



AGENDA
CITY OF SEASIDE
CITY COUNCIL

SPECIAL MEETING
Council Chamber
440 Harcourt Avenue
Thursday, March 14, 2019
6:00 PM

1. CALL TO ORDER

2. ROLL CALL – ESTABLISHMENT OF QUORUM

Ian N. Oglesby	Mayor
David R. Pacheco	Mayor Pro Tem
Jason Campbell	Council Member
Jon Wizard	Council Member
Alissa Kispersky	Council Member

3. PUBLIC COMMENT

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

4. BUSINESS ITEMS

A. DISCUSS SUPPORT OF THE DRAFT LEGISLATIVE LANGUAGE TO IMPLEMENT 2018 FORA TRANSITION PLAN BOARD POLICY

RECOMMENDATION: Discuss support of the Community Financing District element of the transition plan board policy.

5. ADJOURNMENT

Next Regularly Scheduled Meeting:
March 21, 2019
7:00 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings. City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Live streamed meeting videos as well as videos of past meetings are available on the City's website at: <http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 4.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton-Rerig, Public Affairs Officer/City Clerk

DATE: March 14, 2019

**SUBJECT: DISCUSS SUPPORT OF THE DRAFT LEGISLATIVE LANGUAGE
TO IMPLEMENT 2018 FORA TRANSITION PLAN BOARD
POLICY**

PURPOSE & RECOMMENDATION

Discuss support of the Community Financing District element of the transition plan board policy.

BACKGROUND

The attached Fort Ord Reuse Authority Board Packet for the March 15, 2019 Special meeting will be discussed at the meeting.

FISCAL IMPACT

None with this action at this time.

ATTACHMENTS

1. 031119LegislativePacket (1)

Reviewed for Submission to the
City Council by:

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a flourish.

Craig Malin, City Manager



FORT ORD REUSE AUTHORITY

SPECIAL MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, March 15, 2019 at 10:00 a.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY 5:00 P.M., MARCH 14, 2019.

1. CALL TO ORDER

Participating via Teleconference, Jane Parker & Mary Ann Carbone, Yosemite Valley Lodge (Lobby), 9006 Yosemite Lodge Dr, Yosemite National Park, CA 95389

Participating via Teleconference, Cynthia Garfield, Jung Hotel (Lobby), 1500 Canal Street, New Orleans, LA 70112

2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

4. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

5. BUSINESS ITEMS

INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

a. 2019 Legislative Agenda and Transition Draft Legislative Language

Recommendation:

- 1) Review and approve draft legislative language forwarded by the Legislative Committee for Board consideration and approval;
- 2) Review/Consider approving 2019 Legislative Agenda item A;
- 3) Authorize the Executive Officer to submit 2019 Legislative Agenda and Transition legislative language to Monterey Bay State Legislative offices to engage the 2019 legislative cycle/process;
- 4) Direct Staff to provide monthly updates on the status of the legislation.

6. PUBLIC COMMENT PERIOD

INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

7. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

8. ADJOURNMENT

NEXT REGULAR MEETING: April 12, 2019 AT 2:00 P.M.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	2019 Legislative Agenda and transition Draft Legislative Language	
Meeting Date:	March 15, 2019	ACTION
Agenda Number:	5a	

RECOMMENDATION:

- 1) Review and approve draft legislative language forwarded by the Legislative Committee for Board consideration and approval;
- 2) Review/Consider approving the 2019 Legislative Agenda item A;
- 3) Authorize Executive Officer to submit the 2019 Legislative Agenda and Transition legislative language to Monterey Bay State Legislative offices to engage the 2019 legislative cycle/process;
- 4) Direct staff to provide monthly updates on the status of the legislation.

BACKGROUND:

During Board deliberation, leading to the December 2018 adoption of the 2018 Transition Plan, multiple issues and concerns arose - some of which require legislation. An often-debated concern noted during the 2018 Transition Plan adoption process was sustaining or replacing resources and a revenue sharing mechanism to address basewide community facilities, such as habitat, transportation, water augmentation and transit shortfalls. The existing Fort Ord Reuse Authority Basewide Community Facilities District ("CFD") currently provides such a financing mechanism, but requires legislation to extend the CFD past June 30, 2020. Major concerns were also expressed to ensure there were financial mechanisms in place to address "contingent" liabilities, such as CalPERS shortfalls or litigation liabilities that continue post June 30, 2020. Additional issues were raised about the nature and extent of the applicability of the California Environmental Quality Act (CEQA) to the Transition Plan, the survivability and applicability of the Base Reuse Plan, the Master Resolution, and in particular, the prevailing wage and affordable housing policies. Finally, issues related to the respective roles of Monterey County Local Area Formation Commission ("LAFCO") and FORA in crafting and enforcing the 2018 Transition Plan were left to be addressed by 2018 Transition Plan Implementing Agreements (TPIA), legislation or litigation.

