



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 19-0331, **Version:** 1

- a. Consider Senate Bill 189 (Monning) as amended on April 11, 2019, proposing to amend the Fort Ord Reuse Authority Act to extend FORA to June 30, 2022 and to make other changes to the structure and powers of FORA for the July 1, 2020 to June 30, 2022 period; and
- b. Authorize the Chair to transmit a letter conveying the County's position on the legislation.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Consider Senate Bill 189 (Monning) as amended on April 11, 2019, proposing to amend the Fort Ord Reuse Authority Act to extend FORA to June 30, 2022 and to make other changes to the structure and powers of FORA for the July 1, 2020 to June 30, 2022 period; and
- b. Authorize the Chair to transmit a letter conveying the County's position on the legislation.

SUMMARY:

On March 19, 2019, the Board of Supervisors considered FORA's proposed draft language for legislation to implement the Fort Ord Transition Plan and voted 3 to 2 to approve the Fort Ord Reuse Authority's (FORA's) draft legislative language to implement the FORA Transition Plan. The Board further authorized the CAO to send a letter to convey the Board's position to FORA; the letter was sent on March 20, 2019 to the Chair of the FORA Board. At a Special Meeting on March 21, 2019, the FORA Board of Directors voted 7 to 6 to approve draft legislative language and authorized the Executive Officer to submit the legislative language to the Monterey Bay State Legislative offices.

Senate Bill 189 (Monning) related to FORA's transition had been introduced on January 30, 2019. It was subsequently amended on April 1, 2019 and again on April 11, 2019. (SB 189 in its current form is attached as Attachment 1). SB189 generally has FORA dissolving June 30, 2020, as planned, but provides two years for the five land use agencies (cities and County) to finalize the Transition Plan. The bill differs in several respects from the draft language proposed by FORA. Chair Phillips requested that staff present the current version of SB189 to the full Board.

As amended April 11th, SB189:

- Establishes that the Transition Plan is not subject to CEQA
- Becomes operative July 1, 2020 and extends FORA in a limited role until June 30, 2022. Repeals the FORA Act as of January 1, 2023.
- Eliminates FORA oversight over jurisdictions' land use plans and projects within the former Fort Ord, a role previously exercised by FORA.
- Continues FORA with a Board of five (5) local land use jurisdictions (the County and the cities of Del Rey Oaks, Marina, Monterey, and Seaside), with one vote each and limited authority.
- Allows continued collection of CFD fees until June 30, 2022 and ability to revise CFD boundaries as substitute funding mechanisms until June 30, 2022.
- Renders Section 33492.71 of the Health and Safety Code inoperative when FORA dissolves, or when its debt is retired, whichever is later. (Section 33492.1 sets forth the formula for tax increment distribution

within the area of the former Fort Ord).

- Provides that LAFCO shall ensure that all contracts, agreements, and pledges to pay or repay money entered into by FORA are honored and properly administered, and all assets properly transferred.
- Designates the County as financial successor to FORA for distribution of remaining CFD revenues and payment of outstanding FORA debt; however, the legislation provides that if the County succeeds to any financial obligation of FORA, the obligation would not constitute a debt or liability of the County.

Staff has communicated with Senator Monning's office to understand their intent, and to highlight where and how we feel the legislation, as drafted, could impact the County. Staff is seeking direction as to what and if further action is desired by the Board on SB 189. Our primary focus at the staff level has been to review SB 189 with an eye toward technical aspects of the proposed legislation which could cause potential negative financial or legal impacts to the County. In staff's opinion, the legislatively mandated timeframe for the actual dissolution of FORA is a policy decision which will require the Board of Supervisors' input.

The Board may authorize staff to meet with Senator Monning and/or his staff to discuss the County's sentiment with the proposed legislation, or the Board may desire staff take some other action as appropriate. For example, the Board may wish to direct the County Administrative Officer (CAO) to submit a letter to Senator Monning's office to communicate its support for or opposition to, or to communicate issues of concern to the County with the current version of SB189. In that case, a potential area of concern identified by staff is the repeal of Section 33492.71 Health and Safety Code. Staff believes that the tax rate in the Health and Safety Code was part of the statutory arrangement that set forth the creation and ultimate dissolution of FORA and therefore should be maintained.

DISCUSSION:

On January 30, 2019, Senator Bill Monning introduced Senate Bill 189 (SB189) related to FORA's transition. On April 1 and again on April 11, 2019, SB189 was amended (Attachment 1). SB189 extends FORA in a limited role until June 30, 2022 and eliminates FORA oversight over jurisdictions' land use plans and projects within the former Fort Ord, a role previously exercised by FORA.

