



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, August 10, 2018 at 2:00 p.m. | 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

## AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON AUGUST 9, 2018.**

#### 1. CALL TO ORDER

#### 2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

#### 4. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Keep Fort Ord Wild v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 17CV004540, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Marina Community Partners, LLC v. Fort Ord Reuse Authority, Monterey County Superior Court Case No.: 18CV000871, Pending Litigation.
- c. Conference with Legal Counsel - Potential Litigation, Gov. Code §54956.9(d)(4)
- d. Conference with Real Property Negotiators Gov. Code §54956.8  
**Property:** Environmental Services Cooperative Agreement  
**Agency Negotiators:** Michael A. Houlemard, Jr. (FORA) and Barry Steinberg (U.S. Army)  
**Negotiating Parties:** Fort Ord Reuse Authority and United States Army  
**Under Negotiation:** Amendment Terms
- e. Public Employment, Gov. Code §54959.7(b) - Executive Officer Evaluation

#### 5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

#### 6. ROLL CALL

*FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.*

#### 7. CONSENT AGENDA

#### INFORMATION/ACTION

*CONSENT AGENDA consists of routine information or action items accompanied by staff recommendation. Information has been provided to the FORA Board on all Consent Agenda matters. The Consent Agenda items are normally approved by one motion unless a Board member or the public request discussion or a separate vote. Prior to a motion, any member of the public or the Board may ask a question or make comment about an agenda item and staff will provide a response. If discussion is requested, that item will be removed from the Consent Agenda and be considered separately at the end of the Consent Agenda.*

- a. Approve July 13, 2018 Meeting Minutes ([p. 1](#))  
**Recommendation:** Approve July 13, 2018 meeting minutes.
- b. Administrative Committee ([p. 4](#))  
**Recommendation:** Receive a report from the Administrative Committee.
- c. Veterans Issues Advisory Committee ([p. 7](#))  
**Recommendation:** Receive a report from the Veterans Issues Advisory Committee.
- d. Prevailing Wage Status Report ([p. 10](#))  
**Recommendation:** Receive a Prevailing Wage status report.
- e. Fiscal Year 2017-18 Annual Report ([p. 15](#))  
**Recommendation:** Receive the Fiscal Year 2017-18 Fort Ord Reuse Authority Annual Report.
- f. Transition Planning Process Update ([p. 16](#))  
**Recommendation:** Receive an update of the FORA Transition Planning Process.
- g. Public Correspondence to the Board ([p.25](#))  
**Recommendation:** Receive public correspondence to the Board.

## 8. BUSINESS ITEMS

## INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Service Work Order for General Jim Moore Boulevard – 2d Vote (p. 26)

**Recommendation:** Authorize Executive Officer to execute Service Work Order (SWO) W5 to the Whitson Engineers Master Services Agreement No. FC-20171117 for the preparation of Planning, Specification and Estimates for the General Jim Moore Boulevard (GJMB) and South Boundary Road (SBR) intersection, not to exceed \$209,965.

- b. Consistency Determination: City of Marina Municipal Airport Master Plan Update (p. 33)

**Recommendation:**

- i. Conduct a public hearing regarding City of Marina Municipal Airport Master Plan (AMP) Update for consistency with the Base Reuse Plan (noticed on July 31, 2018).
- ii. Consider approving Resolution 18-XX, certifying that the AMP is consistent with the Fort Ord Base Reuse Plan.

- c. Consistency Determination: City of Seaside Zoning Code (p. 41)

**Recommendation:**

- i. Conduct a public hearing regarding City of Seaside's Zoning Code for consistency with the Base Reuse Plan (noticed on July 31, 2018).
- ii. Consider approving Resolution 18-XX, certifying that the Seaside Zoning Code is consistent with the Fort Ord Base Reuse Plan.

- d. Building Removal Program (p. 49)

**Recommendation:** Authorize the Executive Officer to solicit and execute service contracts for a financial advisor and bond counsel to explore the feasibility of bonding FORA property tax to complete remaining base wide building removal, not to exceed \$75,000.