On March 8, 2019, the FORA Board deferred adoption of Legislative Agenda Item A related to the 2018 Transition Plan, which included a position statement and policy direction of the Board, deferring action until specific legislative language could be considered by the Legislative Committee and forwarded for review and consideration by the FORA Board. **FORA staff is not recommending changes to the policy statement contained in Item A of the 2019 Legislative Agenda for the 2018 Transition Plan. That language has been recommended by the Legislative Committee**

In order for legislation to be considered by the Governor for this 2019 Legislative Calendar year, language needs to be submitted to Senator Monning's office as soon as possible,

but no later than **March 22, 2019**, in order to allow state legislative committee review of the proposed legislation. It is anticipated that the draft legislation will be double referred to Senate Governance & Finance and the Senate Environmental Quality Committees. The committees meet every Wednesday and the 1st, 3rd and 5th Wednesday, respectively. The Legislature has spring recess from April 11 through April 22 and no committee meetings take place. The last day for fiscal bills to be referred to the Appropriations committee is April 26th, which means the policy committees will need to have completed their review prior to that time.

Due to the tight time constraints, the FORA Legislative Committee held a special meeting on March 11, 2019 and discussed the draft language which was published on the FORA web page and distributed to committee members and Landwatch in accordance with the Brown Act. At that meeting, the Legislative Committee was advised of the tight legislative time frame outlined above. The Legislative Committee was advised that during the legislative process in Sacramento numerous revisions and changes could occur both in committee and on the floor. There is a need to have as much inclusive language submitted so as not to delay consideration by the various committees that need to review the draft legislation. Staff presented information about each and every section of the draft legislation and relayed that multiple parties had input and/or comment about the draft language, including LAFCO Counsel and County Counsel as to form, agency comments, Board and public comment during the 2018 Transition Plan adoption, and subsequent comments. The facilitation consultants were provided an earlier draft of the language, as background information only, several weeks prior to the consideration by the Legislative Committee. Each member of the Legislative Committee made comments, the Landwatch attorney provided oral comments, the City of Marina posed multiple questions some of which were orally addressed at the Legislative Committee and their written questions are addressed in this Board report. By a vote of 4-1, the Legislative Committee felt comfortable recommending the DRAFT language to the FORA Board for its consideration to get the process started as no language meant no legislation. We attach the draft Language as presented to the Legislative Committee, with annotations, for your consideration.

Senator Monning has requested flexibility in the submission to his office as the specific provisions of any legislation will most certainly be revised as it makes its way through the legislative process in Sacramento. The deadline for submittal is **March 22, 2019** for this to occur.

DISCUSSION:

The attached DRAFT legislation is designed to address the articulated issues of continuing the CFD, while giving the replacement regional funding mechanisms a safety mechanism to address shortfalls. The DRAFT legislation is loosely patterned after the legislation which terminated Redevelopment Agencies in 2011, in that a successor entity manages and wraps up the affairs of the underlying agency. The FORA situation is distinct from the Redevelopment legislation in several key respects. First, the successor is not a new entity but a Successor Board, which is a legal necessity in order to continue the CFD. Second, the Successor Board is not authorized to **complete any project or program** other than implement the statutorily required Transition Plan, collect and manage the CFD and the fund for contingent liabilities. Additionally, the FORA regional

organization is light years ahead of the Redevelopment Agency situation in that it has already adopted a Transition Plan and how things will be dissolved is well underway.

PARAGRAPH BY PARAGRAPH DRAFT LEGISLATION REVIEW:

Section 67700 (a), now creates primacy of this section relative to the dissolution of FORA. It could be strengthened to include the date of June 30, 2020, to ensure that FORA organization does not operate in the same manner. However, these dates and issues are addressed in other sections of the draft Legislation. (See subsections (e)-(k)).

Section 67700(b) sets forth the new definitions of what is referenced in the draft Legislation. Most of the definitions are self-explanatory, however, in reviewing Landwatch's letter, it is clear they don't understand the definition in (b)(1).

Section (b)(1) defines the Authority CFD and uses its officially established name of "Fort Ord Reuse Authority Basewide Community Facilities District". This is the existing FORA CFD: it is not a new district.

Additionally, in reviewing Section (b)(5) "Entitled Development" could be strengthened by including a date at the end of that sentence. "...means development entitled **prior to June 30, 2020.**"

Section (b)(8) defines the Transition Plan as the one which is required by the Legislature. Currently, the draft Legislation does not "freeze" the Transition Plan. Should the Board wish to limit the ability of the Successor Board to modify the Transition Plan, it might consider the following revision to Section (b)(8):

"Transition Plan" means the plan for the dissolution of the Authority adopted by the Board **December 19, 2018, as may be amended prior to June 30, 2020,** as required by Section 67700 (c).

Section (b)(9) defines underlying "land use Jurisdictions" to include California State University. Some have asserted that CSU should not be on the Successor Board, however:

1. CSU exercises plenary land use jurisdiction with respect to developments on its campus: both for educational uses as well as complimentary private uses.
2. CSUMB is now and on track to become the central employment epicenter of Fort Ord recovery, both in terms of training future work force as well as providing jobs.
3. All of the CSU housing is considered "affordable" both in terms of providing student housing and its workforce housing program.
4. Contrary to recent assertions, CSU contributes to mitigations for both its education uses, as outlined by a Writ of Mandate and Settlement Agreement and for its private developments.

If the FORA Board chooses to remove CSU from the Successor Board, this definition would need to be changed to remove them from the list.

