

ATTACHMENT 1

FORA Draft Legislative Language to Implement Transition Plan (Presented to FORA Legislative Committee March 11, 2019)

67700.

(a) Notwithstanding any other provision of law, the requirements of this section shall govern the dissolution of the Authority.

Commented [SD1]: Makes clear this section governs over the rest of the Act.

(b) Additional definitions.

In addition to the definitions set forth in Section 67655, the following definitions apply to this Section:

Commented [SD2]: Establishes definitions

- (1) "Authority CFD" means the Fort Ord Reuse Authority Basewide Community Facilities District.
- (2) "Board" means the Board of Directors of the Authority.
- (3) "CFD revenues" means the revenues collected from the Authority CFD.
- (4) "Contingency account" means the account established pursuant to Section 67700 (h) (5), below.
- (5) "Entitled development" means development of land that has received a discretionary land use entitlement from an underlying land use jurisdiction, including but not limited to a subdivision map approval or use permit.
- (6) "Property tax revenues" means the revenues from the property tax collected pursuant to Health and Safety Code section 33492.71.
- (7) "Reuse Plan" means the Fort Ord Base Reuse Plan adopted by the Board on June 13, 1997 as may be revised until June 30, 2020.
- (8) "Transition Plan" means the plan for the dissolution of the Authority adopted by the Board as required by Section 67700 (c).
- (9) "Underlying land use jurisdictions" means, singularly or in the plural, the cities of Monterey, Del Rey Oaks, Seaside, Marina, the County of Monterey, and the California State University System.

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

(d) The Transition Plan, and its adoption, are not projects for purposes of the California Environmental Quality Act and shall be exempt therefrom. Changes in organization from and after June 30, 2020, to implement the Transition Plan shall also not be a project for purposes of the California Environmental Quality Act and shall be exempt therefrom.

Commented [SD3]: Addresses the CEQA issue. Compatible with the changes in organization are not projects pursuant to CEQA

(e) On July 1, 2020, the Authority shall continue in existence for the limited purposes of (1) continuing the Authority CFD, managing the CFD boundaries, collecting and disbursing CFD revenues; (2) collecting and disbursing property tax revenues; and (3) managing and overseeing the implementation of the Transition Plan.

Commented [SD4]: Limits the purpose of the extended Board

(f) Commencing on July 1, 2020 the Board shall be composed of one member each appointed by the following:

- (1) the City of Del Rey Oaks.
- (2) the City of Marina.

Commented [SD5]: Composition of New Board/Governance

- (3) the City of Monterey.
- (4) the City of Seaside.
- (5) the County of Monterey.
- (6) the Chancellor of the California State University (CSU).

(g) The vote of a majority of the total membership of the Board shall be required to pass ~~or~~ act upon any matter properly before the Board, and each member of the Board shall have one vote.

Commented [SD6]: Governance: Voting Structure 4/6 to move forward
Alternative: Weighted voting?

(h) Effective July 1, 2020, the Board shall have authority only ~~to~~:

- (1) Implement the Transition Plan;
- (2) Collect the revenues set forth in Section 67700 (e), above;
- (3) Disburse the revenues collected as set forth in Section 67700 (e) above for purposes of habitat conservation, transportation, transit, and water supply augmentation. Disbursement of funds shall be guided by the Authority's adopted Capital Improvement Program as of June 30, 2020, as may be modified to reflect agreements between underlying land use jurisdictions implementing the Transition Plan, or other applicable agreements and actions of the governing bodies of the underlying land use jurisdictions;
- (4) Make appropriate revisions to the Authority CFD boundaries as replacement funding mechanisms are created by underlying land use jurisdictions as set forth in (k) (2), below, such revisions to be reflected in the filing of an amended map;
- (5) Establish a contingency account funded annually from any available revenues in order to address unforeseen events arising from (A) Transition Plan implementation, including, but not limited to, administrative overhead; and (B) contingent liabilities and unfunded mandates or mitigation measures, including, but not limited to, litigation costs associated with the dissolution of the Authority or contributions to the California Public Employees' Retirement System;
- (6) Ensure all pledges, contracts, or obligated payments are funded and appropriately carried out;
- (7) Continue as the local reuse authority for purposes of the Federal government and property transfers, including receipt of federal grant funding;
- (8) Hire or retain such employees or consultants as may be necessary or appropriate to carry out the functions set forth in this Section; and
- (9) Such other actions as may be required to wind down the affairs of and dissolve the Authority.

Commented [SD7]: Limited scope of the Board on winding down

(i) Effective July 1, 2020:

- (1) The Board may utilize any of the powers granted in Chapters 4 and 5 of this Title but only as may be necessary or appropriate to implement its duties authorized in this section. The Board is specifically authorized to participate in litigation related to the Transition Plan, and may contract with any underlying land use jurisdiction to assist in the completion of the tasks and requirements outlined in this section.
- (2) The Board shall prepare an annual budget that shall include the contingency account. If, at the end of the fiscal year, any property tax revenues remain unspent they shall be transferred to the Monterey County Auditor – Controller for distribution pursuant to the appropriate formula.

