

### 2018 Commissioners

#### Chair

Simón Salinas  
*County Member*

#### Vice Chair

Warren E. Poitras  
*Special District Member*

Luis Alejo  
*County Member, Alternate*

Matt Gourley  
*Public Member*  
(Pending Swearing In)

Joe Gunter  
*City Member*

Mary Ann Leffel  
*Special District Member*  
(Pending Swearing In)

Maria Orozco  
*City Member, Alternate*

Jane Parker  
*County Member*

Ralph Rubio  
*City Member*

Steve Snodgrass  
*Public Member, Alternate*  
(Pending Swearing In)

Graig Stephens  
*Special District Member, Alternate*  
(Pending Swearing In)

#### Counsel

Leslie J. Girard  
*General Counsel*

#### Executive Officer

Kate McKenna, AICP  
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## AGENDA LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

Monday, August 27, 2018  
4:00 p.m.

Board of Supervisors Chambers  
Monterey County Government Center  
168 West Alisal Street, First Floor  
Salinas, California

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*The Local Agency Formation Commission welcomes you to its meetings. This meeting has been noticed according to the Brown Act. If you want to submit documents, please bring 15 copies for distribution. The meeting will be broadcast live on Comcast Cable TV Channel 28, and is rebroadcast every Monday at 4:00 p.m. Agendas and reports are available on our website at least 72 hours before each meeting.*

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### Call to Order

### Roll Call

### Pledge of Allegiance

### Public Comments

*Anyone may address the Commission briefly about items not already on the Agenda. Please fill out a Speaker Request Form available on the rostrum.*

### Special Business

1. Resolution of Appreciation for Outgoing Public Member Commissioner (Regular) Sherwood Darington.

Recommended Actions:

- Adopt Resolution commending Commissioner Darington for his years of service on LAFCO.
- Presentation of Resolution to outgoing Commissioner Darington, by Chair Salinas.

2. Administer the Oath of Office for Appointment of Independent Special District (Regular) Commissioner Mary Ann Leffel for a Term Ending on the First Monday in May 2022 and Independent Special District (Alternate) Commissioner Graig Stephens for a Remaining Term Ending on the First Monday in May 2020.

Recommended Action: LAFCO Chair Salinas will administer the Oath of Office.

3. Administer the Oath of Office for Appointment of Public Member (Regular) Commissioner Matt Gourley and Public Member (Alternate) Commissioner Steve Snodgrass for Terms Ending on the First Monday in May 2022.

Recommended Action: LAFCO Chair Salinas will administer the Oath of Office.

4. Select the LAFCO Chair and Chair Pro Tempore for a Period Ending in May 2019.

Recommended Action: Conduct the Selection Process.

### Consent Agenda

*All items on the Consent Agenda will be approved in one motion and there will be no discussion on individual items, unless a Commissioner or member of the public requests a specific item to be pulled from the Consent Agenda for separate discussion.*

5. Approve Draft Minutes from the April 23, 2018 LAFCO Regular Meeting.

Recommended Action: Approve minutes.

6. Accept Notes from the May 10, 2018 Budget and Finance Committee Meeting.

Recommended Action: Accept meeting notes.

7. Approve Registers of Checks for April, May and June 2018.

Recommended Action: Approve registers.

8. Accept Report of Draft Financial Statements for the Period Ending March 31, 2018.

Recommended Action (by Budget and Finance Committee): Accept Report.

9. Adopt a Resolution to Approve a Fiscal Year 2017-2018 Year-End Budget Encumbrance of \$6,176 Remaining in Line Item 7247 (Human Resources - Professional Services) on June 30, 2018 for use in Completing Special Projects in Fiscal Year 2018-2019.

Recommended Action (by Budget and Finance Committee): Adopt resolution.

10. Accept Report on Anticipated Agenda Items and Progress Report on LAFCO Special Studies.

Recommended Action: Accept report.

11. Receive a Status Update on LAFCO-related Legislation

Recommended Action: Receive report for information only.

### Public Hearings

12. Fire Protection District Sphere of Influence Amendment and Annexation Proposals:

1) **Monterey County Regional Fire District** – Three-area sphere of influence amendment and annexation of approximately 23,200 acres (36.6 square miles) adjacent to the City of Marina, in the Limekiln Road area between Cachagua and Gonzales, and in the Upper Chualar Canyon northeast of Gonzales (LAFCO File 18-01); and

2) **North County Fire Protection District** - Sphere of Influence amendment and annexation of approximately 2,437 acres (3.7 square miles) adjacent to the City of Marina (LAFCO File #18-02).

***Note: There is an overlap/conflict between these two proposals, in the area outside Marina. Both fire districts are proposing to annex unincorporated areas of the Armstrong Ranch site, now owned by RAMCO Enterprises L.P., as well as a parcel owned by Marina Coast Water District.***

Recommended Actions:

- 1) Regarding the **Monterey County Regional Fire District** proposal (LAFCO File 18-01):

- a) Consider the finding made by the fire district that its proposal is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines;
- b) Adopt a resolution (Attachment 1) **approving** the proposed sphere amendment and annexation and setting October 22, 2018 as the Conducting Authority (protest) proceedings date for the proposed action; and

2) Regarding the North County Fire Protection District proposal (LAFCO File 18-02):

- a) Consider the finding made by the fire district that its proposal is exempt from environmental review pursuant to the CEQA Guidelines;
- b) Adopt a resolution (Attachment 2) **approving in part and denying in part** the proposed sphere amendment and annexation, and setting October 22, 2018 as the protest proceedings date for the proposed action.

### New Business

13. Consider Status Report on the Fort Ord Reuse Authority (FORA) Dissolution Process.

Recommended Action: Receive the Executive Officer's Report and provide general direction to staff.