Section 67700(c) is a carryover from the prior act. This language intimates there could be changes to the Transition Plan but it is not required. Transition Plan Implementing Agreements can be "stand-alone" and do not require changes to the plan. **If the Board chooses to limit the flexibility to adjust the Transition Plan post June 30, 2020, then this Paragraph should be modified with language similar to the recommended language of Section (b)(8) above.**

Section 67700(d) includes the clarifying language regarding the California Environmental Quality Act and its applicability to the Transition Plan which is a change in organization and function transfer from a regional entity to local control entities. The language is consistent with both the analysis of FORA's CEQA counsel and the exemption language contained both in CEQA and in the CEQA guidelines. [See Guidelines Section 15378 and 15320.] Landwatch contends that this language is too broad and offers much discussion, however, at this point in time, staff is not recommending any changes to the language as the legislative language drafted does not provide the Successor Board with any power to impose infrastructure projects on other land use agencies.

Section 67700(e) limits what FORA may do after June 30, 2020. On July 1, 2020, FORA may only collect and manage the CFD; collect and manage the property taxes; and oversee implementation of the Transition Plan. This is a general statement of the limited authority and is more specifically outlined in subsection (h) below. **Note: nothing in this section authorizes FORA to promulgate any new programs or projects.**

Section 67700(f) and (g) define the composition of the Successor Board and voting requirement. These are related items in the governance of the Successor Board. This is in response to some of the comments raised during the adoption of the Transition Plan process. A smaller, easier to manage Board, with single majority vote requirements. An issue has been raised as to inclusion of CSU on the Successor Board. As identified in the responses to Marina's comments about having a six (6) member board and the possible deadlock created by a 3-3 split could be addressed by 1) weighted voting; 2) adding or removing a member. The Legislative Committee unanimously was not in favor of weighted voting. Depending upon the wishes of the Board either (f) or (g) would need to be revised.

Section 67700(h) outlines precisely what the Successor Board is authorized to do. Concerns have been raised about the inclusion of modification of CFD boundaries in section (h)(4): however, the intent of this language is to ensure shrinkage of the CFD boundaries, notwithstanding any provisions in Mello Roos, consistent with the concept of collection of revenues on entitled development and establishment of replacement revenues and revenue sharing. **Addition of language to Section (h)(4) that provides specific authority to reduce the boundaries by filing an amended map, notwithstanding the provisions of Mello Roos, would be a recommended addition to this section. The addition of this language would address a concern raised by Landwatch.** As the regional CFD tax transitions to the nexus-based process, there will be several shortfalls as the replacement programs do not cover all revenues and projects addressed by the CFD. An example of this is the TAMC program with respect to MST. Currently, TAMC is projected to address only \$7M of the \$16M which is programmed in the FORA CFD leaving a \$9M shortfall. TAMC itself will have a nexus shortfall as its nexus program is less for residential development than for commercial development,

whereas the FORA tax collects at a greater rate from residential development. Likewise, multiple on-site projects are not included in the TAMC program. Additionally, currently, the habitat conservation program, post- June 30, 2020 does not have a funding stream which is addressed by the FORA CFD.

Section 67700(i)(1) allows the Successor Board to use any of the powers granted to FORA now limited, however, to the new scope of the Successor Board. For example, the Successor Board could not litigate a consistency issue regarding City of Marina's adoption of a new project or general plan or specific plan, except as that consistency issue involves the 2018 Transition Plan or collection of property tax revenues or CFD fees. This language is included to address some of the issues related to LAFCO and its concerns about litigation post June 30, 2020 and who will manage the litigation. This also responds to comments by FORA Board members about who will manage and participate in litigation on Transition Plan items post June 30, 2020.

Section 67700(i)(2) requires the Successor Board to collect, retain, distribute property tax revenues on a yearly basis, in order to address "contingent liabilities". This provides a funding mechanism for unknown liabilities, while enabling a mechanism for passing through those which are not needed. Of course, if there is an uptick in "contingent liabilities", such as litigation, then there will not be much pass through to the underlying jurisdictions.

Section 67700(j) addresses the concept of regional planning for the Fort Ord area. This section addresses an issue which was raised during the adoption of the 2018 Transition Plan as to the survivability of the Base Reuse Plan (BRP) and the Master Resolution policies post June 30, 2020. The language of the Section tries to balance the need for continuity of the BRP with the articulated desire of many jurisdictions not to be bound by the BRP. Thus, jurisdictions may adopt their own replacement plans for their Fort Ord properties upon completing the appropriate level of environmental review. The only requirement is that those replacement plans address funding regional needs, maintain 20% affordable housing and prevailing wage for first generation construction. **Note the section does not require any consistency determinations by the Successor Board, any replacement or increased CFD or property tax revenues to address these new plans. Nonetheless, the Board might consider adding language which would require compilation and publication of a regional map, showing the approved plans for the Fort Ord regional area.**

Section 67700(k)(1) deals with the requirement for continued funding of regional needs. As discussed above, the regional funding needs and collection of the CFD is related to the shortfalls of the nexus replacement mechanisms and the lack of a unified mechanism for funding habitat and augmented water supply. Concerns were raised about the "including but not limited to," language and there was some intimation that the Successor Board will determine the regional needs. A way to address this perceived issue is to modify the section as follows, thus crystallizing the purpose and limitation of the funding mechanism:

(k) Regional funding.

(1) The Board shall continue to fund regional needs for the former Fort Ord, in consultation with the regional entities to address any shortfalls in revenue

generation for the following regional needs: habitat conservation, transportation, transit, and water supply augmentation, with revenues available to it pursuant to Section 67700 (e).