- e. Habitat Conservation Plan (HCP) Update (p. 51)

**Recommendation:**

- i. Receive a Fort Ord Multi-Species HCP report regarding United States Fish and Wildlife Service HCP and State of California Department of Fish and Wildlife 2081 Incidental Take Permit developments.
- ii. Consider scheduling an Habitat Conservation Board Workshop
- iii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority to implement basewide habitat management activities required by the 1997 Fort Ord Habitat Management Plan.

## 9. PUBLIC COMMENT PERIOD

## INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

## 10. ITEMS FROM MEMBERS

## INFORMATION

*Receive communication from Board members as it pertains to future agenda items.*

## 11. ADJOURNMENT

**NEXT REGULAR MEETING: September 17, 2018 AT 2:00 P.M.**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Transition Planning Process Update

**Meeting Date:** August 10, 2018

**Agenda Number:** 7f

**INFORMATION/ACTION**

### RECOMMENDATION:

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

### BACKGROUND/DISCUSSION:

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

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

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

**FISCAL IMPACT:**

Reviewed by FORA Controller 

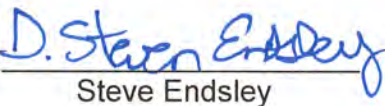
**COORDINATION:**

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

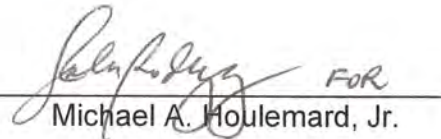
Prepared by

  
Sheri L. Damon

Reviewed by

  
Steve Endsley

Approved by

 FOR  
Michael A. Houlemard, Jr.

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

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

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

- A. The Fort Ord Reuse Authority (“FORA”) was established in 1994 by state legislation and when each Jurisdiction voted to create the Fort Ord Reuse Authority in accordance with Government Code section 67700 and following (the “FORA Act”). FORA, as a regional agency, is authorized with a primary legislative directive to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to the governing local jurisdictions or their designee(s).
- B. FORA, under FORA Act authority, adopted a Fort Ord Base Reuse Plan (the “Reuse Plan”) on June 13, 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the “Basewide Mitigation Measures”), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the “Basewide Costs”). As a part of that approval, the Board certified an Environmental Impact Report and adopted a Statement of Overriding Considerations making the follow findings:
- The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;
  - The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside (“Seaside”) and Marina (“Marina”), thereby creating a housing stock with higher income families in these communities with larger disposable incomes;
  - The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
  - The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
  - The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
  - The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
  - The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks (“DRO”), Monterey (“Monterey”), Seaside, Marina, and the unincorporated areas of the County of Monterey (“County”) in the vicinity of Fort Ord;
  - The Reuse Plan will provide for additional and needed senior housing opportunities;

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



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

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

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

Section 1. Basewide Costs and Basewide Mitigation Measures:

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

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

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

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

## Section 2. Assignment of liabilities/obligations:

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

### Administrative

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



### **Contractual Obligations.**

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

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

### **Section 3. Transition Plan Subject matters:**

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

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

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

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

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

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

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

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

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

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

Signature block for Resolution  
Attachment: Contract assignment list

# **FORT ORD REUSE AUTHORITY BOARD REPORT**

## **BUSINESS ITEMS**

**Subject:** Habitat Conservation Plan Update

**Meeting Date:** August 10, 2018

**Agenda Number:** 8e

### **INFORMATION/ACTION**

### **RECOMMENDATION(S):**

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (HCP) report regarding United States Fish and Wildlife Service (USFWS) HCP and State of California Department of Fish and Wildlife (CDFW) 2081 Incidental Take Permit (ITP) developments.
- ii. Consider scheduling an HCP Board Workshop.
- iii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority (JPA) to implement base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP).

### **BACKGROUND:**

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan (BRP), the Fort Ord Reuse Authority (FORA) must complete an HCP for “take” of Federally-listed species and a 2081 ITP for take of State-listed species as required by the Endangered Species Act (ESA) and California Endangered Species Act (CESA), respectively. Such permits are required to fully implement Habitat Management Plan (HMP) activities and the BRP. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, listing of California Tiger Salamander (CTS), changing CDFW and USFWS staffing, changing funding requirements, and changing HCP/2081 ITP requirements.