It differs in many respects from the FORA draft legislative language. The FORA proposal presented to the Board on March 19th proposed to:

- Establish that the Transition Plan is not subject to CEQA
- Continue FORA with a Board consisting of the five (5) local land use jurisdictions and California State University Monterey Bay (CSUMB) with authority limited to completing tasks implementing the Transition Plan, as well as any FORA obligations
- Allow continued collection of CFD fees for implementation purposes
- Establish triggers for final dissolution
- Establish LAFCO as the oversight Board for final dissolution.

The amended SB189 incorporates some language from the FORA legislative language yet has many differences with the FORA language.

Representatives from RMA, CAO and County Counsel reached out to Senator Monning's office and participated in three conference calls with Monning's staff during April to gain an understanding of the intent of SB189 and the technical components of how it will function. County staff also identified several concerns for discussion with Senator Monning's staff for consideration.

Senator Monning's staff communicated that the intent of SB189 is two-fold, to provide a reasonable but limited extension of time to allow for Transition Plan implementation that will avoid potential significant negative impacts of a final end date of June 30, 2020, while also establishing a firm end date to FORA to have transitioned all its functions and obligations to successor entity(ies) per the Transition Plan adopted by FORA.

Upon review, staff has identified several potential issues of concern to the County and has had discussions with Senator Monning's staff to clarify the intent of the bill and to point out issues.

Salient points of the legislation that may of concern to the County include but are not limited to the following:

FORA Board of Directors: The Board becomes a five-member Board consisting of one member from the County and the cities of Monterey, Del Rey Oaks, Marina, and Seaside, with each member jurisdiction having one equal vote. Irrespective of the wide variation in impacts and contribution rates between the five member jurisdictions, no additional voting power is granted to the most impacted or largest contributors (e.g. there is no 'weighted voting').

FORA Community Facilities District Revenues: The amended bill provides that "Upon dissolution of the authority, all remaining and future community facilities districts revenues shall be transferred to the County of Monterey. The County of Monterey shall disburse those revenue to each underlying land use jurisdiction...". It is not clear what "future revenues" would be anticipated, as other language in the bill does not extend the CFD beyond June 30, 2020. Monning's staff has communicated that the intention of the bill is not to extend collection of CFD revenues beyond June 30, 2022, and the word "future" was to indicate only straggling revenue. It is possible the bill will be amended to clarify this point. Thus, it can be expected that under SB189, collection of CFD revenues by FOR A would cease as of June 30,2022.

The bill grants FORA the authority to revise the CFD boundaries as substitute funding mechanisms in lieu of the CFD are established. Jurisdictions establishing substitute funding must agree to continue to fund regional needs on a pro rata basis either in that substitute funding mechanism or other written agreement (e.g. Transition Plan Implementation Agreement(s)), including but not limited to, habitat conservation, transportation, transit, and water supply augmentation.

Property Tax Distributions and Outstanding Debt: SB189 provides that Section 33492.71 of the Health & Safety Code, which sets forth the tax increment distribution within the area of the former Fort Ord, becomes inoperative when FORA dissolves, or when its debt is retired, whichever is later. The financial impact of this provision on the County is of great concern to staff. County staff has expressed to Senator Monning's staff that the proposal to make section 33492.71 inoperative is of concern to the County because it has financial implications for the County. Under our reading of section 33492.71, after FORA dissolution, 38% of the tax increment, after payment of FORA's outstanding debt, would be allocated to the County. Under SB189, the implication is that the anticipated 38% property tax share to the County, after pass-throughs for schools and housing, won't materialize Because SB189 in essence repeals this tax allocation after the later of dissolution of FORA or payment of FORA's debt. Even the current 25% distribution to the County seems to go away. It appears that the County would get only its normal distribution for each of the tax rate areas within Fort Ord. That is likely to be well below 25% in most tax rate areas, particularly within cities.

Staff believes that the tax rate in the Health and Safety Code was part of the statutory arrangement that set forth the creation and ultimate dissolution of FORA and should therefore be maintained. Staff feels this statutory arrangement was developed to recognize that the County was to be recipient of the majority of the habitat management lands, which in addition to being maintained for habitat (e.g. proposed funded through Habitat Conservation Plan Joint Powers Authority) also must be managed and maintained for open space and

recreation. Additionally, should FORA fail to successfully transition all its functions and obligations as part of the Transition Plan implementation process, the County in many cases has been looked at to assume or may become by default successor to unaddressed issues. This concern has been discussed with Monning's staff. For this reason, therefore, the staff recommendation is to urge amendment of SB189 to retain section 33492.71 of the Health and Safety Code.

