

Fort Ord Reuse Authority Transition Plan Resolution

Board of Supervisors

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Legistar File No. 18-1000

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Goal - Direction

- Consider FORA Draft Transition Plan Resolution
- Consider making recommendation to FORA
- Provide direction to staff

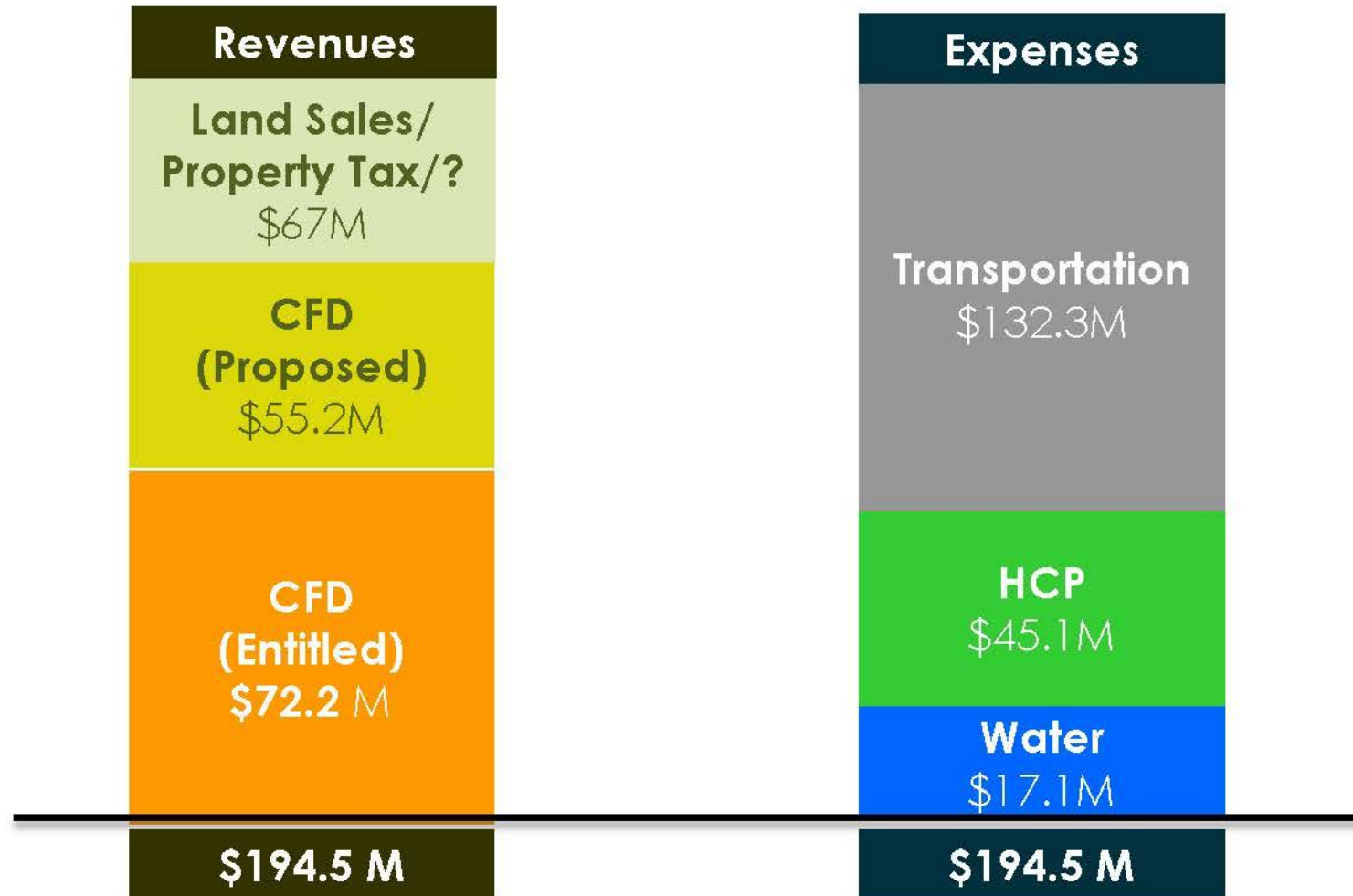
Overview of Plan Resolution

- Section 1: Base-wide Costs and Base-wide Mitigation Measures
- Section 2: Assignment of Assets/Liabilities/Obligations
- Section 3: Transition Plan Subject Matters
- Section 4: CEQA
- Section 5: LAFCO Review and Enforcement

Overarching Policy Question

- 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 assuming the proportional share of those projects and progress?

Funding Obligations*



**Per FORA staff analysis; County not in agreement that these are obligations.*

Revenues to County

REVENUE SOURCE	POST-FORA REVENUES	CONSIDERATIONS	
Property Tax	\$23 million (\$17M discounted)	Between 2020 and 2028	
Land Sales	None		
Community Facility District	≤ \$14 million (TBD)	Pending replacement of CFD funds with East Garrison	
Habitat Set-Aside	≤ \$21 million (TBD)	Pending HCP outcome and FORA Board policy for distribution upon dissolution	

Costs to County – *if accepted*

REVENUE SOURCE	POST-FORA COSTS	CONSIDERATIONS	
Transportation	~\$50 million	Assumes all CIP projects are approved and implemented	
ESCA	≥ \$3.7 million plus TBD	FORA estimate, plus unknown administration, legal, etc.	
Habitat Mgmt (HMP) – County Only	≥ \$300,000 per year plus TBD	<i>Rough</i> estimate based on CTS consultant work, plus unknown administration, etc.	
Administrative	TBD	23.1% of undefined costs	

Section 1: Legal Issues

- FORA needs more careful legal analysis of “obligations”
- Transition Resolution has incorrect legal premise
 - Treats “base-wide costs and/or base-wide mitigation measures” as legal “obligations” that successor jurisdictions must assume;
 - Assumes that Implementation Agreements “require” jurisdictions to “fund base reuse until all base-wide costs and mitigation measures have been retired” and accordingly, “assigns all its rights in the Implementation Agreement to its successor who is responsible to complete the projects in the CIP.”
 - Assumes “all projects identified in Capital Improvement Program” are “obligations required to be assigned by this Transition Plan.”