Section 67700(k)(2) relates to the concept of catch all and acknowledges that not all funding mechanisms will be in place prior to June 30, 2020. This language also starts to “shrink” the CFD boundaries in response to those replacement fee mechanisms. Nothing in this section enables enlargement of the CFD district and provides ultimate flexibility of the jurisdictions to adopt whatever replacement financing mechanism they choose: agreements with Developers, new CFDs, new Development Impact Fees, Community Revitalization and Investment Authorities (CRIAs), Enhanced Infrastructure Financing Districts (EIFDs) or any other mechanism. This is a check and balance to ensure that continuation of the CFD is not required as there will be no further legislative fixes. In some areas, the analogy is “Trust but Verify”—hence the requirements to demonstrate agreed upon regional cooperation for both revenue generation as well as revenue sharing across district boundaries. **NOTE, both FORA/Jurisdiction Implementation Agreements and State law currently authorize replacement land-based financing districts and mechanisms to be utilized with FORA Board approval—no jurisdiction has yet exercised discretion to move forward with establishment of replacement financing districts.** Notwithstanding that fact, concerns were raised about possible denial of replacement land-based financing by the Successor Board. Additional comments were raised about who determines the *pro rata share* of replacement CFD revenue. A possible revision to address the issue:

- (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. The pro rata basis shall be determined by the provisions of the Transition Plan and implementing agreements and by the regional entities to address any shortfalls in revenue generation for the following regional needs: habitat conservation, transportation, transit, and water supply augmentation. The Board may not withhold its satisfaction/approval if all of the regional entities and Transition Plan and implementing elements are met.

Section 67700(l)(1)(A)-(D) relates to the automatic dissolution of the Successor Board. This shifts from a precise end date and instead relies upon “performance measures” which are definite in order to determine the termination date. The intent of this language is to move away from artificial end dates and place the control within the local jurisdictions. Thus, three of the four measures are fully within the control of the jurisdictions to establish replacement financing, enter into agreements and take on ESCA responsibilities. The fourth requirement is within the control of the Federal government and environmental regulators as to when the “final” property transfer will take place. These measures were crafted with various public comments in mind, including the Army’s need for a single entity to receive property and deal with certain issues.

Section 67700(l)(2) relates to the situation where not all reimbursement agreements or funds have been distributed from the CFD collections. Upon dissolution of the Successor Board in accordance with (l)(1), the County will step to the plate to distribute any remaining funds.

Section 67700(l)(3) deals with any outstanding debts of the Successor Board and provides an ongoing mechanism to deal with debts.

Section 67700(l)(4) deals with future County liability for any final dissolution issues.

Section 67700(m)(1) is a carryover from the prior act and Section (m)(2) attempts to clarify the relationship between FORA and LAFCO providing for LAFCO oversight while the Successor Board is in play and indemnification for Transition Plan issues after dissolution of the Successor Board. Finally, the section provides a fund for LAFCO to access for indemnification as a debt obligation, thus utilizing property tax revenues to fund this requirement.

The City of Marina posed eleven questions which we have addressed both in the content of this report and in the attached table. Additionally, Landwatch has also submitted a multiple page letter regarding the draft Legislation, a copy of which is attached for the Board's and public information. Many, if not all, of the points raised by Landwatch are addressed in the discussion of each section hereinabove.

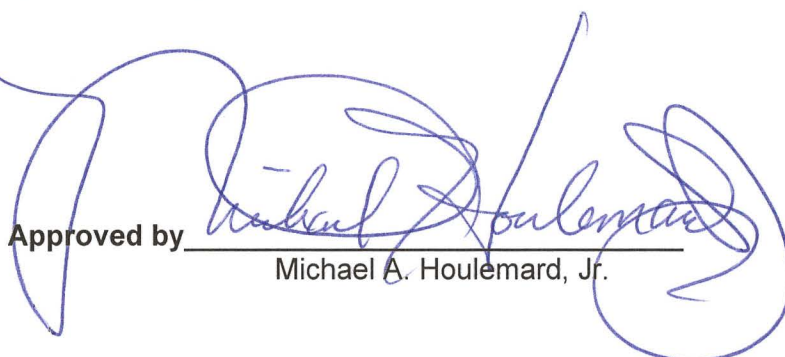
ATTACHMENTS

1. 2018 Legislative Agenda with highlighted policy to be reinserted.
2. DRAFT Legislation as submitted with annotations to the Legislative Committee
3. Matrix of Responses to issues raised by City of Marina
4. Correspondence: City of Marina's questions as submitted to Legislative Committee
 - a. City of Marina's questions as submitted to Legislative Committee March 11, 2019.
 - b. Landwatch letter dated March 11, 2019.

Prepared by


Sheri L. Damon

Approved by


Michael A. Houlemard, Jr.

A. FORA 2018 TRANSITION PLAN LEGISLATIVE COORDINATION ISSUES

Issue:

FORA's June 30, 2020 legislative sunset calls for significant coordination on many items. Specifically, reports to the State Legislature, Local Agency Formation Commission (LAFCO) coordination, FORA jurisdiction interface, and ongoing risk analysis. Since the Board has adopted the 2018 Transition Plan and is implementing elements of that Resolution, working with local agencies is crucial. Coordination is beneficial/essential in traversing the long list of issues and reporting requirements, many of which have been recommended for legislative action to implement.