In addition, any remaining debt or funding obligations - known or unknown at this time - that survive beyond the life of FORA can be paid for from property tax revenues, reducing the property tax "pie" available for distribution to the County. At this time, the Transition Plan identifies some remaining debt to be paid, most significantly PERS obligations. However, FORA is evaluating the viability and opportunity of bonding tax revenues to pay for and accelerate building removal in the Fort Ord area. Any such bond issuance prior to July 1, 2020 would obligate property taxes for up to 30 years to service and repay the debt. Staff raised the concern for Monning's staff consideration that SB189 is not clear whether it gives (or limits) FORA the ability to issue debt between July 1, 2020 to June 30, 2022, and that issuance of further debt beyond June 30, 2020 would further impact future property tax revenues and assumptions being made as part of the Transition Plan process.

Successor Agency(ies) Role: The County seems likely to be asked to be the successor for certain roles, and the Bill mandates the County to serve as the fiscal successor to FORA by receiving and distributing revenues until FORA is dissolved, or all debt is paid, whichever is sooner. The bill does provide that FORA's debt does not become a debt or liability to the County. It also provides for the County to pay itself a reasonable cost for administering the financial obligations out of the revenues. In addition, there may be indirect financial consequences. For example, if FORA issues bonds for projects (e.g. building removal) that are not completed by the time the FORA dissolves, then as a practical matter the County may be put in a position to address and ensure the projects are implemented accordingly after FORA's dissolution.

The Bill states FORA "...shall negotiate and secure one or more successor agencies to implement all obligations under the transition plan", however, it is unclear what happens if FORA is unable to negotiate and secure successor agencies for some or all obligations. Senator Monning's staff communicated it is intended that all obligations under the transition plan will have been negotiated and transferred to successor agency(ies) by or before June 30, 2022 per FORA's adopted Transition Plan.

Remaining Authority in FORA Act: SB 189 leaves in place FORA's authority to amend or modify the Base Reuse Plan and to adopt a Capital Improvement Program; however, Senator Monning's staff has indicated that future amendments may be introduced to clarify this point.

OTHER AGENCY INVOLVEMENT:

At its April 8, 2019 meeting, the Board's Legislative Committee received the SB189 text as amended April 1, 2019. One committee member supported taking a "watch" position on SB189, and coordinate through the Legislative Committee with Senator Monning's office regarding issues of concern in the proposed legislation. The other committee member supported that staff present the amended SB189 legislation to the Board of Supervisors for consideration and action. At the request of the Chair of the Board, staff scheduled this item to come before the Board at the earliest date (May 7, 2019).

Supervisors Adams, Parker, and Phillips serve on the FORA Board, and Supervisor Phillips serves as Chair of the FORA Legislative Committee. Resource Management Agency (RMA) represents the County on the FORA Administrative Committee and has monitored FORA's Transition Planning in coordination with the CAO. CAO, RMA and County Counsel previously met with FORA staff regarding transition items. The CAO, RMA and County Counsel have met with Senator Monning's Office to gain an understanding of the intent of SB189

and the technical components of how it will function. The CAO and County Counsel, in addition to RMA, are available to assist and advise the County in the upcoming months regarding the SB189 and FORA transition.

FINANCING:

The potential impacts, benefits, and costs to the County as a result of SB189 could be significant depending on the final legislation and progress toward implementing FORA's Transition Plan. RMA staff time to prepare this report and participate in the Transition Planning process is included in the FY2018-19 Adopted Budget, General Fund 001, RMA Administrative Appropriation Unit RMA013.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The proposed draft legislative language to implement the FORA 2018 Transition Plan, and its potential adoption by the legislature, achieves the following Board FY15-16 Strategic Initiatives:

- *Economic Development:* Enhancing the well-being and prosperity of Monterey County Residents through collaboration to continue to facilitate the transfer and reuse of the former Fort Ord, to minimize the disruption caused by the base closure on the local economy, to provide for the reuse and development of the base to maintain and enhance the local economy, and to maintain and protect the unique environmental resources of the base. Managing and preparing for a smooth transition of FORA is vital for protecting County interests and reducing fiscal impacts.
- *Infrastructure:* Meet the facilities, water, technology and transportation needs by planning and developing sustainable physical infrastructure as part of the reuse of the former Fort Ord.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: Carl P. Holm, AICP, Acting RMA Director

Attachments:

Attachment 1 - SB 189 (Monning) Text as amended April 11, 2019