In late 2016, USFWS Ventura Office Field Supervisor Stephen P. Henry issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which caused a major overhaul of the species covered and the areas included as federal permit “preserved” habitat. Due to the need for these extensive revisions, FORA staff and consultants worked significantly longer to complete the screen-check draft HCP. However, USFWS and CDFW representatives agreed to meet an HCP schedule allowing one 60-day review period prior to publishing the public review draft HCP and its Environmental Impact Statement/Environmental Impact Report (EIS/EIR). In July 2017, FORA distributed the screen-check draft HCP for USFWS, CDFW, and Permittees’ 60-day review. While other parties met the timeline, CDFW took eleven months to send in comments on the screen-check draft HCP. Many of CDFW staff comments brought up issues that were already resolved through discussions and compromises with CDFW staff in previous years. Staff found the degree and amount of the comments challenging, and recognized that strategic meetings, rather than editorial rewrites of the draft document, were in order.

CDFW and FORA staff agreed to meet on July 27<sup>th</sup> and 30<sup>th</sup> for phone conference meetings to work through the new comments. Several issues were resolved, and others remain yet-to-resolve. The two main issues to be resolved in the next few weeks are:

1. CDFW assurances of Bureau of Land Management (BLM) continued management of the Fort Ord National Monument in a manner consistent with HCP and
2. CDFW's current position that they would not consider issuance of a 2081 permit for Sand Gilia under the Fort Ord HCP until the Marina Heights (now known as Seahaven) developer successfully mitigates Sand Gilia take that occurred in the last 14 years and was not mitigated in compliance with their 2081 permit.

Two topic-specific meetings are planned to resolve these issues.

The schedule for completion of the HCP was delayed by several months by CDFW's new staff, as discussed above. However, a new development in the regulation of federal Environmental Impact Statements (EISs) by the Department of Interior may provide an opportunity for expediting the project timeline. On April 27, 2018, the Deputy Secretary of the Interior sent out a Memorandum mandating that all outstanding EISs with a Notice of Intent published on or before August 31, 2017 must publish a project schedule with a Final EIS completion and Record of Decision (ROD) issuance date of no later than 365 days from the effective date of the Memorandum. This pertains to the HCP, and follow-up communications with USFWS indicate that they will work on a tight timeline to complete the review. Therefore, the HCP schedule (**Attachment A**) has been adjusted to bring it to completion for a ROD in April 2019.

The HCP program is based on building to a habitat endowment that would generate enough annual interest earnings to fund protection in "perpetuity" for cost of restoring and managing habitat areas. The Cities, County, and other members of a future JPA (called the HCP Cooperative) would sign an Implementing Agreement and oversee stay-ahead provisions so that no species take exceeds completed mitigations.

## **DISCUSSION:**

Discussions at Transition Task Force (TTF) meetings have often focused on the cost of the HCP. HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (CFD) monies collected from former Fort Ord development. FORA has paid \$2-3 million for the environmental review and document preparation so far as performed by consultants and staff. The required Endowment was originally projected to be \$9 million but is now expected to cost \$48 to \$66 million with about \$21 million expected to be collected by FORA before June 30, 2020. It is estimated that, if FORA sunsets, the jurisdictions would have to figure out how to generate the remaining \$27 to \$45 million required by USFWS/CDFW if they were to continue the effort, or, alternatively, the State Legislature might extend FORA's financing ability with FORA assigning that revenue stream to a successor agency.

Some have raised the idea that HMP obligations can be met by using current HCP funding, and that will be as useful to the region and individual jurisdictions as a functioning base-wide HCP. There are several issues associated with this approach:

- 1) The HMP obligations are for a longer list of species;



- 2) The HMP does not include CTS obligations because it pre-dated that species' State and Federal listing;
- 3) The HMP sets aside Habitat Management Areas (HMAs), but does not provide a mechanism for take of species in the required management actions for the HMAs;
- 4) Without a base-wide USFWS HCP and CDFW 2081 ITPs, any development project will have to process Federal and State permits individually. Additive costs for such an approach are estimated to be much higher than a base-wide approach. Also, mitigation for listed plant species is most commonly in the form of preserved habitat. As a result, some jurisdictions may not be able to find sufficient mitigation land for the permits that they seek.

