	[3]
FORA-TAMC Reimbursement Agreement Concerning Hwy 68 Operational Improvements	2014	http://fora.org/Reports/TTF/051614_FORA-TAMC_Hwy68_operational_improvements.pdf	Liability/Obligation:		
FORA-Monterey Bay Charter School Traffic MOU	2015	http://fora.org/Reports/TTF/FORA_MBCS_Traffic_MOU_signed_111315.pdf	Asset		
MST - TAMC-Marina-FORA MOU	2007	http://fora.org/Reports/TTF/FORA-MST-TAMC-Marina_MOU_050107.pdf			
Whitson Engineers (Master Services)	2017		Asset		
Capital Improvement Program Transportation Assignments	TBD	ATTACHED	Liability/Obligation	As Assigned.	
NOTES: [1] Contract deals with Four Streets: 8th Street: 4,871,433; Crescent: 1,018,004 (Already completed pd. Approx. \$400,000 remainder reallocated to other projects); Abrams Drive: 852,578; Salinas Road: \$3,410,313 [2] Contract is City of Marina assigning a portion of the above reimbursement Agreement to Dunes for building a portion of 8th Street.					

CONTRACTS	YEAR	AGREEMENT LINK	ASSET/LIABILITY PLEDGE/OBLIGATION	MULTI-AGENCY	MULTI-AGENCY NOTES	Notes
US-MCWRA Agreement	1993	http://fora.org/Reports/1993-Agrmt-US_MCWRA.pdf	Asset	County of Monterey/City of Monterey/City of Seaside/City of Del Rey Oaks/CSUMB/MPC/UC/MCWD		1
FORA-MCWD Water/Waste Water Facilities Agreement	1998	http://fora.org/Reports/CIP/031398%20 Water Wastewater Facilities Agreement.p df		MCWD	A. Agreement Terminates. MCWD/unserve d areas on Fort Ord only served by new contracts; subsequent annexation by MCWD/LAFCO issues	1
FORA-MCWD Water/Waste Water Facilities Agreement-Amendment 1	2001	http://www.fora.org/Reports/CIP/Water-Wastewater-FAamend1.pdf		MCWD		
FORA-MCWD Water/Waste Water Facilities Agreement - Amendment 2	2007	http://www.fora.org/Reports/CIP/Water-Wastewater-FAamend2.pdf		MCWD		
Army-FORA MOA for Sale of Portions of the Former Fort Ord	2000	http://fora.org/Reports/TTF/062000_MOA_Army-FORA_EDC-Agreement.PDF	Asset/Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD?	B. Each entity must be designated as a Local Reuse Authority by OEA in Federal Govt. and State Government to receive water/wastewa ter rights; Issue as to prioritization and access;	2, 3
FORA, MCWD Quitclaim Deed Ord infrastructure	2001	http://fora.org/Reports/TTF/110701_FORA-MCWD_Quitclaim_Deed_Ord_Infrastructure.pdf	Obligation	City of DRO/City of Monterey/City of Seaside/County of Monterey/MPC/CSUMB (as to Enforcement of Provisions only) NOTHING TO ASSIGN TO MCWD: TRANSFER COMPLETE	Enforcement of obligations contained in Quitclaim as to water/wastewa ter service obligations	4

Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 1	2002	http://fora.org/Reports/TTF/102301_MOA_Army-FORA_Amend_1.PDF				5
MCWD-FORA Quitclaim deed L35.1 & L35.2	2004	http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed090304.pdf				
Army- FORA, MRWPCA, and MCWD MOA	2005	http://fora.org/Reports/110205_MOA_Army_MRWPCA-FORA-MCWD.pdf	Asset	Seaside/DRO/City of Monterey		
MCWD-FORA Quitclaim deed L35.5	2006	http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed020806.pdf	Enforcement	City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD		
FORA Recycled Water allocations to jurisdictions	2007	http://fora.org/Reports/TTF/RecycledWater_allocation_to_Jurisdictions--051107.PDF		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (See Section 3)	6
FORA Potable Water allocation to jurisdictions	2007	http://fora.org/Reports/TTF/PotableWater_allocation_to_Jurisdictions-011207.pdf		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (Section 3)	7
Army-Seaside AYH Water Deed	2008	http://fora.org/Reports/TTF/082808_AYH_Water_Deed.pdf		Seaside		8
MOU Water Augmentation and 3 Party Agreement	2015	http://fora.org/Reports/2015-MOU-Three-Party_Final.pdf	Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/City of Monterey/County of Monterey		9
FORA-MCWD Pipeline Reimbursement Agreement	2016	http://fora.org/Reports/2016-Rmbrs_Agrmt_FORA-MCWD_Pipeline_Executed_08-25-16.pdf	Liability	City of Seaside/City of Del Rey Oaks/County of Monterey/City of Monterey/County of Monterey		10

Notes:

1. This Agreement was quitclaimed to MCWD. However, replacement supplies are to the benefit of all properties on Fort Ord.
1. Agreement terminates on FORA sunset. Annexation does not automatically terminate agreement. Oversight continues until agreement terminates.
2. Article 5, provides FORA first right of refusal to excess water and waste water Rights. Successor must be consented to by Army and designated as Local Reuse Authority (Federal and State Law)
3. Article 5 requires fair and equitable water allocation to enable the effective base reuse.
4. Quitclaim Deed requires compliance with underlying obligations including but not limited to a fair and equitable allocation of water to the jurisdictions; JPA/Successor to enforce
5. Changes MCWD Public Benefit Conveyance to an EDC conveyance
6. Allocates 1427 afy reclaimed water to jurisdictions (fair and Equitable share); MCWD/JPA/Successor to enforce
7. Potable water allocations to jurisdictions (Fair and Equitable share); MCWD/JPA/Successor to enforce
8. 109 AFY water to Seaside (Stillwell Kidney)
9. Planning agreement to analyze alternatives for augmented water supply options
10. Six Million dollar liability to build infrastructure pipeline for delivery of reclaimed/augmented water supply to Ord Community