Benefits:

Collaborative efforts will help assure effective transition decisions or aid potential legislative actions prior to 2020 sunset.

Challenges:

State law requirements, contractual obligations, and inter-agency agreements will require intensive legislative multi-agency "negotiations." One of FORA's funding mechanisms (Mello Roos/Community Facilities District fee) is not within LAFCO jurisdiction and terminates at dissolution. Designating successor entity to assume FORAs liaison role of with active military and veteran community.

Proposed Position:

Coordinate and seek support from State Legislature (17th State Senate District and 29th State Assembly District) to assure 1) post-FORA funding for jurisdictions after FORA sunsets on June 30, 2020 in compliance with Title 7.85 of the Government Code entitled Fort Ord Reuse Authority Act, 2) so remaining jurisdictions future liabilities are covered or mitigated to avoid unfair responsibility or liabilities, 3) clarify authority of Local Area Formation Commission/FORA to assign obligations; 4) potential governance structure if needed; 5) survivability of existing contracts/agreements/documents/plans/policies; and 6) application of California Environmental Quality Act.

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.
- (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.

(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.

(i) Effective July 1, 2020:

Commented [SD5]: Composition of New Board/Governance

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

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

- (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;

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.

- (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
 - (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

Commented [SD11]: Clarifies the role of LAFCO

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 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

DRAFT

City of Marina Question	FORA Staff Response	Possible Alternative
1. 67700(a) references dissolution of the Authority, but there is no definite end date. Why?	The automatic dissolution of the entity is in Section 67700(l) which utilizes “performance objectives” that address the financial and regional agreements contemplated by the 2018 Transition Plan, while acknowledging the need of the Federal Government for a single successor entity to facilitate property transfers. We did note during the Legislative Committee, with the exception of the Federal property transfers, all other Performance Objectives were within the control of the local entities to take action and/or enter into agreements addressing the objectives.	
2. 67700(c) states 3 limited purposes, but (h) gives authority for 9 acts such as: filing amended maps and such other acts needed for dissolution of the Authority. Are (e) and (h) inconsistent?	Section (e) and Section (h) are not inconsistent. Section (e) is the general scope of authority while Section (h) is the more specific. The reason for the specific articulation of filing amended maps has to do with reducing the CFD boundaries as the replacement revenue generation and sharing mechanisms come into being. The CFD will need management to keep it coordinated with the other regional revenue generators such as TAMC, MCWD, Monterey 1 and the Habitat Cooperative. This Successor Board will also take other actions to implement dissolution, as necessary.	If the Board wants to clarify that Section (e) is the general section and (h) is the specific, those words could be added to those sections.
3. 67700(h)(8) why is there no limitation as to the number of employees, wages, benefits, and/or consultant costs to be incurred by the Authority?	The Successor Board is free to determine how to address the staff /consultants needs of the successor entity. It is contemplated the Successor Board will utilize the members own employees to perform the duties of the entity. The existing FORA staff's CalPERS benefits and contract is slated to terminate on June 30, 2020. If the Successor Board want employees, they will need to make new arrangements.	
4. Since CSU will become a voting member, will it have to provide 20% affordable housing as referred to in 6700(j)(2)? If not, why not?	All of the housing provided currently by CSUMB is considered affordable housing.	

5. 67700(i) will the Board have authority to participate in litigation that does not relate to the Transition Plan?	As currently drafted the Successor Board's participation in Litigation is limited to the scope of its limited authority: Transition Plan, collection of revenues under CFD and property tax revenues.	
6. 67700(k)(2) appears to give the Authority the power to prevent a land use jurisdiction from adopting substitute financing unless it is done in a written agreement to the "reasonable satisfaction of the Authority..." The section goes on to state: "Such regional needs include, but are not limited to, habitat conservation, transportation, transit and water supply augmentation". What regional needs are included BUT not listed?	Currently, the only known additional regional need not listed is building removal.	See Staff Report on possible modification to the Section to address the issue of Authority's power to deny.
7. 67700(k)(2) if a local jurisdiction were to create an alternative to the CFD how would the pro rata basis be determined?	Pro rata would be subject to approval by the Successor Board. However, given the limits on Entitled Development as of June 30, 2020, that is the most likely benchmark. However, alternative language could be added to incorporate the regional providers and Transition Plan Implementing Agreements participants.	Possible Alternative: <u>The pro rata basis shall be determined by the provisions of the Transition Plan and implementing agreements and by the regional entities to address any shortfalls in revenue generation for the following regional needs: habitat conservation, transportation, transit, and water supply augmentation. The Board may not withhold its satisfaction/approval if all of the regional entities and Transition Plan and implementing elements are met.</u>

8. 67700(l) states that “the Authority dissolved by operation of law upon occurrence of all of the following” It lists four acts that must be completed. Why is there no definite percentage of completion or the Authority being dissolved if the Board majority votes that a remaining act(s) is no longer necessary?	See response to 1. Above.	
9. Has RGS seen and been given time to review this proposal? If not, why not? If so, what is its opinion?	RGS was given a copy of an earlier draft of the legislation several weeks prior to consideration by the Legislative Committee. However, it was for background and information only. It is not within their scope of work as <i>facilitators</i>. .	
10. Will a representative of RGS be permitted to make a presentation at the special meeting on this item?	Legislation is not within the charge, or scope, of the RGS contract.	
11. There will be 6 voting members. This appears to create a potential deadlock and possible hindrance in making progress. What are the alternatives? (5,7,9)	One possible alternative is to have a weighted vote. However, most of the members of the Legislative Committee expressed opposition to this alternative. Another possible alternative is to eliminate one member, or add amember, in order to create an odd number of votes. (5 or 7). Given the nature of getting so many together, less is probably better.	