14. Consider Report on Business Items for the 2018 CALAFCO Annual Conference on October 3-5 2018.

Recommended Actions:

- a. Authorize seven attendees (Action Item)
- b. Designate voting delegates (Action Item)
- c. Consider nominations for CALAFCO Board of Directors (Information or Action Item)
- d. Receive information about CALAFCO Achievement Award Nominations (Information Only)

### Executive Officer's Report

*The Executive Officer may make brief announcements about LAFCO activities, for information only.*

15. Miscellaneous Information Items

- a. Reorganization Options for Spreckels Community Services District and Spreckels Memorial District
- b. CALAFCO Statewide Disadvantaged Unincorporated Community Map
- c. Presentations Regarding LAFCO's 2018 Municipal Service Review and Sphere of Influence Study for Salinas Valley Memorial Healthcare System

### Commissioner Comments

*Individual Commissioners may comment briefly on matters within the jurisdiction of LAFCO. No discussion or action is appropriate, other than referral to staff or setting a matter as a future agenda item.*

### Adjournment to the Next Meeting

The next Regular LAFCO Meeting is scheduled for Monday, September 24, at 4:00 p.m.

*Alternative Formats and Facility Accommodations: If requested, the agenda will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC 12132) and the federal rules and regulations adopted in implementation thereof. Also if requested, facility accommodations will be made for persons with disabilities. Please contact (831) 754-5838 for assistance.*

# LAFCO *of Monterey County*

## LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP  
Executive Officer

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DATE: August 27, 2018  
TO: Chair and Members of the Commission  
FROM: Kate McKenna, AICP, Executive Officer  
SUBJECT: Fort Ord Reuse Authority (FORA) Dissolution Process Update

### SUMMARY OF RECOMMENDATION:

It is recommended that the Commission:

1. Receive the Executive Officer's report; and
2. Provide general direction to staff.

### EXECUTIVE OFFICER'S REPORT:

#### Purpose

This report provides a background summary of FORA dissolution, highlights two primary areas of concern with the current process, and discusses LAFCO staff-recommended next steps. Staff requests that the Commission provide general direction on this significant component of LAFCO's 2018-19 work program.

#### Background

FORA is legislatively scheduled to "sunset" by June 30, 2020. The enactment of AB 1614 in 2012 included a role for LAFCO to "provide for the orderly dissolution of FORA." Per AB 1614, FORA is required to prepare and submit a transition plan to LAFCO by December 30, 2018. The transition plan "shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of obligations."

In January 2018, the Commission approved a staff-prepared review of LAFCO's statutory responsibilities and expectations for FORA dissolution (Attachment 1). A total of four staff-level meetings between FORA and LAFCO have taken place since January. During these meetings, LAFCO staff received updates on the draft plan sections, discussed anticipated next steps in the dissolution process, and reiterated LAFCO's need to receive a thorough and comprehensive transition plan from FORA.

FORA continues to work towards completion of a comprehensive transition plan pursuant to the requirements of AB 1614. To the degree that the FORA's transition plan comprehensively addresses the statutory requirements when FORA submits a transition plan to LAFCO, that level of completeness will support LAFCO's efforts to provide for FORA's orderly dissolution.

#### Primary Areas of Concern

##### 1) Status of FORA's Transition Plan Development

FORA's documents identify a goal of the FORA board receiving a substantially completed transition plan from FORA staff by September or October. That timeframe is quickly approaching. However, FORA's initial June 5, 2018 draft transition plan inventoried a wide range of fundamental, but largely unanswered,

questions regarding post-FORA roles and responsibilities. The July 13 FORA board report (Attachment 2) summarized and distilled these unresolved matters into a more streamlined format. However, as of this writing, there are no clear indications that a comprehensive plan addressing post-FORA responsibilities, successor agencies, the timing of transfer of assets and obligations, and similar key aspects of FORA dissolution, is nearing completion.

LAFCO staff therefore anticipates that, as a practical matter, the final transition plan that FORA will submit to LAFCO by the end of 2018 will likely need to include an inventory of not-yet-resolved matters, as well as outlining a process of how and when FORA anticipates reaching a final determination on these matters, whether that occurs before or after LAFCO adopts a resolution making determinations as to FORA dissolution. FORA's transition plan should also discuss a process for resolving additional, unforeseen issues that may emerge after the transition plan has been submitted to and acted on by LAFCO.

FORA and others should not expect the limited-duration LAFCO process itself to refine the transition plan to completion, or to function as a mechanism to continue to seek consensus on all unresolved, substantive aspects of the transition plan after FORA submits its plan to LAFCO. As previously stated and clearly outlined in AB 1614, it is incumbent on the FORA-prepared transition plan, not on LAFCO, to "assign assets and liabilities, designate responsible successor agencies, and provide a schedule of obligations." Additionally, the FORA board, staff, and consultants have the subject-matter expertise and the experience that are needed to craft the transition plan and carry it through to FORA's anticipated sunset date in 2020.

The dissolution of FORA is undertaken pursuant to specific 1994 State legislation known as the FORA Act, as amended by AB 1614 in 2012. The FORA Act does not specify a remedy if FORA's transition plan, or subsequent implementation actions by FORA through June 30, 2020, fall short of meeting AB 1614's statutory obligations. At a minimum, if the Commission were to determine that the transition plan does not meet the requirements set forth in AB 1614, then LAFCO may find it necessary to send the plan back to FORA for revision and resubmittal to LAFCO.

## 2) Assignment of Roles and Duties to Prospective FORA Successor Agencies

On August 7, LAFCO received from FORA a draft resolution (Attachment 3) listing various findings and conditions of approval for the FORA board to consider alongside a draft transition plan in September or October. These proposed findings included requesting that LAFCO impose requirements, specifically regarding a potential replacement for the FORA Community Facilities District fee and responsibility for not-yet-completed FORA roadway projects, on anticipated successor agencies – in this case the Ord Community Cities and the County, and the Transportation Agency for Monterey County, respectively.