References

ADMINISTRATION

Transition	
<ol style="list-style-type: none"> 1. Jurisdictions control own destiny 2. Jurisdictions choose litigation strategy 3. Potential opportunity to consolidate FORA & City's unfunded liability to pay over 30 years 	<ol style="list-style-type: none"> 1. Increased CalPERS risk due to new staffing 2. Uncertain CalPERS assumptions increases liabilities 3. Uncertain legal liability 4. Increased Administrative Activity 5. Cost of LAFCo Indemnification 6. Increased Administrative Load (per Jurisdiction)
Extension	
<ol style="list-style-type: none"> 1. FORA administers and funds CalPERS obligations & other administrative functions 2. Liability risk to jurisdictions minimized 3. 115 Trust may be used for any retirement funding purpose-terminated agency unfunded liability or current liability. 4. Shared administrative costs 5. No LAFCo Indemnifications 	<ol style="list-style-type: none"> 1. Potential increase in future CalPERS obligations for continuing or new staff

WATER/WASTEWATER Water/Waste Water

Transition	
<ol style="list-style-type: none"> 1. MCWD manages Water/wastewater system 2. MCWD capacity charges can replace existing finance streams 3. Existing coordination between MCWD / M1W 4. If MCWD annexation is successful, Ord Community representation is assured 	<ol style="list-style-type: none"> 1. If no annexation, potential loss of Representation for the Ord Community 2. Potential litigation risk over water allocations 3. Loss of ability to leverage base wide revenue 4. Increased development capacity fees needed 5. 8 Agencies – CIP Coordination Required
Extension	
<ol style="list-style-type: none"> 1. Elected Officials represent Ord Community 2. FORA Board Oversees Allocations 3. WWOC coordinates jurisdiction CIP's 4. FORA CFD Fee reduces water and capacity fees for all jurisdictions 5. FORA Selects Water Augmentation Projects 6. No additional legal risk to jurisdictions 	<ol style="list-style-type: none"> 1. Potential MCWD Annexation Litigation 2. If MCWD annexation is successful, FORA representation functions are no longer needed. 3. If MCWD annexation is successful, WWOC's function is diminished.

TRANSPORTATION

Transition	
<ul style="list-style-type: none"> More local control, jurisdictions create their own priorities and revenue streams subject to agreement w/neighbors 	<ul style="list-style-type: none"> More jurisdictional vulnerability to law suits and bureaucratic delay Less ability to influence regional outcomes Neighbor jurisdictions may not be accommodating; litigation issues Replacement revenue generation and revenue sharing must be addressed Fort Ord Transportation Network may not be fully implemented
Extension	
<ul style="list-style-type: none"> Current CIP reflects ORD area collective priorities Cooperation on road projects makes it easier to get grants and CEQA approvals Steady CFD revenue stream and ancillary revenues more likely to complete projects 	<ul style="list-style-type: none"> Cumbersome negotiations and approvals and prioritization work continues under FORA Single target for lawsuits

HABITAT

Transition	
<ul style="list-style-type: none"> Jurisdictions could withdraw or re-organize Habitat protection 	<ul style="list-style-type: none"> Entire program could be at risk due to lack of funding or regulatory approval FORA CFD revenue stream must be replaced; not a direct nexus to some developments make a CFD required or single payment required
Extension	
<ul style="list-style-type: none"> Economies of scale by having FORA staff the early years of the cooperative Steady CFD revenue stream w/ land sale & property taxes due to FORA as back up 	<ul style="list-style-type: none"> Jurisdictions will eventually have to take this function over

FINANCIAL ASSETS

Transition	
<ul style="list-style-type: none"> ▪ New financing mechanisms. ▪ Provides opportunity to add items not currently financed. ▪ Provide opportunity to adjust assessment basis (sf etc.). ▪ Creates a vehicle for new contracts with developers. 	<ul style="list-style-type: none"> ▪ Legal limitations (Nexus) ▪ Shifts land use costs (Housing to Job) ▪ Entitled development may not be subject to new fees ▪ Shifts fairness and equity b/t Jurisdictions (Eliminates basewide costs concept) ▪ Time/cost w/creation of new mechanisms ▪ New fees litigation challenges
Extension	
<ul style="list-style-type: none"> ▪ Financing mechanism exists ▪ Tax preserves Land Use Costs (Housing/Jobs) ▪ Entitled development subject to fees ▪ No legal challenges ▪ Maintains basewide costs model (Fairness/Equity) 	<ul style="list-style-type: none"> ▪ CFD requires vote to make changes ▪ CFD boundaries include residents who will not owe tax

ENVIRONMENTAL SERVICES/CLEAN UP

Transition	
<ul style="list-style-type: none"> ▪ Limited Contractual choices <ul style="list-style-type: none"> ▪ County, Marina, Seaside, JPA or ▪ FORA Act/FORA "Lite" extension 	<ul style="list-style-type: none"> ▪ ESCA function/staffing is specialized. Coordination agreements with other affected jurisdictions required. ▪ ESCA costs may increase given new coordination not covered in Army contract amendment which assumed single entity coordinated successor ▪ Litigation/Costs increase if chosen successor fails/refuses to perform duties ▪ Practical Risk for future development if obligations not completed.
Extension	
<ul style="list-style-type: none"> ▪ US Army requires one entity to represent the public ▪ FORA has a series of agreements w/ Army, EPA & State of California that will not be easy to assign ▪ Funding is as anticipated as structure and coordination remains in place. 	

MISCELLANEOUS CONTRACTS

Transition	
<ol style="list-style-type: none">1. May provide some home rule flexibility as enforcement will be unclear/uncertain.	<ol style="list-style-type: none">1. May lead to additional litigation risk and costs if no consensus on application/interpretation of provisions.2. Uncertainty may affect future development potential.
Extension	
<ol style="list-style-type: none">1. Provides a regional forum to address issues.2. Provides opportunity for spreading costs on a basewide basis.	<ol style="list-style-type: none">1. FORA is a target.