(j) Regional Planning.

- (1) The Reuse Plan adopted pursuant to Section 67675 shall continue to be applicable ~~to all lands within the former Fort Ord, provided that any underlying land use jurisdiction shall have the authority to determine that the Reuse Plan is no longer applicable to its lands so long as the jurisdiction remains obligated to fund regional needs in the former Fort Ord through collection of CFD revenues or other substitute funding mechanism as set forth in (k) below.~~
- (2) Notwithstanding the foregoing, the Reuse Plan requirement for twenty percent (20%) affordable housing and for the payment of prevailing wages on first generation construction projects shall continue and be applicable to all underlying land use jurisdictions.

Commented [SD8]: Addresses the Base Reuse Plan continuity and the need for local control for future planning while preserving key policy

(k) Regional funding.

- (1) The Board shall continue to fund regional needs for the former Fort Ord, ~~including~~ but not limited to, habitat conservation, transportation, transit, and water supply augmentation, with revenues available to it pursuant to Section 67700 (e).
- (2) Any underlying land use jurisdiction may adopt a substitute funding mechanism in lieu of the Authority CFD, in which case the Board shall adjust the boundaries of the Authority CFD accordingly, provided that the underlying land use jurisdiction commits in its substitute funding mechanism or otherwise in a written agreement, to the reasonable satisfaction of the Authority, to continue funding regional needs in the former Fort Ord on a pro rata basis. Such regional needs include, but are not limited to, habitat conservation, transportation, transit, and water supply augmentation.

Commented [SD9]: Expresses the need for ongoing regional funding while preserving the ability of local jurisdictions to replace it.

(l) Dissolution.

- (1) This Title shall become inoperative and the Authority dissolved by operation of law upon the occurrence of all the following:
 - (A) All CFD revenues have been collected from entitled development or substitute funding mechanisms have been implemented pursuant to Section 67700 (i), above for all underlying land use jurisdictions;
 - (B) Any and all revenue sharing and other agreements implementing the Transition Plan are in effect;
 - (C) The Environmental Services Cooperative Agreement between the Authority and the United States of America, Department of the Army has been completed or assigned; and

Commented [SD10]: Provides a more clear definition of when FORA dissolves with performance objectives and outlines process if debts or litigation continue to be outstanding.

- (D) The transfer of property from the federal government to the underlying jurisdictions has been completed.
- (2) Upon the dissolution of the Authority, all remaining CFD revenues shall be transferred to the County of Monterey which shall cause the revenues to be disbursed to the underlying land use jurisdictions on a pro rata basis based upon the source of the revenues or other reasonable method.
- (3) Should any debt of the Authority survive its dissolution, property tax revenues shall continue to be paid to the County of Monterey, pursuant to Health and Safety Code section 33492.71 (c) (1) (D), in such amounts as is necessary to retire the debt. Upon the later to occur of the dissolution of the Authority or the retirement of debt as provided for herein, Article 4 of Division 24, Part 1, Chapter 4.5 of the Health and Safety Code shall become inoperable, and any remaining property tax revenues shall be transferred to the Monterey County Auditor – Controller for distribution pursuant to the appropriate formula.
- (3) Should the County of Monterey succeed to any financial obligation of the Authority as a result of the disbursement of remaining revenues or the retirement of debt, it shall have no liability whatsoever from its general fund to any person or entity regarding such obligation, and any such liability shall be payable solely out of the remaining revenues set forth in (2), above, prior to their disbursement. The County shall be compensated for any services rendered regarding the disbursement of remaining revenues out of such revenues before disbursement.
- (m) (1) The Monterey County Local Agency Formation Commission shall provide for the ~~orderly~~ dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred, as more fully set forth herein.
- (2) The Board shall provide annual reports to the Monterey County Local Agency Formation Commission regarding the implementation of the Transition Plan and the provisions of this Section. Upon satisfaction of the requirements of Section 67700 (l) (1), above, the Board shall provide a finding and final report to the Commission confirming the satisfaction of all Transition Plan elements and the requirements of this Section. The Commission shall review the list and determine whether or not all necessary and appropriate implementation has been addressed. Should the Commission conclude that not all necessary and appropriate implementation has been addressed, it shall notify the Board within ten (10) days following the next available Commission meeting consistent with Chapter 9, Part 1, Division 2 of Title 5 of the Government Code (commencing with Section 54950) (the “Brown Act”). The Authority shall make provision to reimburse the Commission for its staff time required to comply with this Section; make further provision for a litigation reserve to fund litigation against the Commission that may continue or exist beyond the dissolution of the Authority; and, defend, indemnify and hold harmless the Commission, its officers and employees in any litigation arising out of the exercise of the Commission’s duties hereunder unless

Commented [SD11]: Clarifies the role of LAFCO

such litigation arises out of the gross negligence or willful misconduct of the Commission, its officers or employee. Any litigation or indemnification obligation arising out of this section shall be considered a debt of the Authority.

Commented [SD12]: Qualifies the property tax revenue stream to pay for continuing litigation and/or indemnification obligations