

# Fort Ord Reuse Authority Transition Plan Resolution

Board of Supervisors

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# Goal - Direction

- Consider Revised FORA Draft Transition Plan Resolution
- Authorize staff to participate in facilitated discussions with FORA, jurisdictions
- Provide direction on preparing draft Transition Plan Implementation Agreement terms that address County concerns
- Provide direction on recommendations to FORA for the Draft Transition Plan Resolution

# Overview of Plan Resolution

- Section 1: Preliminary Findings and Determinations
- Section 2: Assignment of Assets/Liabilities/Obligations
- Section 3: Insurance
- Section 4: Implementation Agreements and Transition Plan Agreements

# Overarching Policy Questions

- Should the County and member agencies of FORA continue all of FORA's planned development, base-wide mitigation measures and costs after FORA's dissolution? Is the County prepared to assume risks, unfunded debts, and liabilities associated with the assignment to County of certain tasks as last resort and assignment to County proportional share of certain projects?

# Overarching Policy Issues

- Revenue forecasts and financial assignments unrealistic
  - Some entitled projects not anticipated to be built
  - High cost of construction, blight, and other barriers to development persist
- Financial shortfall of \$67 million even if CFD extended/replaced
  - Unless jurisdictions agree to continue sharing 50% land sale revenues
  - Land sale revenue projections unreliable, highly variable
- County assigned as successor entity on some key issues

# Overarching Policy Issues

- Major issues remain in flux, so is difficult to get agreement on transition plan
  - Regional plan desirable to address future development with possibility of shifting development to cities
  - If development shifts to cities, how does Habitat Conservation Plan benefits compare to costs of plan
  - Question remains if all the CIP transportation projects are needed

# Overarching Policy Issues

- Transition Plan Resolution
  - Supervisors and other jurisdictions have different thoughts
  - Given flux of issues, plan should more specifically indicate who the stakeholders are and identify a date by which they should convene to determine alternative
  - It seems assumed these discussions will happen via Transition Plan Implementation Agreements (by March 2019)
  - If agreement not obtained, then include default successor based on input from relevant stakeholders

# Plan – Recitals and Section 1

- Finds Implementation Agreements are the starting point for Transition Plan Implementing Agreements.
- Expresses intent that jurisdictions continue to pay their fair and equitable cost of the FORA program until all costs and mitigation measures have been paid/satisfied
- Identifies key base reuse elements (e.g. habitat and transportation projects) as essential, and recognizes importance of funding mechanisms and contributions
- Recommends extension of the FORA Act to address blight/building removal needs of region
- Finds IAs may need enforcement if water allocations exceeded



# Plan – Section 2.1 Assets

- 2.1.3 Litigation Reserve Funds
  - \$300K set aside, but may be used for insurance or other needs
  - If any litigation or indemnity obligation is pending at dissolution, unexpended balance distributed to County in trust for such uses (unless County is adverse party to FORA)
- *What happens if funding is not sufficient to pay for remaining litigation/indemnity obligation?*
- *Is County willing to accept?*
- *Does this mean that County would then assume management of the pending litigation upon dissolution of FORA?*

# Plan – Section 2.1 Assets

- 2.1.4 Habitat Funds –approx. \$21 million distribution
  - To HCP JPA if formed.
  - If no HCP JPA, but JPA formed for HMP, then funds apportioned between HMP JPA and program for incidental take permits for future development
  - If no JPA by September 2019, then FORA will distribute between HMAs and future ITPs
- *If no HCP, County needs to review existing development ITP monitoring and mitigation for East Garrison development.*

# Plan – Section 2.1 Assets

- 2.1.5 Capital Improvement funds
  - All CFD special taxes collected and remaining...shall first go to in progress construction projects
  - Next direct to FORA's final year CIP; funds transferred to underlying jurisdictions if jurisdiction has a TPIA
- If the jurisdiction does not have a TPIA, then it does not receive these funds
- *Is the level of development used to estimate revenue realistic?*
- *Suggest, for clarity, sentence one of 2.1.5 read "All CFD Special Taxes, except for those funds specifically designated for habitat management, collected and remaining..."*