TRANSITION STAFFING

Transition	
<ul style="list-style-type: none">▪ Possible reduction in CalPERS liability▪ Ramp down begins consistent with workload function shifts▪ Potential to retain key personnel within land use jurisdictions	<ul style="list-style-type: none">▪ Loss of key personnel to complete as much as possible prior to 2020▪ Potential increase in CalPERS costs to successor agencies by workload shifts
Extension	
<ul style="list-style-type: none">▪ Staffing ramp down begins consistent with workload function shifts▪ Potential reduction in CalPERS liabilities consistent with contract amendments	<ul style="list-style-type: none">• Key personnel may require CalPERS benefits to continue working

TITLE 7.85. FORT ORD REUSE AUTHORITY 67650-67700

CHAPTER 1. Title and Declaration of Policy 67650-67652

CHAPTER 2. General Provisions 67655-67659

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CHAPTER 1. Title and Declaration of Policy [67650 - 67652]

(Chapter 1 added by Stats. 1994, Ch. 64, Sec. 1.)

67650. This title shall be known and may be cited as the "Fort Ord Reuse Authority Act."

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67651. The Legislature hereby declares the following goals to be the policy of the State of California:

- (a) To facilitate the transfer and reuse of the real and other property comprising the military reservation known as Fort Ord with all practical speed.
- (b) To minimize the disruption caused by the base's closure on the civilian economy and the people of the Monterey Bay area.
- (c) To provide for the reuse and development of the base area in ways that enhance the economy and quality of life of the Monterey Bay community.
- (d) To maintain and protect the unique environmental resources of the area.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67652. The Legislature finds and declares as follows:

- (a) The policy set forth in Section 67651 is most likely to be achieved if an effective governmental structure exists to plan for, finance, and carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner.
- (b) The County of Monterey and the Cities of Monterey, Salinas, Carmel, and Pacific Grove have requested the Legislature to establish a governmental structure for Fort Ord.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 2. General Provisions [67655 - 67659]

(Chapter 2 added by Stats. 1994, Ch. 64, Sec. 1.)

67655. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this title.

(a) "Authority" means the Fort Ord Reuse Authority.

(b) "Base-wide facility" means a public capital facility which, in the judgment of the board, is important to the overall reuse of Fort Ord, and has significance beyond any single city or the unincorporated area of the county.

(c) "Board" means the governing board of the authority, as specified in Section 67660.

(d) "Fort Ord Reuse Plan" means the plan for the future use of Fort Ord adopted pursuant to Section 67675.

(e) "Legislative body" means the city council of a city or the board of supervisors of a county, or the legislative body or governing board of any other public agency.

(f) "Local facility" means a public capital facility which, in the judgment of the board, is important primarily within a single city or the unincorporated area of the county.

(g) "Member agency" means the County of Monterey and the City of Carmel, the City of Del Rey Oaks, the City of Marina, the City of Sand City, the City of Monterey, the City of Pacific Grove, the City of Salinas, or the City of Seaside.

(h) "Fort Ord," including references to the territory or area of Fort Ord, means the geographical area described in the document entitled "Description of the Fort Ord Military Reservation Including Portion of the Monterey City Lands Tract No. 1, the Saucito, Laguna Seca, El Chamisal, El Toro and Noche Buena Ranchos, the James Bardin Partition of 1880 and Townships 14 South, Ranges 1 and 2 East and Townships 15 South, Ranges 2 and 3 East, M.D.B. and M. Monterey County, California," prepared by Bestor Engineers, Inc., and delivered to the Sacramento District Corps of Engineers on April 11, 1994.

(i) "Public capital facilities" means all public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeways, 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 could most efficiently and conveniently be planned, negotiated, financed, or constructed by the authority to further the integrated future use of Fort Ord.

(j) "Redevelopment authority," for purposes of the transfer of property at military bases pursuant to Title XXIX of the National Defense Authorization Act for the 1994

fiscal year, means the Fort Ord Reuse Authority, except that, with respect to property within the territory of Fort Ord that is transferred or to be transferred to the California State University or to the University of California, "redevelopment authority" solely for purposes of the transfer of property at military bases pursuant to Title XXIX of the National Defense Authorization Act for the 1994 fiscal year means the California State University or the University of California, and does not mean the Fort Ord Reuse Authority.

(Amended by Stats. 1994, Ch. 87, Sec. 1. Effective May 20, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67656. The local agencies specified in Section 67660 may establish the Fort Ord Reuse Authority in accordance with the provisions of this title upon the adoption of resolutions favoring the establishment of the authority by the governing bodies of those local agencies that would appoint a majority of the voting membership of the board as constituted by that section.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67657. (a) The authority is a public corporation of the State of California that is independent of the agencies from which its board is appointed. Notwithstanding any other provision of law, the powers and duties of the authority are those granted or imposed by this title.

(b) The jurisdiction of the authority shall be the territory of Fort Ord. The jurisdiction of the authority is subject to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(c) The Legislature finds and declares that the planning, financing, and management of the reuse of Fort Ord is a matter of statewide importance, and that the powers and duties granted to the authority by this title shall prevail over those of any local entity, including any city or county, whether formed under the general laws of the State of California or pursuant to a charter, and any joint powers authority.

(Amended by Stats. 2003, Ch. 296, Sec. 20. Effective January 1, 2004. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67658. The authority's purpose is to plan for, finance, and manage the transition of the property known as Fort Ord from military to civilian use.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67659. In accordance with Section 317 of the Elections Code, the authority is a district for purposes of initiative and referendum under Chapter 4 (commencing with Section 9300) of Division 9 of that code and the voters of the authority are the voters of Monterey County.

(Amended by Stats. 2006, Ch. 588, Sec. 10. Effective January 1, 2007. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 3. Organization [67660 - 67673]

(Chapter 3 added by Stats. 1994, Ch. 64, Sec. 1.)

67660. (a) The authority shall be governed by a board of 13 members composed of the following:

- (1) One member appointed by the City of Carmel.
- (2) One member appointed by the City of Del Rey Oaks.
- (3) Two members appointed by the City of Marina.
- (4) One member appointed by Sand City.
- (5) One member appointed by the City of Monterey.
- (6) One member appointed by the City of Pacific Grove.
- (7) One member appointed by the City of Salinas.
- (8) Two members appointed by the City of Seaside.
- (9) Three members appointed by Monterey County.