In response, LAFCO staff submitted a memo (Attachment 4) to FORA on August 8, and also attended the August 10 FORA meeting to speak on this subject. To summarize the August 8 memo, neither AB 1614 nor statewide LAFCO law (the Cortese-Knox-Hertzberg, or CKH Act) appears to give LAFCO any legal basis to impose such requirements on any public agency in the context of FORA dissolution.

The dissolution of FORA is undertaken pursuant to the FORA Act, as amended by AB 1614, not pursuant to the CKH Act. The CKH Act applies only to changes to local agencies. The CKH Act's definition of a local agency includes cities, counties, and special districts. More specifically, Section 56100(a) of CKH states that CKH "provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts" (emphasis added). The FORA Act states that "the authority [FORA] is a public corporation of the State of California that is independent of the agencies from which its board is appointed." The CKH Act includes no mention of, or references specific to, FORA or Fort Ord.

It is unclear whether FORA falls within the definition of a special district as defined by the CKH Act. In the 20+ years of FORA's existence, LAFCO has not regulated the actions or activities of the FORA agency itself. LAFCO does regulate the boundaries and services of certain FORA member agencies – the cities and special districts – in accordance with the CKH Act, as is the case with other cities and special districts.

FORA itself has no LAFCO-adopted sphere of influence and has not been subject of any LAFCO-adopted municipal service review studies.

The FORA Act of 1994 includes the following statement (Section 67657[b]):

- “The jurisdiction of the authority [FORA] 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” (emphasis added).

The above statement clarifies that the CKH Act remains applicable to **changes to the territorial boundaries** of FORA member entities– in other words, to boundary changes to FORA member agencies such as the cities of Marina, Seaside, Monterey, and Del Rey Oaks, and special districts such as Marina Coast Water District. This wording does not subject any other aspects of FORA, including its dissolution, to the CKH Act. Accordingly, since the creation of FORA in 1994, LAFCO and the CKH Act have had no role in overseeing or regulating ongoing FORA activities other than territorial boundary changes and spheres of influence of FORA member agencies. The boundaries of those agencies would not be affected by FORA dissolution, unless boundary changes are sought, separately, through the standard LAFCO proposal process, as Marina Coast Water District is currently pursuing. The CKH Act is applicable in such instances.

Additionally, even if FORA were to be construed as a district, the CKH Act is a “general,” statewide statute. Its general provisions regarding agency dissolution would, in the current context, be superseded by the FORA Act, as amended by AB 1614, which is specific to FORA dissolution. The FORA Act and AB 1614 define and prescribe LAFCO’s role in FORA dissolution as follows:

- “LAFCO shall provide for the orderly dissolution of the authority [FORA] 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.”

AB 1614 makes no reference to the CKH Act. The whole of the FORA Act appears to contain no other references to the CKH Act other than the reference to the geographic boundaries of FORA member agencies, discussed immediately above.

AB 1614, not the CKH Act, is the statute that provides the legal authority and guidance for FORA dissolution. This is an important distinction, in that the CKH Act’s provisions (Section 56886, among others) authorize the Commission to potentially impose certain conditions of approval on the dissolution of a city or district. These authorizations are not applicable to Commission actions taking place outside the context of the CKH Act, as is the case with FORA dissolution. AB 1614 defines a limited role (see above) for LAFCO to provide for the orderly dissolution of FORA. AB 1614 does not extend the CKH Act’s provisions to FORA dissolution, nor does AB 1614 provide LAFCO with any other apparent legal basis to unilaterally impose directives on FORA member agencies (the cities, the county, and TAMC) as was proposed in FORA’s July 10 draft resolution.

Based on the preceding information, FORA must plan to take responsibility both for identifying successor agencies, and for arranging and negotiating to actually transfer its existing roles and responsibilities to those agencies in accordance with its principal act (the FORA Act of 1994, as amended by AB 1614), and according to other existing, applicable laws and legal doctrines. LAFCO cannot carry those actions out on FORA’s behalf.

Staff has reviewed the applicable statutes – including the FORA Act and CKH Act – with LAFCO’s legal counsel and determined that LAFCO’s authorized role in FORA dissolution is defined in the FORA Act, as amended by AB 1614, listed above. LAFCO’s role will begin when FORA submits its transition plan. A staff-recommended framework of the specific subsequent actions proposed to put LAFCO’s statutory role into action is discussed in the **Next Steps** section, below.

## Other Related Elements of FORA Dissolution

FORA will be the CEQA lead agency and LAFCO will be a responsible agency. FORA has indicated its likely intent to determine that approval of the transition plan is either not within the definition of a “project” under CEQA, or is categorically exempt as an organizational change. No formal actions have taken place on an environmental document. A signed indemnification agreement from FORA, indemnifying LAFCO’s actions regarding FORA dissolution, is also anticipated with the final transition plan in December. It is LAFCO staff’s understanding that, alongside the dissolution planning process, the FORA board is also still considering pursuing an additional legislative extension.

## Next Steps

The attached, LAFCO staff-recommended tentative schedule (Attachment 5) outlines specific steps to implement LAFCO’s statutory role in FORA’s dissolution. This updated schedule expands on the approach that was introduced in concept in the January 2018 LAFCO agenda item report.

The schedule incorporates an initial public review period, a study session, responses to the transition plan, potential revisions by FORA to the transition plan, and a LAFCO resolution making determinations for the dissolution of FORA. Subsequent to LAFCO’s dissolution resolution, the FORA board will have approximately 15 months remaining to execute contractual agreements with all successor agencies, fulfill any conditions of approval set forth and adopted by the FORA board or LAFCO, and refine any unresolved matters that may remain in the transition plan at the time of LAFCO’s resolution action.