LEGISLATIVE COMMITTEE QUESTIONS

March 11, 2019

- 1. 6700(a) references the “dissolution of the Authority, but there is no definite date. Why?**
- 2. 6700(c) states 3 limited purposes, but (h) gives authority for 9 acts. This seems to be inconsistent with 6700(c). Example: revisions to the CFD boundaries, property transfers, receipt of federal grant funding, filing an amended map and “such other actions as may be required to wind down the affairs of and dissolve the Authority”. Are 6700 (c) and (h) inconsistent?**
- 3. 6700(h)(8) Why is there no limitation (% or amount) as to the number of employees, wages, benefits, consultant costs to be incurred by the Authority?**
- 4. Since CSU will become a voting member will it have to provide 20% affordable housing as referred to in 6700(j)(2)? If not, why not?**
- 5. 6700(i) will the Board have authority to participate in litigation that does not relate to the Transition Plan?**
- 6. 6700(k)(2) appears to give the Authority the power to prevent a land use jurisdiction from adopting a substitute funding mechanism unless it is done in a written agreement to the “reasonable satisfaction of the Authority...” The section goes on to state: Such regional needs include, but are not limited to, habitat conservation, transportation, transit and water supply augmentation”. What regional needs are included BUT not listed?**
- 7. 6700(k)(2) If a local jurisdiction were to create an alternative to the CFD how would the pro rata basis be determined?**
- 8. 6700(l) States that “the Authority dissolved by operation of law upon occurrence of all of the following” It lists four acts that must be completed. Why is there no definite percentage of completion or the Authority being dissolved if the board majority votes that a remaining act(s) is no longer necessary?**
- 9. Has RGS seen and been given time to review this proposal? If not, why not? If so, what is its opinion?**
- 10. Will a representative of RGS be permitted to make a presentation at the special board meeting on this item?**
- 11. There will be 6 voting members. This appears to create a potential deadlock and possible hindrance in making progress. What are the alternatives? (5, 7, 9)**

March 11, 2019

By E-mail

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Re: Proposed legislation to amend FORA Act

Dear Members of the Board:

LandWatch Monterey County (“LandWatch”) offers the following comments on the draft legislation to amend the FORA Act that was discussed by the FORA Legislative Committee at its meeting today (“Proposed Amendments”).

The Proposed Amendments are inconsistent with the legislative mandate to sunset FORA in 2020. Nor are they responsive to the requests for autonomy in future planning and infrastructure development expressed by the land use jurisdictions.

In effect, the Proposed Amendments strip FORA of its ability to amend and enforce the Reuse Plan but leave a “FORA CFD Board” entity with plenary authority to determine “regional needs,” to program regional infrastructure and spending to meet these needs, to compel land use agencies to fund these needs, and to control the revenue raising enactments of the land use agencies. *The FORA CFD Board’s authority to manage all this would be unfettered because the remaining provision of the Reuse Plan are unclear and unenforceable and because the Proposed Amendments would provide a broad CEQA exemption that is worded to go well beyond mere organizational changes.*

Also, we note that the Proposed Amendments were not available for review until this weekend and that the Legislative Committee voted to forward them to the FORA Board after a short meeting held this Monday morning at 8 am. We understand that the FORA Board may act through a special meeting some time this week to recommend the Proposed Amendments to Senator Monning. This abbreviated review fails to provide an opportunity for public participation or careful deliberation by FORA and its member agencies.

These points are discussed below.

A. The go-forward entity should not have open-ended authority to determine “regional needs,” to program regional infrastructure, to compel land use agencies to fund these needs, or to control the revenue raising enactments of the land use agencies.

1. The FORA CFD Board would have final authority on “regional needs” and the infrastructure plans to meet these needs.

As written, the proposed legislation would effectively extend FORA for an indefinite period, with continued authority to determine and fund "regional needs," including, *but not limited to*, habitat management, transportation, transit, and water supply augmentation. (See Proposed Amendments, § 67700(h)(3), (k)(1) [emphasis added].)

Even if the open-ended phrase “but not limited to” were removed, the broad authority to determine, fund, and program future habitat management, transportation, transit, and water supply augmentation is inconsistent with the stated desires of the member agencies to have autonomy as to these future infrastructure and spending decisions.

The default infrastructure plan to meet these "regional needs" would be the Capital Improvement Plan (CIP) as of 2020. (Proposed Amendments, § 67700(h)(3).) The passive voice language that would permit future modification of the 2020 CIP to reflect new agreements by land use jurisdictions obscures the fact that it would be the FORA CFD Board that had the final authority to modify the 2020 CIP. (Proposed Amendments, § 67700(h)(3).) As a CFD legislative body, only the FORA CFD Board would have the authority under the Mello-Roos Act to determine for what purposes CFD taxes were imposed and how the CFD revenues were spent.