(b) Notwithstanding subdivision (a), any local agency that does not adopt a resolution favoring establishment of the Fort Ord Reuse Authority pursuant to Section 67656 shall not be required to appoint a voting member to the board. The failure of a local agency to appoint a voting member to the board pursuant to this subdivision shall not alter or reduce the powers and duties of the authority or the board in any manner.

(c) Each member agency may appoint one alternate for each of its positions on the board, and each alternate shall have all the rights and authority of a board member when serving in that board member's place.

(d) Each board member and each alternate shall be a member of the legislative body making the appointment, except that alternates appointed by the Monterey County Board of Supervisors shall be members of the board of supervisors or county staff. Board members and alternates shall serve at the pleasure of the member agency making the appointment.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67661. The following may serve as ex officio nonvoting members of the board:

(a) A representative appointed by the Monterey Peninsula Community College District.

(b) A representative appointed by the Monterey Peninsula Unified School District.

(c) A representative designated by the Member of Congress from the 17th Congressional District.

(d) A representative designated by the Senator from the 15th Senate District.

(e) A representative designated by the Assembly Member from the 27th Assembly District.

(f) A representative designated by the United States Army.

(g) A representative designated by the Chancellor of the California State University.

(h) A representative designated by the President of the University of California.

(i) A representative designated by the Monterey County Water Resources Agency.

(j) A representative designated by the Transportation Agency of Monterey County.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67662. The board may appoint or remove additional ex officio nonvoting members at its pleasure.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67663. The board shall provide by resolution the dates on which and the time and place at which regular meetings of the board shall be held. A copy of each resolution establishing the date, time, and place of a regular meeting shall be filed with the secretary of the board and the clerk or secretary of the legislative body of each of the members. The board shall comply with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67664. The board may adopt rules and regulations for the conduct of its meetings and activities.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67665. Notwithstanding the provisions of Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1, any member or ex officio member of the board who is also a member of another public agency, a county supervisor, or a city

council person, and who has in that designated capacity voted or acted upon a particular matter, may vote or otherwise act upon or participate in the discussion of that matter as a member of the board.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67666. The secretary of the board shall maintain minutes of the meetings of the board and, as soon as possible after each meeting, shall cause a copy of the minutes to be forwarded to each member of the board.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67667. A majority of the voting members appointed to the board pursuant to Section 67660 shall constitute a quorum and may act for the authority.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67668. A resolution, ordinance, or other action of the board shall not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration. Except as otherwise provided in this chapter, any action taken by the board shall require the affirmative vote of a majority of the appointed members of the board.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67669. The members of the board shall serve without compensation.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67670. The board shall elect from its own members a chair and a vice chair at the first board meeting held each year. Each shall serve a term of one year and may be reelected.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67671. The board shall determine the qualifications of, and shall appoint and fix the salary of, the executive officer of the agency, and shall employ or contract with other staff or consultants as may be necessary to execute the powers and functions provided for under this title, including, but not limited to, attorneys, financing

consultants, planners, accountants, engineers, architects, contractors, appraisers, and other consultants and advisors.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67672. The chief administrative officer or city manager of each member agency, or his or her designee, may serve on an administrative committee to the board to provide advice, analysis, and recommendations to the board as the board may request from time to time.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67673. The board may, at its pleasure, appoint an additional advisory committee or committees to provide the board with options, critique, analysis, and other information as it finds useful, and may provide mechanisms through which a committee may report to the board.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 4. Powers and Duties [67675 - 67685]

(Chapter 4 added by Stats. 1994, Ch. 64, Sec. 1.)

67675. (a) The board shall 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. 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.

(b) Notwithstanding any other provision of this section, the board may adopt the "Final Base Reuse Plan" prepared by the Fort Ord Reuse Group as the Fort Ord Reuse Plan for purposes of this title. The plan adopted pursuant to this subdivision may serve as the Fort Ord Reuse Plan until July 1, 1996. The board may prepare elements described in subdivision (c) that are generally consistent with the adopted plan. After July 1, 1996, only a plan containing the required elements and fully satisfying the requirements of this title shall serve as the Fort Ord Reuse Plan.

(c) The Fort Ord Reuse Plan shall include all of the following elements:

(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.

(d) In addition to the plan elements required pursuant to subdivision (c), the plan may also include any element or subject specified in Section 65302.

(e) The Fort Ord Reuse Plan may provide for development to occur in phases, with criteria concerning public facility development and other factors that must be satisfied within each time phase.

(f) In preparing, adopting, reviewing, and revising the reuse plan, the board shall be consistent with approved coastal plans, air quality plans, water quality plans, spheres of influence, and other county-wide or regional plans required by federal or state law, other than local general plans, including any amendments subsequent to the enactment of this title, and shall consider all of the following:

(1) Monterey Bay regional plans.

(2) County and city plans and proposed projects covering the territory occupied by Fort Ord or otherwise likely to be affected by the future uses of the base.

(3) Other public and nongovernmental entity plans and proposed projects affecting the planning and development of the territory occupied by Fort Ord.

(Amended by Stats. 1995, Ch. 14, Sec. 1. Effective May 26, 1995. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.1 Notwithstanding the provisions of Title 7 (commencing with Section 65000), after the board has adopted a reuse plan, a member agency with jurisdiction within the territory of Fort Ord may adopt and rely on the Fort Ord Reuse Plan, including any amendments thereto, for purposes of its territory within Fort Ord as its local general plan for purposes of Title 7 until January 1, 1996.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.2 After the board has adopted a reuse plan, each county or city with territory occupied by Fort Ord shall submit its general plan or amended general plan to the board, which satisfies both of the following:

(a) The plan is submitted pursuant to a resolution adopted by the county or city, after a noticed public hearing, that certified that the portion of the general plan or amended general plan applicable to the territory of Fort Ord is intended to be carried out in a manner fully in conformity with this title.