The Transition Task Force (TTF) discussed Habitat Management on May 16, 2018 and subsequent meetings, and several Task Force members were concerned that, without a Joint Powers Authority (JPA) to assign HCP work to, the Transition Plan to be delivered to the Local Agency Formation Commission (LAFCO) of Monterey County by the end of 2018 would have a loose end. This discussion was elevated to Board on July 13, in a Transition Plan study session. In response, Authority Counsel removed the paired signing of the JPA Agreement and Implementing Agreement to allow for early execution. At a meeting on August 30<sup>th</sup>, prospective permittees reviewed the updated agreement. Most were in favor of forming a JPA with the purpose of implementing base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP). If the HCP and its accompanying EIS/EIR are completed in the future, the JPA's purpose could be amended.

Now is probably a point of no return for USFWS, CDFW, BLM and FORA to resolve the remaining issues and bring the HCP and its supporting documents forward for public comment and Board approval. Given the overarching principal to complete a Transition Plan without loose ends, the FORA Board may entertain options and alternatives to the current assumed approach. It is recommended that the participants sign on to some form of JPA Agreement and establish a Habitat Cooperative to allow the parties a structure to continue discussing how to protect habitat on the former Fort Ord and enable a permitting structure that treats the FORA jurisdictions in an equitable manner.

The Executive Officer suggests that the Board could consider the following alternatives:

- A. Form a JPA Cooperative according to the current HCP schedule (March/April 2019) and continue building the HCP Endowments with HCP replacement funding provided by the Jurisdictions post-FORA or an extension of FORA financing authority.  
 Pro: Staff time efficiently directed to completing the HCP within the expedited schedule  
 Con: Possible loose end in the Transition Plan depending on HCP outcome
- B. Form a JPA Cooperative in the near-term, providing the initial purpose of implementing the 1997 HMP on behalf of its members and supporting member jurisdiction's CESA and ESA ITP processing, prior to providing LAFCO with a draft Transition Plan (December 2018), and provide flexibility that this JPA may amend its purpose in the future to implement the base-wide HCP if that effort is successfully concluded.  
 Pros: Loose ends are tied up in one aspect of the Transition Plan; the region would have a responsible entity that would fund and implement HMP requirements.  
 Con: Staff time directed to forming a JPA might divert resources from completing HCP

- C. Abandon the HCP process and assign FORA funds collected so far to FORA jurisdictions charged with implementing FORA's habitat management obligations or their own.

Pro: This option would save FORA from expending approximately \$150,000 for HCP consultants in the current FY18-19 budget.

Cons: Individual HCPs for future development lack regional cohesion and are therefore less effective at saving endangered species, CDFW and USFWS indicated that individual permits would be difficult to acquire without a regional approach, FORA jurisdictions (Seaside, Del Rey Oaks, Monterey) may not be able to identify enough mitigation land for the permits that they seek.

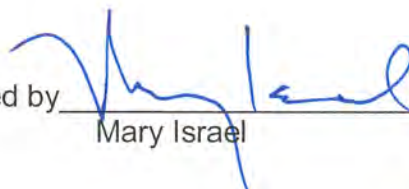
**FISCAL IMPACT:**

Reviewed by FORA Controller 

Staff and Authority Counsel time for this item is included in the approved annual budget.

**COORDINATION:**

Authority Counsel, Administrative Committee, ICF International, Denise Duffy & Associates, CDFW, and USFWS.

Prepared by   
Mary Israel

Reviewed by   
Jonathan Brinkmann

Approved by   
Michael A. Houlemard, Jr.