Thus, under the Proposed Amendments and the Mello-Roos Act, the FORA CFD Board alone would have plenary authority to determine “regional needs,” to devise the infrastructure and spending plan to meet these needs, and then to program and disburse the funding for these needs.¹

2. The FORA CFD Board would compel land use agencies to fund the “regional needs” and infrastructure plans.

The land use jurisdictions would be *obligated* to continue to fund these "regional needs" on a pro rata basis, either through the CFD or through some "substitute funding

¹ The fact that the go-forward entity is named the "Fort Ord Reuse Authority Community Facilities District" (Proposed Amendments, § 67700a1) does not disguise the fact that this entity would continue to control the critical FORA functions of determining regional needs, determining the required infrastructure, imposing funding requirements, approving funding mechanisms, and programming that funding.

mechanism," which mechanisms must be *approved by FORA*. (Proposed Amendments, § 67700(j)(1), (k)(2).)

The Proposed Amendments do not state what role the FORA CFD Board would have in programming and disbursing the revenues from the substitute funding mechanisms. However, the FORA CFD Board would have approval authority over these substitute funding mechanisms, based on its "reasonable satisfaction" that the mechanisms "continue funding regional needs . . . on a pro rata basis." (Proposed Amendments, § 67700(k)(2).) Thus, the FORA CFD Board could not approve a land use authority's substitute funding mechanism unless the FORA CFD Board determined that the FORA CFD Board could ensure that substitute funding mechanism's revenues would be dedicated to meeting the regional needs it identified.

In short, the land use jurisdictions would remain subject to the FORA CFD Board's plans for all regional needs and would be required to fund those plans through mechanisms approved by FORA.

3. The FORA CFD Board would control revenue enactments by land use jurisdictions.

The FORA CFD Board would have the right to control how the land use jurisdictions set up their future substitute funding mechanisms. (Proposed Amendments, § 67700(k)(2).) These mechanisms might include impact fees, development agreements, City-level CFDs, property taxes, etc. *This is an approval authority that FORA does not have now, and it is an authority that goes well beyond the authority of a normal Community Facilities District. The exercise of this authority to control the fiscal affairs of other land use agencies would take the FORA CFD Board well outside of its existing competence. And it would interfere with the land use jurisdictions' autonomy.*

Many Fort Ord projects have relied on *ad hoc* development agreements that fund infrastructure and other community benefits. Under the Proposed Amendments, the use of such development agreements as a "substitute funding mechanism" in the future would require that the FORA CFD Board be at the bargaining table when these agreements are negotiated because the FORA Board would have to approve the agreements.

Finally, it is not clear that the legislative authority of the land use jurisdictions over their own fiscal affairs can in fact be delegated to another agency. LandWatch suggests that counsel for the land use agencies carefully consider this issue.

B. The Proposed Amendments fail to clarify and substantially confuse the issue of the continuity of the Reuse Plan.

During the Transition Planning process, LandWatch and others have repeatedly raised the issue of the continued applicability of the Reuse Plan. The Proposed Amendments do not clarify this issue.

Instead the Proposed Amendments simply provide that the Reuse Plan "shall continue to be applicable" unless a land use jurisdiction determines it is no longer applicable to a land use. (Proposed Amendments, § 67700(j)(1).) There is no clear procedure identified for a land use jurisdiction to make such a determination.

And even if the land use jurisdiction decides that the Reuse Plan is no longer applicable, that land use jurisdiction "remains obligated to fund regional needs" through the CFD or through some substitute mechanism the FORA CFD Board has approved. (*Ibid.*) Thus, even if a land use jurisdiction decided not to pursue the development as planned in the 22-year old Reuse Plan, it could still be made to fund the infrastructure and habitat management that FORA determined would be needed for that development.

More problematically, the language stating that the Reuse Plan "shall continue to be applicable to all lands" is unclear as to what particular mandates of the Reuse Plan would remain "applicable." Would this include specific land use designations? Land use intensities? Regional infrastructure plans? Development allocations to each land use jurisdiction in terms of total units? Specific policies intended to regulate development at the project level? Policies intended to be implemented at the program or plan level such as jobs/housing balances?

It is unclear who would have authority to enforce the continued applicability of the Reuse Plan. In the absence of the currently mandated consistency determinations and in the absence of a clear procedure for a land use agency to determine that the Reuse Plan no longer applies to a land use, no affected landowner, member of the public, or land use jurisdiction would have any remedy for failure to comply with the Reuse Plan.

The FORA CFD Board would have no continuing authority to modify the Reuse Plan to consider changing circumstances or to make consistency determinations. In short, no entity would have any clear authority to enforce a land use jurisdiction's compliance with the Reuse Plan.

The notion that a FORA CFD Board can adequately steward what was intended to be a living regional plan without the authority to modify and enforce that plan is fundamentally flawed. The land use jurisdictions cannot be indefinitely required to develop only in accordance with a set of land use designations, development intensities, infrastructure plans, development unit allocations, and land use policies developed 22 years ago for which there is no remaining authority to enforce or modify.

Even if it were legal to indefinitely permit the dead hand of the Reuse Plan to regulate future development plans forever, it would not be wise policy. Again, the land use jurisdictions have asked for autonomy.