(b) It contains, in accordance with guidelines established by the board, materials sufficient for a thorough and complete review.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.3. (a) The board shall, within 90 days after the submittal, after a noticed public hearing, either certify or refuse to certify, in whole or in part, the portion of the general plan or amended general plan applicable to the territory of Fort Ord.

(b) Where a general plan or amended general plan is refused certification, in whole or in part, the board shall provide a written explanation and may suggest modifications, which, if adopted and transmitted to the board by the county or a city, will allow the amended general plan to be deemed certified upon confirmation of the executive officer of the board. The county or a city may elect to meet the board's refusal of certification in a manner other than as suggested by the board and may then resubmit its revised general plan to the board. If the county or a city requests that the board not recommend or suggest modifications which if made will result in certification, the board shall refuse certification with the required findings.

(c) The board shall approve and certify the portions of a general plan or amended general plan applicable to the territory of Fort Ord, or any amendments thereto, if the board finds that the portions of the general plan or amended general plan applicable to the territory of Fort Ord meets the requirements of this title, and is consistent with the Fort Ord Reuse Plan.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.4. (a) Within 30 days after the certification of a general plan or amended general plan, or any portion thereof, the board shall, after consultation with the county or a city, establish a date for that county or city to submit the zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord.

(b) If the county or a city fails to meet the schedule established pursuant to subdivision (a), the board may waive the deadlines for board action on submitted zoning ordinances, zoning district maps, and, where necessary, other implementing actions, as set forth in Section 67675.5.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.5. (a) The county and cities shall submit to the board the zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord that are required pursuant to this title.

(b) The board may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified general plan applicable to the territory of Fort Ord. If the board rejects the zoning ordinances, zoning district maps, or other implementing actions applicable to the territory of Fort Ord, it shall give written notice of the rejection specifying the provisions of the general plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out, together with its reasons for the action taken.

(c) The board may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the county or cities and transmitted to the board, shall be deemed approved upon confirmation by the executive officer of the board.

(d) The county or cities may elect to meet the board's rejection in a manner other than as suggested by the board and may then resubmit its revised zoning ordinances, zoning district maps, and other implementing actions to the board.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.6. (a) Except for appeals to the board, as provided in Section 67675.8, after the portion of a general plan applicable to Fort Ord has been certified and all implementing actions within the area affected have become effective, the development review authority shall be exercised by the respective county or city over any development proposed within the area to which the general plan applies.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.7. After the board has certified a general plan or an amended general plan, any amendments to that certified plan that are applicable to the territory of Fort Ord shall take effect only upon certification in the same manner as for the initially certified plan, as provided in this title.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.8. (a) After the board has adopted a reuse plan pursuant to this title, any revision or other change to that plan which only affects territory lying within the jurisdiction of one member agency may only be adopted by the board if one of the following conditions is satisfied:

(1) The revision or other change was initiated by resolution adopted by the legislative body of the affected member agency and approved by at least a majority affirmative vote of the board.

(2) The revision or other change was initiated by the board or any entity other than the affected member agency and approved by at least a two-thirds affirmative vote of the board.

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

(2) Subject to the consistency determinations required pursuant to this title, each member agency with jurisdiction lying within the area of Fort Ord may plan for, zone, and issue or deny building permits and other development approvals within that area. Actions of the member agency pursuant to this paragraph may be reviewed by the board on its own initiative, or may be appealed to the board. Under

no circumstances shall development approvals of the following categories be held to be inconsistent with the Fort Ord Reuse Plan:

- (i) The construction of one single family house or one multiple family house not exceeding four units on a vacant lot within an area appropriately designated in the plan.
- (ii) Improvements to existing single family residences or to existing multiple family residences not exceeding four units, including remodels or room additions.
- (iii) Remodels of the interior of any existing building or structure.
- (iv) Repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, any building or structure.
- (v) Installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and development approved pursuant to this chapter.
- (vi) Replacement of any building or structure destroyed by a natural disaster.
- (c) The board may require any public or private entity seeking to initiate a revision or other change to a plan adopted pursuant to this section to pay a charge or charges sufficient to cover the reasonable costs of reviewing, evaluating, preparing, adopting, and publishing the proposed revision or change.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67675.9. If an environmental impact statement on the closure and reuse of Fort Ord has been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the board may proceed in the following manner:

- (a) A notice of the preparation of an environmental impact report on the Fort Ord Reuse Plan shall be prepared pursuant to either Section 21080.4 or Section 21080.6 of the Public Resources Code, and shall include a description of the reuse plan and a copy of the environmental impact statement. The notice shall indicate that the board intends to utilize the environmental impact statement as a draft environmental impact report and requests comments on whether, and to what extent, the environmental impact statement provides adequate information to serve as a draft environmental impact report, and what specific additional information, if any, is necessary to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The notice shall also indicate the address to which written comments may be sent and the deadline for submitting comments.
- (b) Upon the close of the comment period on the notice of preparation, the board may proceed with preparation of the environmental impact report on the reuse

plan. The board shall, to the greatest extent feasible, avoid duplication and utilize information in the environmental impact statement consistent with this division. The draft environmental impact report shall consist of all or part of the environmental impact statement and any additional information that is necessary to prepare a draft environmental impact report in compliance with the California Environmental Quality Act.

(c) In all other respects, the environmental impact report for the reuse plan shall be completed in compliance with the California Environmental Quality Act.

(Added by renumbering Section 67575.9 by Stats. 1997, Ch. 580, Sec. 3.9. Effective January 1, 1998. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67677. The board may negotiate and enter into appropriate agreements with the United States or any of its agencies or departments for the purpose of determining the disposition, reuse, or conservation of the property or facilities within the area of Fort Ord.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67678. (a) The board shall be the principal local public agent for the acquisition, lease disposition, and sale of real property transferred pursuant to the "Pryor Amendment", except as otherwise provided in this section. The board may take title to property transferred pursuant to the "Pryor Amendment" within the area of the base that is either turned over to the board by the federal government at no cost or that is purchased. The board may sell, lease, or otherwise dispose of this property at full market value or at less than full market value in order to facilitate the rapid and successful transition of the base to civilian use. In any transaction involving the transfer of federal property, the board shall fully satisfy all conditions, requirements, and understandings with the federal government with respect to the use and disposal of that property. In the sale, lease, or disposition of real property, the board shall follow the procedures and make those determinations that are required of redevelopment agencies pursuant to Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(b) (1) The 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.