**Table 1.** Revised Schedule for Installation-Wide Multispecies Habitat Conservation Plan for Former Fort Ord, CA

Key:

Document Preparation
Meetings
Review Periods
Notice prep/publish
Final Approval Steps

		Status	2017												2018												2019											
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
HCP																																						
1	Draft Pre-Public HCP	Done																																				
2	Key Issue Resolution status updates	Done																																				
3	Wildlife Agency and Working Group Review Period (8 wk)	Done																																				
4	Meetings to Identify Key Issues	Done																																				
5	Bi-weekly meetings (as necessary) with Wildlife Agencies, FORA, and Working Group Members to check-in or resolve outstanding issues																																					
6	Prepare 3rd Admin Draft HCP	Done																																				
7	Review 3rd Admin Draft HCP (Permit Applicants and BLM only )	Done																																				
8	Revise 3rd Admin Draft HCP	Done																																				
9	Review 3rd Admin Draft HCP (Permit Applicants, BLM, Wildlife Agencies)	Done																																				
10	Prepare Screen-check Draft HCP	Done																																				
11	Review Screen-check Draft HCP (Wildlife Agencies)	Done																																				
	Prepare 2nd Screen-check Draft HCP	Done																																				
	Agencies and Permittee Review 2nd Screen-check Draft (60 days)																																					
12	Prepare Screencheck Public Draft HCP																																					
13	Solicitor review (2 weeks)																																					
14	Prepare Public Review HCP																																					
15	Prepare and publish Notice in Federal Register for HCP, EIS, IA																																					
16	Public/Agencies Review Period (90 days)																																					
17	Conduct Public Outreach																																					
18	Prepare Final HCP																																					
19	See Approval process steps																																					

		Status	2017												2018												2019											
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
	EIR/EIS																																					
1	Prepare 1st Admin Draft EIS/EIR	Done																																				
2	Review Period	Done																																				
3	Prepare 2nd Admin Draft EIS/EIR	Done																																				
4	Solicitor review (2 weeks)																																					
5	Prepare Public Review EIS/EIR																																					
6	Prepare and publish Notice of Availability in Federal Register (see HCP-15 above)																																					
7	Prepare and publish CEQA Notice of Availability																																					
8	Public/Agencies Review Period (90 days)																																					
9	Respond to public comments/Prepare Admin Draft Final EIS/EIR																																					
10	Agency Review Period (2 weeks)																																					
11	Prepare Final Public Draft EIS/EIR - clear for publication																																					
12	Prepared and Publish Notice of Final EIS, HCP and IA Availability in Federal Register - 30 day comment period																																					
13	Publish CEQA Notice of Determination - Permit Applicants - 30 day challenge period																																					
14	CEQA Notice of Determination--CDFW - 30 day challenge period																																					
15	See Approval Process steps																																					

		Status	2017												2018												2019												
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
	<b>Implementing Agreement</b>																																						
1	Prepare 2nd Admin Draft IA	Done																																					
2	Wildlife Agency and Working Group Review Period	Done																																					
7	Prepare 3rd Admin Draft IA	Done																																					
8	Review 3rd Admin Draft IA (Permit Applicants and BLM only )	Done																																					
9	Respond to comments	Done																																					
10	Review 3rd Admin Draft IA (Permit Applicants, BLM, Wildlife Agencies)	Done																																					
11	Prepare Screen-check Draft IA	Done																																					
12	Review Screen-check Draft IA (Wildlife Agencies)																																						
13	Prepare Public Draft IA																																						
14	Prepare and publish Notice of Availability in Federal Register (see HCP-13 above)																																						
15	Public/Agencies Review Period (90 days)																																						
16	Prepare Final IA																																						
17	See Approval Process steps																																						

Status		2017												2018												2019												
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
	<b>Approval Process</b>																																					
1	Permit Applicants and BLM Approval of Final Plan, Final EIR/EIS, Final IA, & JPA																																					
2	Establish JPA (Implementing Entity)																																					
3	JPA approves Final Plan, EIR/EIS and Implementing Agreement																																					
4	See EIR/EIS steps 12, 13 and 14																																					
5	Local Agencies Adopt Imp Ordinances																																					
6	Wildlife Agencies Approval of Plan, EIR and EIS and IA																																					
7	CDFW Findings Preparation																																					
8	FWS Findings/Biological Opinion																																					
9	Permits Issued by FWS																																					
10	Permits issued by CDFW																																					