In terms of any ongoing LAFCO role subsequent to approval of a FORA dissolution resolution (i.e. between approximately April 2019 and July 2020), the Commission may consider requiring periodic status updates from FORA to verify that the dissolution is occurring in accordance with the transition plan and with LAFCO’s resolution on FORA dissolution. However, it is ultimately the responsibility of FORA, not LAFCO, to impose responsibilities and assign obligations to the proposed successor agencies.

LAFCO’s formal role will begin upon receiving from FORA a transition plan. In the meantime, LAFCO staff will continue to work with FORA, Senator Monning’s office, and other stakeholders to assist in carrying out the important work mandated by AB 1614.

Respectfully Submitted,



Kate McKenna, AICP  
Executive Officer

Prepared by: Joe Serrano, Senior Analyst

## Attachments:

1. LAFCO January 22, 2018 Staff Report
2. FORA July 13, 2018 Staff Report

Related note – The first draft transition plan was presented to the FORA board on June 8, 2018:

[http://www.fora.org/Board/2018/Packet/Additional/060818\\_Transition\\_Plan\\_Draft\\_Study\\_session\\_Report.pdf](http://www.fora.org/Board/2018/Packet/Additional/060818_Transition_Plan_Draft_Study_session_Report.pdf)

3. FORA’s Draft Resolution circulated on August 7, 2018
4. LAFCO Memo to FORA dated August 8, 2018
5. LAFCO Schedule – FORA Dissolution Process (updated as of August 27, 2018)

<p style="text-align: center;"><b>AGENDA ITEM NO. 14</b></p>
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# LAFCO *of Monterey County*

## LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP  
Executive Officer

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DATE: January 22, 2018  
TO: Chair and Members of the Commission  
FROM: Kate McKenna, AICP, Executive Officer  
SUBJECT: Report on the Fort Ord Reuse Authority (FORA) Dissolution Process

### SUMMARY OF RECOMMENDATION:

It is recommended that the Commission adopt the following:

1. Receive the Executive Officer's report; and
2. Provide general direction to staff.

### EXECUTIVE OFFICER'S REPORT:

#### Introduction

FORA's organizational structure is set to dissolve on or before June 30, 2020. The Fort Ord Reuse Authority Act (Government Code Section 67650) that established FORA is also scheduled to sunset on January 1, 2021. LAFCO is tasked to complete the dissolution of FORA pursuant to state law. FORA was originally set to dissolve in June 30, 2014 but was postponed to June 30, 2020 by Assembly Bill No. 1614. The time extension was provided to fulfill ongoing and fixed term obligations on Fort Ord such as munitions and explosives removal, Habitat Conservation Plan implementation, financing contaminated building deconstruction, and coordinating planning and construction of the Central Coast Veteran's Cemetery. No additional extension has been approved at this time. However, the FORA Board is seeking legislative action to extend the duration of FORA as an alternative to the proposed dissolution.

It is our understanding that any legislative action to extend FORA or its financing mechanisms will run parallel with the completion of a transition plan outlining how obligations, assets, and other functions will be properly transferred to a successor agency(ies) following the dissolution of FORA. The transition plan is a statutory requirement of AB 1614 and subject to LAFCO approval. With the December 2018 deadline approaching, FORA staff anticipates a final transition plan will be considered for FORA adoption in October.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) is the governing law for LAFCOs and establishes procedures for local government changes of organizations such as annexations, consolidations, and dissolutions of a local agency. LAFCOs have numerous powers under the CKH Act to ensure the orderly development of cities and special districts, however, the dissolution of FORA is outside the CKH Act and distinctive to this LAFCO. Therefore, this staff report is intended to (1) outline the dissolution process and schedule, (2) clarify the roles of FORA and LAFCO, and (3) examine the legislative requirements.



## Coordination between FORA and LAFCO

Due to the complexity of the proposed dissolution, LAFCO has held informal meetings with FORA staff to discuss its transition planning during the past year. These ongoing discussions allow FORA and LAFCO an opportunity to address the legislative mandate collectively and grant sufficient time for approval and implementation prior to FORA's statutory sunset in June 2020. Such coordination will be beneficial during the next several months as FORA moves forward with its next phase of the transition plan – drafting a joint powers agency (JPA) outline and concept as a possible successor agency. The latest staff-level discussion occurred on January 10, 2018. A conference call was held to discuss the January 12 FORA Board meeting which included a status update on the draft transition plan. A copy of the FORA staff report is included as Attachment A. Please note that the attachments in the FORA staff report are in draft form and subject to change. The need to clarify the legislative requirements for both FORA and LAFCO was also raised during the conference call.

To further assist in the collaborative efforts, the following section provides clarification of the legislative requirements for both agencies.

### FORA's Responsibilities to Complete Dissolution

Government Code Section 67700(b)(2) indicates that the FORA Board shall approve and submit a transition plan to LAFCO on or before December 30, 2018. The same statute also states that the transition plan “shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.” Based on FORA's draft work plan schedule, shown in Attachment A, a final transition plan will be considered for their Board's adoption in October 2018.

It is imperative that the FORA-adopted transition plan be comprehensive and specific. The plan must clearly identify the specific means by which all types of current FORA assets, liabilities, and responsibilities will be transferred to other agencies or otherwise assigned or terminated. These provisions must be clearly laid out in the transition plan for LAFCO to be able to “provide for the orderly dissolution of [FORA]” pursuant to AB 1614. It is critically important that the transition plan not identify the issues only in broad or general terms and look to the LAFCO process to refine the plan or continue to seek consensus on unresolved aspects of FORA dissolution after submittal of the transition plan to LAFCO in December 2018. LAFCO anticipates a detailed transition plan that includes the following criteria:

- **Assign Assets & Liabilities:** Documentation specifying how FORA assets will be transferred to appropriate successor agencies and liabilities including but not limited to contracts, agreements, and pledges will be honored and properly administered.
- **Designate Responsible Successor Agencies:** Designation of successor agencies to continue the planning for, financing, and managing the transition of the former Fort Ord from military to civilian use.
- **Provide Schedule of Remaining Obligations:** Documentation identifying the schedule/terms of repayment of all remaining financial obligations.