(2) The board shall transfer or lease all real and personal property received pursuant to this section and which is intended for private use, except for uses specified in paragraph (3), within a reasonable period of time after receiving title to the property. Any proceeds received by the board each year as a result of the sale or lease of the property, net of all costs incurred by the board as a result of the sale, management, servicing, maintenance, and enhancement of the property, and net of all payments made to the federal government due to the property, shall be divided as follows: 50 percent of the net proceeds received each year shall be paid to the city or county with jurisdiction over the property, and 50 percent of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

(e) This title shall not be construed to limit the rights of the California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or

purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

(Amended (as added by Stats. 1994, Ch. 64) by Stats. 1994, Ch. 1169, Sec. 2. Effective January 1, 1995. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67679. (a) (1) 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.

(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

(3) The board may construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located. A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) 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.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(Amended (as added by Stats. 1994, Ch. 64) by Stats. 1994, Ch. 1169, Sec. 3. Effective January 1, 1995. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67680. The board may enter into contracts and agreements as necessary to mitigate the impacts of the reuse of Fort Ord on rare and endangered species of flora and fauna. These contracts and agreements may include provisions for the long-term preservation and management of habitat areas, including acquisition or acceptance by the board of title to real property, restriction on the development of portions of the area of Fort Ord, and arrangements for the long-term management and biological monitoring of the flora and fauna of the base, including its financing.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67680.5. The board may enter into contracts and agreements as necessary to mitigate impacts of the reuse of Fort Ord in addition to those specified in Section 67680.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67681. The board may study, evaluate, and recommend cleanup of toxic and explosive substances within the area of the base to the federal government, including the Department of Defense, and the State of California, if it determines that doing so is in the best interests of the communities in the Monterey Bay area.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67683. The board shall aggressively pursue all possible federal funding for the transfer, cleanup, and reuse of Fort Ord, including funding to pay for the costs of public capital facilities and funding to attract and encourage the development of private businesses and public universities and other public facilities within the area

of the base. The board may also pursue and accept federal and state funding to pay part of the expenses of operating the Fort Ord Reuse Authority.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67684. The board may take other action that is necessary or convenient to ensure the rapid and successful conversion of the area of Fort Ord to civilian use in a way that provides maximum benefits to the communities of the Monterey Bay area and the State of California.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67685. The applicability of any capital facilities fees imposed under this title to public educational agencies shall be subject to the provisions of Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 5. Funding [67690 - 67692]

(Chapter 5 added by Stats. 1994, Ch. 64, Sec. 1.)

67690. In addition to any funds received from federal and state agencies for the expenses of operating the Fort Ord Reuse Authority, the board may receive contributions from agencies represented on the board. Each agency represented by a board member shall contribute to the authority, on or before August 1 of each fiscal year, the sum of fourteen thousand dollars (\$14,000) for each board member that the agency appoints. Each public agency which is represented on the board by an ex officio member shall contribute to the authority, on or before August 1 of each fiscal year, the sum of seven thousand dollars (\$7,000). For purposes of this section, the term "public agency" does not include any elected official of the federal or state government.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67691. The board and the member agencies may provide by contract for the transfer to the board or between member agencies of revenues available from sales tax, property tax, or other sources in order to help finance the cost of paying for services or capital facilities to serve or enhance the development of Fort Ord. The contract or contracts may provide for the transfer of funds to member agencies with responsibility for providing services of facilities within the area of Fort Ord for a specified number of years, and for the repayment of those funds in later years with

interest, or for repayment in the form of an equity interest in property, sales, or other tax revenues that may be payable as a result of development occurring within the area of Fort Ord. Any such contract shall be effective only upon approval by the board and the member agencies involved.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

67692. The board shall consider a program of local revenue sharing among the member agencies to ensure an equitable apportionment of revenues generated from the reuse of Fort Ord among those member agencies responsible for the provision of services to Fort Ord and member agencies that assist in the funding of services to Fort Ord.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 6. Pledge [67695- 67695.]

(Chapter 6 added by Stats. 1994, Ch. 64, Sec. 1.)

67695. The State of California does hereby pledge to and agree with the holders of any bonds issued, and with any public or private entity with which the board has entered into a contract or an agreement, pursuant to the provisions of this title, that the state will not alter or change the structure, organization, programs, or powers hereby vested in the board until those bonds are fully met or discharged and until the board has fully met or discharged its obligations pursuant to those agreements or contracts. However, nothing in this act shall preclude an alteration or change if, and when, adequate provision shall have been made by law for the protection from impairment of the contracts represented by those bonds or contracts or agreements, and the right to so alter or change is hereby reserved. The board is authorized to include this pledge and undertaking of the state in its bonds and contracts or agreements.

(Added by Stats. 1994, Ch. 64, Sec. 1. Effective May 9, 1994. Inoperative on June 30, 2020, or sooner, as prescribed by Section 67700. Repealed as of January 1, 2021, pursuant to Section 67700.)

CHAPTER 7. Dissolution [67700- 67700.]

(Chapter 7 added by Stats. 1994, Ch. 64, Sec. 1.)

67700. (a) This title shall become inoperative when the board determines that 80 percent of the territory of Fort Ord that is designated for development or reuse in the plan prepared pursuant to this title has been developed or reused in a manner consistent with the plan adopted or revised pursuant to Section 67675, or June 30, 2020, whichever occurs first, and on January 1, 2021, this title is repealed.

(b) (1) The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts,

agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred.

(2) The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations. The transition plan shall be approved only by a majority vote of the board.

(Amended by Stats. 2012, Ch. 743, Sec. 3. Effective January 1, 2013. Repealed as of January 1, 2021, by its own provisions. Note: Termination clause affects Title 7.85, commencing with Section 67650.)