# Plan – Section 2.1 Assets

- 2.1.7 ESCA Reimbursement
  - If not otherwise worked out, assigned to County by default (subject to Army approval)
- *Plan should be revised to identify all parties identified in ESCA as potential successors and acknowledge that they will meet and determine successor (current draft omits City of Marina)*
- *City of Seaside has the majority of remaining ESCA lands and has expressed willingness to be ESCA successor entity.*

# Plan– Section 2.1 Assets

- Assigns to County the furniture, equipment and supplies of FOR A to be held in trust for prompt sale or disposition
- Funds from sale to be used for FORA liabilities or obligations unrelated to CIP projects, then remaining to be directed to projects in FORA's final year CIP in which FOR A was lead.
- Remaining funds, if any, to be distributed to jurisdictions if the jurisdiction has a TPIA

# Plan – Section 2.1 Assets

- 2.1.5 Capital Improvement Funds
- & 2.1.10 Condition of Entitlement to Proportional Distributions of Assets or Proceeds
  - Poison pill: If don't have TPIA, then not eligible for funds, even if assigned the responsibility
- *If FORA is assigning liabilities/responsibilities to default entities, then should appropriately assign funding to default entities even if no agreements entered.*

# Plan – Section 2.1 Assets

- 2.1.11 Real Property
  - FORA shall seek legislation/approvals to enable landfill to go to County post-dissolution
  - If County does not specify designee recipient of landfill at least 12 months prior to dissolution, the Army shall transfer landfill to County
- *Property subject to negotiations, which may not be complete by June 30, 2019 (12 months prior to dissolution). Can legislation/approvals allow for County to designate recipient prior to Army direct transfer?*

# Plan – Sec 2.2 Liabilities/Obligations

- 2.2.1 Unfunded Pension Liability under CalPERS Contract
  - FORA fully committed to fund, which can include encumbering future property tax pursuant to law
  - If involves property tax, County shall accrue property tax in FORA's account until debt retired (CalPERS can do 5 year payment plans)
- *FORA is of opinion, and staff agrees, that a CalPERS agreement would constitute an outstanding obligation therefor can fund from property tax.*



# Plan – Sec 2.2 Liabilities/Obligations

- 2.2.2 Habitat Funds
  - Refers to section 2.1.4
- *Does not provide for on-going 30.2% of CFD/replacement fees contribution by jurisdictions to habitat management as it does for other CIP projects/activities in Section 2.2.*

# Plan – Sec 2.2 Liabilities/Obligations

- 2.2.6 Transportation and Transit
  - County responsible to generate/collect funding and construct for
    - County-lead CIP & FORA-lead CIP transportation projects in County jurisdiction
  - \$13M (10%) revenue estimated from County, far less than CIP projects cost projections
- *Questions if all transportation projects needed?*
- *Regional funding entity or Inter-jurisdiction cost-share needed.*
- *Discretionary which projects advance, and subject to CEQA.*

# Plan – Sec 2.2 Liabilities/Obligations

- 2.2.7 Water/Wastewater
  - Marina Coast Water District rights of enforcement under Implementation Agreements
  - Water Augmentation funding - \$1.7M (10%) revenue estimated from County
- *It is staff's understanding MCWD will enter into agreement with jurisdictions to memorialize water allocations, and if insufficient water based on groundwater sustainability plan will reduce equitably across all jurisdictions*

# Plan – Sec 2.2 Liabilities/Obligations

- 2.2.8 Other Contracts and Agreements
  - General assignments
    - *Questions remain whether agreements can be assigned or need action by parties*
  - Agreement No. 76: County-FORA-EG Partners LLC Funding Obligations
    - *Notes should read “Funding options identified for repayment of debt”*

# Plan – Section 3 Insurance

- 3.1 Transition Plan Insurance & 3.2 Tail Coverage
  - FORA exploring coverage for litigation that may arise from Transition Plan and Tail Coverage for general liability post transition
- Plan should address Pollution Legal Liability insurance policy.

# Plan – Section 4

- 4.1 Projects in the CIP
  - Designates all projects in CIP as obligations to be assigned unless TPIA provides otherwise
- 4.3 Escrow
  - TPIAs or Escrow Account managed by 5 member panel of landholding jurisdictions
    - *Consider establishing JPA for joint funding instead of an escrow account?*

# Recommended Board Action

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