State law does not provide specific steps to complete the dissolution of a unique entity such as FORA. Therefore, LAFCO will generally follow the provisions of the CKH Act as guidelines during this special dissolution process. In addition to being guided by AB 1614 and the CKH Act, LAFCO's process will take into consideration the objectives, policies, and programs of the Fort Ord Base Reuse Plan. Therefore, FORA's application packet should also include the following:

1. **LAFCO Filing Fee:** LAFCO requests payment of fees equaling the actual cost of processing the dissolution. LAFCO will generally follow the Commission's adopted filing fee schedule (Attachment B). LAFCO's current hourly rate is \$125 per hour, based on salaries, benefits and overhead. The hourly rate includes analyst time, routine Executive Officer and secretarial support, routine legal review and GIS support services, and routine copy services. Since the dissolution of FORA is not a routine application, the actual cost will include significant legal counsel services. Other expenses may arise in the course of processing the dissolution, including but not limited to publication of hearing notices,

finance expertise or other consultant support, and additional miscellaneous charges yet to be determined. LAFCO staff will work with FORA to prepare a more detailed cost estimate as part of our ongoing coordination.

2. Environmental Document: LAFCO requests a copy of an environmental document in association to the proposed dissolution. Each proposal for a change of organization or reorganization must be reviewed to ensure that it complies with the requirements of California Environmental Quality Act (CEQA). This involves the preparation of an environmental document processed by FORA as the lead agency in advance of LAFCO consideration as the responsible agency.
3. Indemnification Agreement: LAFCO requests the transmittal of a signed indemnification agreement. Typically, indemnification agreements are conditions of approval in adopted LAFCO resolutions. However, due to the unique complexities and risks associated with this dissolution process, LAFCO staff requests that FORA agree at the outset to defend, indemnify, hold harmless, and release the Local Agency Formation Commission of Monterey County from any claim, action, or proceeding brought against it as part of this dissolution. The indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this dissolution, whether or not there is concurrent passive or active negligence on the part of LAFCO, its agents, officers, attorneys, or employees. LAFCO staff and counsel will prepare a draft indemnification agreement for use by FORA in the next few months.

This is a tentative list of required application documents. Since we are still in the beginning stages of the transition plan development, LAFCO will inform FORA if other application items are required.

#### **LAFCO's Responsibilities to Complete Dissolution**

Pursuant to Government Code Section 67700(b)(1), LAFCO shall provide for the orderly dissolution of FORA. Processing the dissolution - based upon, and in accordance with, the transition plan to be adopted by the FORA Board - is the only FORA-related role established for LAFCO under state law. LAFCO has outlined a tentative schedule, as shown below, to facilitate the completion of the dissolution process. FORA's draft work plan dates are also included in this schedule.

Upon receipt of the transition plan and related documents and fees, LAFCO will review and provide any comments to FORA in early 2019 (January-March). Following our review, LAFCO staff will schedule a hearing date for Commission consideration in late-spring or early summer (April-June). Once approved, the adopted LAFCO resolution will be distributed to all affected agencies for their records. No other action is statutorily required by LAFCO under the FORA Act or AB 1614.

#### **FORA Dissolution Schedule**

<b>Important FORA Dates</b>	<b>Deadlines</b>
FORA Board receives draft Transition Plan Summary/Charts for Water/Wastewater and Financial/Assets	January 2018
FORA Board receives draft Transition Plan Summary/Charts for Administration/Environmental Services Cooperative Agreement	February 2018
FORA Board receives draft Transition Plan Summary/Charts for Habitat Conservation Plan and Transportation	March 2018
FORA Board considers Draft Joint Powers Agency Agreement	July 2018
FORA Board receives Complete Transition Plan (Draft Version)	August/September 2018
FORA Board considers adoption of Final CEQA Determination and Transition Plan	October 2018

Important LAFCO Dates	Deadlines
Submission of transition plan to LAFCO, accompanied by a determination pursuant to the CEQA, with FORA as the CEQA lead agency	No later than December 30, 2018
Transmittal of signed indemnification agreement	
Payment of LAFCO processing fees (Initial Deposit)	
LAFCO review of transition plan	January-March 2019
LAFCO approval of dissolution (Public Hearing)	April-June 2019
FORA Act is deemed inoperative	June 30, 2020
FORA Act is deemed repealed	January 1, 2021

## Conclusion

For over twenty years, FORA has been engaged in achieving the State Legislature's goal to plan, finance, and implement the use and development of the territory previously occupied by the Fort Ord military base. Without amendments to existing law, dissolution is imminent and a transition plan is required in order for LAFCO to complete the dissolution process. The FORA Board has taken preliminary steps towards transition planning by focusing on a Joint Powers Agency as the potential single successor to complete any remaining obligations. Ongoing discussions between FORA and LAFCO this year will be critical and will allow both agencies to cooperatively identify uncertainties, address concerns and find possible solutions at an early stage. However, it is imperative that FORA not only identify any possible issues in the transition plan but also resolve them accordingly.

The formation of FORA was a long-term plan 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. The dissolution of FORA should also be considered as a long-term plan with a clear direction on all projects, obligations and other pending matters in the transition plan. Formulating a comprehensive long-term plan to address current and future needs will offer the successor agency(ies) a resourceful management tool to fulfill the legislative goals for the former Fort Ord area. A thorough plan could also lay the foundation for future LAFCO actions such as annexations by local agencies to ensure the provision of municipal services (i.e. water, sewer, fire, etc.). Therefore, the LAFCO office will continue to work with FORA staff and will periodically update the Commission on the dissolution process.