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MEMORANDUM

TO: FORT ORD REUSE AUTHORITY

FROM: GEORGE SCHLOSSBERG
BARRY STEINBERG
NEO TRAN

DATE: JANUARY 19, 2018

RE: ROLE OF FEDERALLY RECOGNIZED LOCAL REDEVELOPMENT
AUTHORITIES

Introduction:

This Memorandum is in response to your request for information regarding the federal role and federal requirements for a Local Redevelopment Authority (“LRA”) to implement the closure and redevelopment of the former Fort Ord under the Defense Base Closure and Realignment Act of 1990, as amended, and other applicable federal law and regulations. We are providing this information in our role as the federal base closure counsel for the Fort Ord Reuse Authority (“FORA”), and our advice is provided in the context of FORA’s relationship, agreements, and obligations with the federal government.

Role of Federally Recognized Local Reuse Authorities:

The Defense Base Closure and Realignment Act of 1990 (as amended, the “Base Closure Act”), defines a local redevelopment authority (“LRA”) as

“... any entity (including any entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.”¹

¹ Base Closure Act, § 2910(9).

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An LRA serves as the primary link between the Department of Defense (“DOD”), the installation, and other federal and state agencies on one hand, and the local communities on the other hand, for all matters related to the closure and redevelopment of the former military installation pursuant to the Base Closure Act.² It is the single entity charged with identifying local redevelopment needs and preparing a comprehensive redevelopment plan (“Community Reuse Plan”) that balances all of the disparate requirements of the surrounding community; such federal deference is given to the Community Reuse Plan that DOD is required to consider such Community Reuse Plan in the environmental review process that guides the disposal of the surplus federal property.

Generally, the Secretary of Defense will recognize a single LRA per closed installation.³ However, since skills and authorities needed to develop a Community Reuse Plan are different from those needed to implement such a plan, DoD regulations permit the sequential recognition of two LRAs: (i) a “Planning” LRA for the initial planning phase leading to the preparation and adoption of the Community Reuse Plan, and (ii) an “Implementation” LRA for the subsequent implementation phase leading to the redevelopment and build-out of the former installation in accordance with the Community Reuse Plan. FORA has sought and received such sequential recognition, first as a Planning LRA, and subsequently as an Implemental LRA. As the Department of Defense Base Redevelopment and Realignment Manual (“Manual”) explains:

*Initially, the LRA should focus on crafting the base redevelopment plan. During the base closure process, it is not uncommon for one entity to be recognized as the LRA for reuse planning purposes, and a follow-on entity designated to coordinate and oversee implementation of the plan. In some cases, the LRA also may want to implement all or part of the redevelopment plan. Not all communities will choose to create an implementation LRA. Implementation responsibilities, including restructuring or dissolving the planning LRA, should await completion of the redevelopment plan and a financial feasibility analysis of alternative scenarios for actual redevelopment.*⁴

The DOD’s Office of Economic Adjustment (“OEA”) will recognize an Implementation LRA only if the LRA pursues an economic development conveyance (“EDC”).⁵ FORA submitted an EDC application in 1997 seeking to acquire at no cost significant portions of the surplus federal property comprising the former Fort Ord, and entered into that certain *Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the sale of portions of the former Fort Ord*, dated June 20, 2000, as amended (“EDC Agreement”). The EDC Agreement has been amended seven (7) times since 2000, most recently on January 5, 2018. Among other things, the consideration to the United States for the

² Section C3.2.2 of the Base Redevelopment and Realignment Manual, Office of Deputy Under Secretary of Defense (Installations and Environment), March 1, 2006 (“Base Redevelopment and Realignment Manual”).

³ 32 C.F.R. §174.6(a).

⁴ Base Redevelopment and Realignment Manual, Section C3.2.3.

⁵ Base Redevelopment and Realignment Manual, Section C3.2.3.

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EDC Agreement and the conveyance of the many acres of surplus federal property and other interests in property and water interests to FORA at no cost, is FORA's obligation to implement the Community Reuse Plan that was the basis for the EDC Application.

Requirements for LRA to Implement the Community Reuse Plan:

At a fundamental level, an Implementation LRA (such as FORA) needs the requisite resources, ability, and authority to implement the Community Reuse Plan. For example, if the Community Reuse Plan envisions certain limitations on the use of the property, the Implementation LRA needs to be able to assert appropriate land use controls. If the Community Reuse Plan is dependent upon certain infrastructure improvements prior to development, the Implementation LRA must have the financial resources, or access to capital, and legal authorities sufficient to place the infrastructure in a timely manner. And where resources are limited, the Implementation LRA must have the ability to allocate those resources across the surplus property in a fair and impartial manner that guarantees the success of the Community Reuse Plan. And most importantly, the Implementation LRA must be able to comprehensively monitor and enforce the many environmental use restrictions placed on the property by the federal quitclaim deeds conveying the surplus property to FORA, as well as comprehensively enforce any contractual obligations FORA has undertaken in the course of its relationship with the federal government.

Redevelopment of an installation such as Fort Ord pursuant to the Base Closure Act has several key factors rooted in the federal base closure ("BRAC") process that differentiate it from other non-BRAC large-scale development projects:

- The Implementation LRA is the only entity eligible to receive BRAC property under an Economic Development Conveyance ("EDC").⁶ Therefore, the Implementation LRA must have the legal authority to negotiate and enter into the EDC with DOD, receive and manage the property under its name, and lease, dispose, or development such property as a single project in accordance with the Community Reuse Plan pursuant to the Base Closure Act. It is likely that many more amendments to the EDC Agreement will be required as the surplus federal property is redeveloped, and the build-out contemplated by the Community Reuse Plan continues, and only the Implementation LRA may seek and enter into these amendments. Importantly, the EDC Agreement provides that should the Army determine that additional water rights are excess to the needs of the Army, FORA shall have the first right of refusal to any such transfer rights. Absent, such central allocation of water rights in support of the Community Reuse Plan, it is unlikely that the Army would transfer such water rights to the community.

⁶ 32 C.F.R. 174.9(b).