If *specific provisions* of the Reuse Plan are to survive, e.g., the affordable housing and prevailing wage provisions identified in Proposed Amendments section 67700(j)(2),

they should be enumerated. There appears to be no agreement among the land use agencies as to the continuity of other provisions of the Reuse Plan. Without such agreement, the vague language in the Proposed Amendments is a recipe for litigation.

C. Eventual termination of FORA CFD Board is postponed indefinitely until the last unit is built.

The draft language would ensure that FORA would continue indefinitely because FORA could only be dissolved when "all CFD revenues have been collected from entitled development" and when "substitute funding mechanisms have been implemented." (Proposed Amendments, § 67700(l)(1)(A).) Since an entitled development only pays the CFD tax when it finally pulls a building permit, FORA would continue in existence as long as there were a single unbuilt lot in any jurisdiction still subject to the CFD.

The language perpetuating FORA until "substitute funding mechanisms have been implemented" (Proposed Amendments, § 67700(l)(1)(A)) is unclear as to whether this means until the substitute funding mechanism is *enacted* or until all of the substitute funding is *collected, programmed, and disbursed*.

D. Authority to shrink CFD boundaries is not specified.

Although the Mello-Roos Act permits annexation to a CFD, there is no current authority under Mello-Roos to de-annex lands to shrink the borders of a CFD. The Proposed Amendments contemplate that FORA could do this by revising the CFD boundaries as replacement funding mechanisms were adopted. (Proposed Amendments, § 67700(h)(4).) As LandWatch has advocated previously, this authority should be set out specifically.

E. A CEQA exemption is not required for changes in organization.

It is unclear why FORA now seeks to designate its Transition Plan both as "not a project" subject to CEQA and as "exempt" from CEQA. (Proposed Amendments, § 67700(d).)

FORA has already adopted the Transition Plan in its December 19, 2018 Resolution 18-11. That resolution states that no EIR or other CEQA document was required because the Transition Plan is "not a project" subject to CEQA, citing the definitions of "project" in 14 CCR section 15378(b) and Public Resources Code section 21065, which exclude organizational activities that will "not cause a foreseeable physical impact on the environment."

To the extent that the Transition Plan is merely an organizational change without the potential for physical impacts, there is no *need* for a statutory exemption. Exemptions

are not applicable to or needed for activities that are not a project under 14 CCR section 15378(b) and Public Resources Code section 21065.

The Proposed Amendment would also characterize *all future* “changes in organization from and after June 30, 2020, to implement the Transition Plan” as “not a project” and exempt. (Proposed Amendments, § 67700(d).) To the extent that the future changes in organization to implement the Transition Plan were in fact merely changes in organization with no potential for a foreseeable physical impact, then they would meet the “not a project” test and no exemption would be needed.

However, it remains unclear what might be included in future "changes in organization . . . to implement the Transition Plan." This language could easily be misinterpreted to include all sorts of actions intended "to implement the Transition Plan" that are not merely changes in organization without physical impacts.

For example, the FORA CFD Board might argue in the future that it is merely implementing an organizational change when it supports or enters into an agreement that includes a funding commitment to one or more specific infrastructure projects in Fort Ord that may cause physical changes in the environment. In the normal course of events, such a funding commitment is subject to CEQA review at the program or plan level. It is not sufficient that individual projects eventually be subject to piece-meal project-specific environmental review as proposed in sections 1.2 and 2.2.7 of the Transition Plan. A funding commitment that enables one set of infrastructure projects, as opposed to some other set of projects or possibly no projects at all, must be subjected to environmental review *at the plan level*. Otherwise, there would be no opportunity to consider alternatives and mitigation at the plan level, where it matters most in the regional planning context.

Furthermore, it is not clear whether the proposed Transition Plan Implementation Agreements (“TPIAs”) would be treated as “not a project” or exempt. The language in section 4.1 of the Transition Plan describing the possible provisions of these TPIAs includes not just funding agreements, which *should* be subject to CEQA if they constitute project commitments, but also includes the catch-all phrase "such other matters as may be required to implement this Transition Plan." LandWatch opposes a CEQA exemption that covers the TPIAs without additional provisions that narrow the exempted activities to just those activities that meet the "not a project" test.

In sum, the fundamental problems with the Proposed Amendments with respect to CEQA are that the first sentence covering past actions is unnecessary and the second sentence covering future actions is too broad. The proposed Amendments should be revised to define and specify the limits of the future action that would not be subject to CEQA as follows:

~~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 be~~ not ~~be~~ a project for purposes of the California Environmental Quality Act provided that such changes do not cause a foreseeable physical impact on the environment and shall be exempt therefrom.

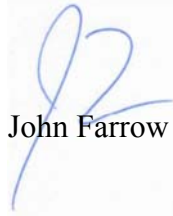
In the absence of any remaining enforceable constraint on the FORA CFD Board from the Reuse Plan, compliance with CEQA may represent the only real check on its authority to impose infrastructure projects on other land use agencies.

Conclusion

The Proposed Amendments should be carefully reconsidered and revised with the cooperation and participation of the land use agencies and an opportunity for public review. An unfettered FORA CFD Board should not be created to manage regional needs on an ad hoc basis without a living regional plan and at the expense of the autonomy of the land use jurisdictions.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

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