Respectfully Submitted,



Kate McKenna, AICP  
Executive Officer

Prepared by: Joe Serrano, Senior Analyst

### Attachments:

- 1) FORA January 12 Staff Report (with attachments)
- 2) LAFCO Filing Fee Schedule

cc: Michael A. Houlemard, Fort Ord Reuse Authority

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>		
<b>BOARD STUDY SESSION</b>		
<b>Subject:</b>	Transition Plan Study Session	
<b>Meeting Date:</b>	July 13, 2018	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>		

### **RECOMMENDATION:**

- i. Receive an update of the Fort Ord Reuse Authority (FORA) Transition Planning Process.
- ii. Deliberate policy and programmatic issues, directing staff to prepare a Transition Plan with specific liability, obligation and asset assignment recommendations.

### **BACKGROUND/DISCUSSION:**

The FORA Board of Directors received a report outlining the first draft of the Transition Plan and background materials on June 8, 2018 during a several hour Board Study Session. Discussion was limited to the background information and presentation, noting the time-certain regular meeting at 2:00 pm. That information and background is the general documentation and culmination of a 2½ year gathering period, encompassing analyses, review, and discussion by three Board ad hoc committees, public input and consultant review. For the July 13 Board session, staff is providing a draft compilation of the assignment charts (by jurisdiction) demonstrating what is proposed to be assigned. Staff has added a column for proposed implementation of the assignment. These assignment charts are the basis for how remaining revenue generation obligations and project implementation will be accomplished and are attached hereto as **Exhibit A**. Additionally, we provide the following policy areas for the Board to consider providing direction by Chapter if it so chooses. This Board report identifies and outlines areas where staff seeks Board direction to refine the Transition Plan.

#### **• COMPLETE THE ECONOMIC RECOVERY**

- Base wide costs and base wide mitigations
- What and When?

#### **• REVENUE GENERATION**

- Continue existing financing or
- Create new system(s) to achieve comparable resources.

#### **• REVENUE SHARING**

- Decide how to share revenues between those that generate the revenues and those providing the cross boundary basewide costs and mitigation measures

#### **• POLICY ENFORCEMENT**

- What policies and how?(i.e. prevailing wage, veterans support, building removal)

#### **• IMPLEMENTATION PLAN**

- Contractual Assignment
- Agreements (by some or all jurisdictions and/or entities)
- Litigation



## **REVENUE GENERATION/REVENUE SHARING:**

- Should the infrastructure and habitat conservation projects in FORA's capital improvement program be completed and existing funding mechanism sustained?
- If YES, then what does the successor/follow-on FORA organization look like?
- If NO:
  - Then how should funds from individual jurisdictions be equitably charged, collected and distributed to complete FORA's obligations?
    - Should those jurisdictions with outstanding entitled development be required to provide an agreement and/or assurances that they will collect replacement revenues and transfer those revenues to an escrow account or directly to those jurisdictions implementing projects as outlined?
  - What should be required of a jurisdiction to assure they will collect replacement revenues comparable to implement obligations?

## **POLICY ENFORCEMENT/IMPLEMENTATION PLAN:**

- As a part of the implementation program, should FORA "file/record" the Master Resolution as it exists on June 30, 2020?
- As a part of the Implementation Plan and Transition Program, should FORA prepare and update the Capital Improvement program in March 2020 and utilize this update as the basewide costs and mitigation measures remaining for FORA completion?
- Will jurisdictions self-enforce FORA/BRP policies?

## **ADMINISTRATIVE:**

- Should all administrative liabilities be assigned based upon voting percentage?
- Who manages LAFCO/real party in interest Transition Plan litigation beyond 2020?
- Who assumes responsibilities under potential settlement agreements or court judgments?
- Can/should FORA seek insurance policies extensions to provide gap/statute of limitation coverage? e.g. Workers' compensation/Director coverage? Alternatively, deposit/fund an escrow for contingent "administrative liabilities?"
- Who receives/maintains FORA records repository/website?

## **ESCA:**

- Which jurisdiction or new entity should be FORA's single entity successor for completing the Environmental Services Cooperative Agreement ("ESCA") obligations and receipt of Army contract amendment for additional dollars? (See Paragraph 5.2.2 Environmental Services Obligations, ESCA Cooperative Award; AOC Paragraph 5 requires 120 day written notice and acceptance by EPA/DTSC regulators of successor's fitness to meet AOC requirements).
  - How will successor/ other jurisdictions share ESCA resources and responsibilities?
- Should FORA's ESCA obligations and Army financial support be transferred to a JPA, Monterey County/ Seaside JPA? Would the Army approve?
- Will the ESCA funds, priced for a single coordinated entity to manage and implement be sufficient to support another management structure?
- What agreements need to be in place to share the ESCA resources?
- What additional management structure will the successor need to develop/implement to manage the ESCA?
- Where will ESCA office be for appropriate access to support requirements?

- The Monterey County Health Department Director of Health is the contractually designated party for DTSC reporting, notices, comments, approvals and other communications from and to the Department after FORA ceases to exist. (2008 DTSC Agreement). Shall the Director of Health be directed by County to begin transitioning the DTSC contractual requirements with FORA staff?