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- The Implementation LRA serves as the local authority on behalf of federal agencies to seek, monitor and implement Public Benefit Conveyances and Homeless Assistance Provider land conveyances. This is a continuous process that often requires the Implementation LRA to enforce or take over Legally Binding Agreements entered into with Homeless Providers or other recipients of surplus federal property in accordance with the Community Reuse Plan.
- The Implementation LRA must have sufficient financing, or the ability to acquire such financing, to carry out the economic development objectives set forth in the Community Reuse Plan. Specifically, the Implementation LRA must have the authority and status to accept federal funding from the DOD Office of Economic Adjustment (“OEA”), or other federal agencies or entities. However, OEA requires that its funds be segregated and dedicated to implementation of the Community Reuse Plan and not co-mingled with other funding sources. Additionally, to the extent required by the EDC Agreement or any amendments to the EDC Agreement, the Implementation LRA must have the authority to meet federal requirements for “back-end” revenue sharing, which may include segregating total project revenues to meet federal accounting standards.
- The Implementation LRA must have sufficient financing, or the ability to acquire such financing, to implement and manage in a comprehensive manner the infrastructure requirements necessary to carry out the economic development objectives set forth in the Community Reuse Plan.
- The Implementation LRA has unique federal environmental remediation obligations and authorities that permit the Implementation LRA to pursue certain conveyances of surplus property in advance of its remediation in accordance with federal environmental requirements. In fact, and as discussed below, FORA has undertaken this obligation, by (i) accepting from the Army an “Early Transfer” of environmentally contaminated surplus federal property, and (ii) by entering into an Environmental Services Cooperative Agreement (“ESCA”) with the United States. Both the Early Transfer and the ESCA involve continuing obligations that will likely not be completed by the time FORA is set to sunset.

Unique Environmental Matters Relating to Fort Ord:

1. Federal Superfund Site: Fort Ord has been designated as a national priorities list (NPL) site, the formal title of a Superfund site. In addition to munitions and explosives of concern (“MEC”) issues for which FORA is being paid to remediate, the groundwater at the former base is contaminated and requires remediation. This groundwater remediation is being performed by the Army, not FORA, and is not likely to be completed in the next twenty (20)

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years. As a consequence, there are constraints on access to and the use of groundwater and those constraints are reflected in the deeds to the property. These constraints, coupled with continuing obligations to address the potential of encountering MEC, necessitate a comprehensive long term plan consisting of monitoring, inspection, and enforcement obligations. These are the responsibility of FORA initially, and eventually will pass by deed to the end users of the property. In addition to FORA, the local jurisdictions in which the property is located will be obligated to exercise their municipal authority to ensure compliance with the long term environmental obligations imposed on the property.

2. Early Transfer: The transfer of title to real property out of the federal inventory requires a federal determination that all action necessary to protect human health and the environment *has been taken*.⁷ This statutory requirement establishes a condition precedent to transfer, which in the case of the former Fort Ord, could not be met by the Army owing to the environmental contamination of the property as a result of military activities, including the use and disposition of MEC. In order to accelerate the conveyance of contaminated properties, federal law permits an expedited disposal process, a so-called “Early Transfer,” whereby the determination that all remedial action has been taken is deferred,⁸ when sufficient guarantees can be put in place that (i) the required remediation will take place post-transfer, and (ii) that suitable protections for human health and the habitat can be established during the remediation process.

The Early Transfer process for a California NPL site requires, by statute, the approval of the Administrator of the United States Environmental Protection Agency (“EPA”) and the concurrence of the Governor of California. As a condition for this approval and concurrence, FORA was required to enter into an Administrative Order on Consent (“AOC”) with EPA and California Department of Toxic Substances Control (“DTSC”), establishing the process, schedule, documentation, and regulatory oversight of the MEC work for which the Army is responsible, and FORA is performing. In essence, the AOC creates an enforcement mechanism by the federal and State regulatory agencies binding FORA, as the single point of responsibility to complete the agreed upon work of the AOC. Should FORA sunset prior to the completion of this AOC mandated environmental work, the assignment of this responsibility would need the consent of EPA.

3. Environmental Services Cooperative Agreement: In order to satisfy the remediation requirements for an Early Transfer, FORA entered into an environmental services cooperative agreement (“ESCA”) with the Army, whereby the Army would fund the environmental investigation and remediation of MEC through a grant to FORA,⁹ thereby avoiding the incremental funding of Army contractors over many years. In the case of the former Fort Ord, this enables FORA to remediate the surface and near surface areas many years sooner than would have occurred had the Army pursued its usual funding and contracting process. It is estimated that the combination of an early transfer and cooperative agreement funding has

⁷ 42 USC 9620(h)(3)

⁸ 42 USC 9620(h)(3)(C)

⁹ 10 USC 2701(d)

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accelerated FORA's beneficial use of the surface area by as much as 10 years. Should FORA sunset prior to the completion of the ESCA, the assignment of this responsibility would need to be negotiated with the Army.

Conclusion:

Should FORA sunset in 2020, and not be replaced by a single entity empowered to comprehensively implement the Community Reuse Plan and the ESCA, the multiple Fort Ord communities will face additional development challenges and possible liabilities resulting from potential defaults under the ESCA that will make it more difficult to achieve the desired common economic development goals of the Community Reuse Plan, as well as face individual financial burdens heretofore efficiently absorbed by FORA through economies of scale.

The federal government will correctly insist on a single entity to assume the financial, management and administrative obligations of the AOC and the ESCA, and the individual governmental units enforcing the land use restrictions contained in the hundreds of federal quitclaim deeds will need to coordinate their enforcement approaches to enforce identical and common land use restrictions. Moreover, applications for Federal assistance for common infrastructure required to implement the Community Reuse plan will need to be coordinated to avoid destructive competition while assuring timely completion of the infrastructure and development.

I trust this Memorandum is responsive to your request for information. If you have any questions or concerns, please call George Schlossberg directly at 202-828-2418, or contact him by email at george.schlossberg@kutakrock.com.

G.R.S. & N.T.T.