(quotes from Transition resolution, section 1, page 4.)

Section 1: Legal Issues

Legal concerns:

- Cannot assume the Implementation Agreement survives FORA's dissolution;
- Question the legal authority of FORA to “assign” contract without consent of assignee;
- Even if County consented, proposed assignment may be legally impossible: proposed assignment would result in County contracting with itself (e.g., FOR A proposes to assign FORA/County Implementation Agreement to County, resulting in County contracting with itself).

Legal issues, continued

- Second incorrect legal premise is that the CIP is a legal obligation that successor jurisdictions must complete.
- Completion of CIP projects not legally mandated if assigned to jurisdiction:
 - Base Reuse Plan has growth management approach implemented via Capital Improvement Program and “Development and Resource Management Plan”; does not mandate completion of specific CIP projects;
 - Transition Resolution does not propose plan for centralized administration of Base Reuse Plan; BRP implemented through deed restrictions and local general plan policies subject to local discretion.
 - Completion of CIP projects would be subject to environmental analysis, funding availability, and approval of jurisdiction within its discretion.

Plan – Section 2

- Proposes to assign “administrative liabilities” to voting members.
- What is the rational basis for allocating “administrative liabilities” based on voting structure? Is there a more equitable approach?
- Need a precise definition of “administrative liabilities” and cost estimate.
- Suggest separate section on litigation, with more specificity:
 - Who manages the litigation after FORA dissolution?
 - How does the litigation fund proposed in Sec. 2 relate to the escrow fund proposed in sec. 3.E?

Plan– Section 3 –Legal issues

- Transition resolution proposes to “assign costs” of completing CIP projects to jurisdictions:
 - 10% of “projected CFD special taxes to be collected” (\cong \$19.5 mil.) assigned to County (Sec. 3. A, B, and E.)
- FORA does not have legal authority to assign a monetary obligation to jurisdiction without the consent of the jurisdiction;
- County limited by Constitutional Debt Limitation Clause (“pay as you go”)
 - prohibits County from incurring indebtedness or liability exceeding income or revenue in a given fiscal year unless:
 - Encumber the funds when make the commitment; or
 - Future payment is contingent. (Cal. Const., Art. 16, sec. 18)

Plan – Section 3

- CFD and land sale revenues are speculative
- Does FORA hold any debt obligations?
- Escrow account: Who manages? How are decisions made? This is unclear and ambiguous, and needs further clarity.
- Plan should address insurance for claims made after FORA dissolution that challenge actions by FORA.

Transition Options – ESCA

- Plan should list all successor entities allowed under ESCA
- ESCA states that obligation may be assumed by:
 - A. City of Seaside
 - B. County
 - C. City of Marina
 - D. Joint Powers Authority (JPA)
- Seaside, County and Marina decide who, then negotiate w Army

Transition Options - Habitat

- A. Continue developing Base-wide Habitat Conservation Plan (HCP) and establishment of HCP-JPA as soon as practical
- B. Create new JPA to manage Habitat Management Plan (HMP) obligations and receive FORA set aside funds
- C. Allow HMP activities to fall to underlying jurisdictions and develop policy to distribute FORA set aside funds

Transition Options - Transportation

- Transition Resolution assignment of CIP and schedule to jurisdictions is pre-decisional, does not recognize local discretion
- Options:
 - A. TAMC assume Fort Ord regional roadways
 - B. FORA Board consider reprioritizing use of monies before June 30, 2020 to fund project near completion/without development nexus/other criteria
 - C. Upon dissolution, underlying jurisdictions evaluate roadways for General Plan consistency and environmental review
 - Enter into inter-jurisdictional cost-share agreements for projects

Plan – Section 3

- Transition Plan should ensure legally adequate mechanisms for:
 - Any remaining land transfers if not completed by dissolution; and
 - Affirm prior water allocations.
- Regarding proposal to record Master Resolution:
 - What purpose is served? Recordation only provides notice on title; does not address aspects of the MR that assume a centralized regional body that would be obsolete if FOR A is dissolved.
 - Is prevailing wage already required by state law?

Legal Issue - Sierra Club Settlement

- Between FORA and Sierra Club
- Required Chapter 8 of the Master Resolution, which provides for consistency determinations with Base Reuse Plan.
- Required recordation of covenant in deeds transferring Fort Ord land to advise future owners that the development and use of the property is subject to the Reuse Plan, Master Resolution, and infrastructure constraints identified in the Reuse Plan.
- Allows for amendment of Chapter 8, subject to CEQA and notification of Sierra Club.
- FORA Transition Plan should specifically address Sierra Club settlement following dissolution.

Staff recommendation

- Recommend County staff and County Counsel meet with FORA staff to discuss revision of draft Transition Plan resolution:
- Legal considerations:
 - to distill “obligations” vs. matters of discretion more precisely;
 - to prevent future financial commitments on decisions that are within the Board’s future discretion;
 - to address imprecise wording.

Staff recommendation

- Recommend revision of Plan to lay out schedule of what needs to be resolved and process for resolving
- If the Board wants to take a position on the issues/topics, provide direction to staff regarding communication of County position to FORA.

Recommended Board Action

- Consider FORA Draft Transition Plan Resolution
- Consider making recommendation to FORA
- Provide direction to staff