### **HABITAT:**

- What happens if USFWS/CA DFW do not approve Basewide HCP/2081 permit by 2020?
  - JPA/Habitat Cooperative if in existence, underlying jurisdictions if not?
- Who is the successor to a Basewide HCP/2081 permit if no Habitat Cooperative is formed?
- How are replacement funds (approximately \$45M) allocated and/or how is the endowment funded without the FORA Community Facilities District (CFD) fees?
- What are the obligations under the HMP?
- Is it feasible to process individual take permits with USFWS/CA DFW?
- What are the time /development costs and can or should those costs be shifted as habitat conservation is a **basewide cost/regional asset**?
- How do jurisdictions finance removal of invasive species and habitat restoration?
- What is the backup transition plan if there is no basewide Habitat Conservation Plan (HCP)? Would the \$21 Million collected by FORA for habitat protection be placed in trust to a) protect habitat management areas on a basewide basis and invested in habitat trust/annuity for those purposes and b) fund/repay development projects required to obtain Section 7/2081 permits? Trust to be managed by either JPA/Habitat Cooperative or all underlying jurisdictions?

### **TRANSPORTATION:**

- Who completes FORA lead agency improvements?
  - South Boundary Road Upgrade
  - Intergarrison Road
  - GJM Blvd.
  - NE-SW Connector
  - Gigling Road
  - Eucalyptus Road
- What is the schedule for FORA lead project completion (i.e. Implementation)?
- What is the schedule for FORA Network completion?
- How do we ensure Fort Ord Zone network obligations are met and monitored/reassessed?
- How should revenues be transferred for off-site and regional projects?
  - Assign off-site impacts to underlying jurisdictions?
  - How would jurisdictions equalize revenues for these projects that FORA would have provided to the jurisdiction?
  - Assign Implementation Agreement obligations?
  - Breaking out the entitled development projections from the new project projections creates an offset in outstanding obligations.
- How are collected funds disbursed/prioritized (within the limitations of receipt of funds)?



## **WATER/WASTEWATER:**

- How will there be public representation of the Ord Community without the 1998 Facilities Agreement if no MCWD annexation of Fort Ord prior to 2020?
- How do water allocation adjustments occur in order to ensure fair and equitable water allocation?
- How do you define, approve, and pay for the Augmented Water project (a required CEQA mitigation in the BRP) currently in planning?
- How do you ensure future water service and annexation of the entire Ord Community?
- Should some future service areas be required to pay annexation fees? Should only new development pay capacity (i.e. augmented water supply) charges, or should the augmented water supply charge be shared on a base wide basis?
- Should FORA assign the revenue generation associated with water augmentation to MCWD? This would shift financing from FORA CFD to MCWD capacity charges.
- First Right of Refusal? Should FORA's first right of refusal for excess water/wastewater rights be assigned to MCWD or to jurisdictions that still have development potential?

## **MISCELLANEOUS**

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

## **BUILDING REMOVAL**

- Should remaining FORA obligations for current policy building removal be assigned to underlying jurisdictions?
- Should additional building removal policy-level obligations be undertaken by the FORA Board to reduce future burden on underlying jurisdictions? If yes, should the FORA Act be recommended for extension as a part of the Transition Plan, to enable a revenue sharing program be devised by the land use jurisdictions using former FORA property tax revenues or other resources to accelerate blight removal?

## **FINANCIAL (See also Revenue Generation/Revenue Sharing hereinabove)**

- 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 \$72M)
    - Should there be a compensatory payment for entitled development by those entities with entitled development, unless contract or other commitment in place at sunset to fulfill the FORA obligation?
  - Should imposition of an amount based upon development be imposed by LAFCO based upon contractual commitments in the Implementation Agreements?
- If replacement CFD revenues are generated, how are revenue transfers handled to compensate/reimburse surrounding jurisdictions for their portions of the base wide costs and mitigation measures?
- Can the development fee be assigned to successor for the areas not covered by the CFD?
- Can the Implementation Agreements be assigned and do they require the jurisdictions by contract to finish the Base wide Costs and Mitigation measures as identified in the CIP?

- Does assignment require the Land Use Jurisdictions to adopt replacement fees and/or mechanisms to replace the FORA Property Tax and Development Fees?

This report does not include discussion of the following chapters: CEQA, Transition Staffing, and/or Conclusion/Recommendation as many of those chapters will be guided by the Board's discussion and direction on the other chapters. Transition staffing will be guided during 2019 by the Executive Officer with the assistance of a human resources consultant. CEQA for adoption of the Transition Plan will be guided by the final Board recommendations as will the conclusions/recommendations of the Draft Transition Plan.

**PUBLIC COMMENT:** At the last meeting public comments were requested to be sent to [planning@fora.org](mailto:planning@fora.org). No comments were received at that email. FORA did receive two comment letters which are attached to this report as **Exhibit B**. FORA staff requests that comments be sent to [planning@fora.org](mailto:planning@fora.org).

**FISCAL IMPACT:**

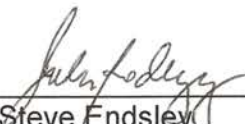
Reviewed by FORA Controller 

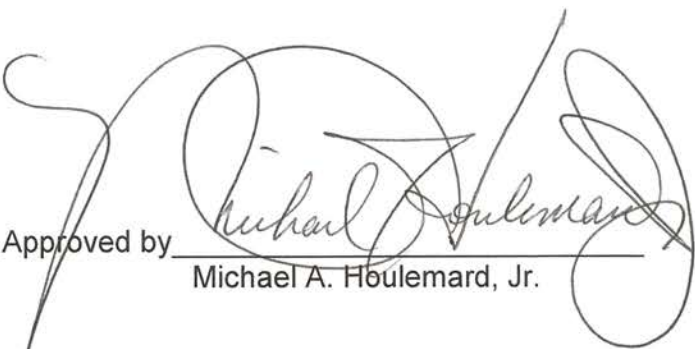
**COORDINATION:**

On June 5, 2018, the Administrative Committee was provided a copy of the Preliminary DRAFT Transition Plan. The 2016 and 2017 Transition Task Forces and the 2018 Transition Ad Hoc Committee received reports and background materials, and regular consultation has been undertaken with the Local Area Formation Commission staff, governing each of the elements that staff have been able to identify that are required in a 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.

Prepared by   
Sheri L. Damon

Reviewed by  FOR  
Steve Endsley

Approved by   
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



# LAFCO *of Monterey County*

## LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

### 2018 Commissioners

#### Chair

Simón Salinas  
County Member

#### Vice Chair

Warren E. Poitras  
Special District Member

Sherwood Darington  
Public Member

Matt Gourley  
Public Member, Alternate

Joe Gunter  
City Member

Maria Orozco  
City Member, Alternate

Jane Parker  
County Member

Luis Alejo  
County Member, Alternate

Ralph Rubio  
City Member

Vacant  
Special District Member  
Alternate

Graig R. Stephens  
Special District Member

### Counsel

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General Counsel

### Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102  
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P. O. Box 1369  
Salinas, CA 93902

Voice: 831-754-5838

## MEMORANDUM

DATE: August 8, 2018

TO: Michael A. Houlemard, FORA Executive Officer

FROM: Kate McKenna, AICP, LAFCO Executive Officer 

SUBJECT: Transition Plan Process Update Report – Consent Agenda Item #7f

On August 7, LAFCO received a copy of FORA's August 10 staff report which outlines recent steps taken by the FORA board to complete the statutorily required transition plan. The report also includes a draft resolution listing various findings for the FORA board to consider in conjunction with a draft transition plan in September or October. These draft findings currently contain, in Sections 1 and 3B, regarding a potential replacement for the FORA Community Facilities District fee and roadway project respectively, requests for LAFCO to impose responsibilities and assign obligations to specific successor agencies, without the context of an adopted transition plan.

LAFCO staff has concerns with these proposed findings, in that:

1. It is currently unclear whether the language in Assembly Bill 1614 gives LAFCO the authority to impose or assign FORA obligations/responsibilities to any agency. Per AB 1614, it is incumbent on the FORA-prepared transition plan, not on LAFCO, to "designate responsible successor agencies." (Gov't Code 67700.b.2)
2. FORA's findings as to specific successor agency roles and responsibilities should be based on a comprehensive transition plan, which FORA has not yet prepared, and should be made in the context of identifying the successor agencies for all areas of current FORA responsibility.
3. LAFCO's role and scope of review regarding the FORA dissolution is derived from AB 1614. The Cortese-Knox-Hertzberg Act Government Code Section 56886 of which is cited as the purported statutory authority in Section 1 of the August 10 agenda item, applies to changes to "local agencies" (defined in the CKH Act as cities, counties, and special districts). Given that FORA is outside the CKH Act's definition of a local agency, it is unclear how LAFCO's regulatory powers under 56886 or other sections of the CKH Act could apply to the FORA dissolution.

The matters outlined above are under ongoing review in coordination with LAFCO's legal counsel. A brief report regarding LAFCO's role and status of the transition planning will be presented to our Commission at the August 27 LAFCO meeting. We appreciate this opportunity to provide comments. Please continue to keep us informed throughout your process. LAFCO staff will continue to work with FORA and other stakeholders on the transition planning and dissolution process.



**Fort Ord Reuse Authority - Dissolution Process**  
**LAFCO Schedule (Updated as of August 27, 2018)**

Action	Target Date	Description
Receive Transition Plan	December 30, 2018	Government Code Section 67700(b)(2) indicates that the FORA Board shall approve and submit a transition plan to LAFCO on or before December 30, 2018. LAFCO also anticipates the submittal of a signed indemnification agreement, an adopted environmental document, and an initial deposit of approximately \$10,000.
Review of Transition Plan	January 2019	LAFCO staff will begin a formal review of the submitted transition plan. LAFCO staff will also post the transition plan on the LAFCO website to solicit additional public comment.  If LAFCO finds that the dissolution plan does not meet the prescribed requirements of the FORA Act, then LAFCO may find it necessary to send the plan back to FORA for revision and resubmittal to LAFCO.
Conduct LAFCO Study Session	January 28, 2019	This study session will be held during a regularly scheduled LAFCO meeting and will give an opportunity for the Commission, local agency representatives, and the general public to discuss the FORA transition plan and dissolution process prior to Commission action in March.
FORA Review of Public Comments	February 2019	FORA will receive a study session CD and any written public comments. FORA will have the opportunity to make any revisions to the transition plan.
Conduct LAFCO Hearing to Consider the Orderly Dissolution of FORA	March 25, 2019	Commission consideration of FORA's adopted CEQA, final transition plan and dissolution of FORA will take place at a regularly scheduled LAFCO meeting.
Distribution of Adopted LAFCO Resolution	April 2019	LAFCO staff will distribute copies of the adopted resolution and transition plan to all affected and interested agencies. This concludes the formal LAFCO action pertaining to the dissolution of FORA.
Pre-FORA Dissolution Tasks (by FORA)	April 2019 – June 2020	FORA will have approximately 15 months remaining to execute contractual agreements with all successor agencies, fulfill any conditions of approval set forth and adopted by the FORA board or LAFCO, and address any unresolved matters listed in FORA's transition plan. No LAFCO action is required, however, the Commission may receive periodic updates from FORA.
FORA Act Inoperative	June 30, 2020	FORA Act is deemed inoperative in June 2020. FORA will discontinue all current operations, meetings, and official business hours as of this date. No LAFCO action is required.
Post-FORA Dissolution Tasks (by FORA)	June 2020 – December 2020	Interim post-FORA representatives will have approximately 6 months left to resolve any remaining FORA matters before the Act is officially repealed. No LAFCO action is required.
FORA Act Repealed	January 1, 2021	FORA Act is deemed repealed. No LAFCO action is required.