

2020

May 22, 2020

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*Special District Member, Alternate*

**Counsel**

Kelly L. Donlon  
*General Counsel*

**Executive Officer**

Kate McKenna, AICP

132 W. Gabilan Street, #102  
Salinas, CA 93901

P. O. Box 1369  
Salinas, CA 93902

Voice: 831-754-5838

[www.monterey.lafco.ca.gov](http://www.monterey.lafco.ca.gov)

FORA Chair/Supervisor Jane Parker  
FORA Board of Directors  
Executive Officer Josh Metz  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933

**Subject: 2020 Transition Plan and Draft Multi-Agency Transition Plan Implementing Agreement**

Dear FORA Chair/Supervisor Jane Parker, FORA Board, and Executive Officer Metz,

On behalf of the Local Agency Formation Commission (LAFCO), I am writing to respectfully request that FORA:

- 1) Provide clear and definitive statements in the draft 2020 Transition Plan and Transition Plan Implementing Agreement regarding the survival of the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30;
- 2) Delete inaccurate and unnecessary statements in recitals F, G, and H of the draft Transition Plan Implementing Agreement regarding LAFCO's oversight role;
- 3) Clearly state whether current Fort Ord water allocations are intended to continue post-FORA dissolution or not, and
- 4) Execute an agreement by June 30 with the County of Monterey, a City member of FORA, or a third-party fiduciary to complete FORA's post-dissolution administrative affairs.

We provide these requests through LAFCO's oversight role under Government Code section 67700. LAFCO is dedicated to working with FORA and its member agencies to complete our respective dissolution responsibilities in the time remaining.

1. Provide clear and definitive statements in the draft 2020 Transition Plan and Transition Plan Implementing Agreement regarding the survival of the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30.

The Draft 2020 Transition Plan includes unclear and provisional statements regarding the potential survival of the policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30 (see sections 1.1, 1.3, and 2.2.6 of the 2020 Transition Plan). As expressed in our May 14 letter, LAFCO continues to request that the FORA Board review and provide definitive statements, in the draft 2020 Transition Plan and Transition Plan Implementing Agreements, as to whether or not FORA intends the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, Transition Plan, and other FORA agreements, contracts, and plans to have any force or effect after June 30, 2020. LAFCO staff believes these statements of FORA's intent are important in supporting LAFCO's statutory role to provide for an orderly dissolution.

2. Delete inaccurate and unnecessary statements in recitals F, G, and H of the draft Transition Plan Implementing Agreement regarding LAFCO's oversight role, as shown in the attachment.

The Draft Multi-Agency Transition Plan Implementing Agreement, included in the May 20 FORA Administrative Committee Packet, presented new recitals, which are unnecessary and inaccurate in their depiction of LAFCO's oversight role in FORA dissolution. These recitals incorrectly state that the 2018 Transition Plan depended upon exercise of LAFCO powers to enforce Transition Plan assignments and designations. Furthermore, the discussion of LAFCO's limited role in the dissolution of FORA was identified and addressed before the FORA Board adopted the 2018 Transition Plan. LAFCO's limited role is evident in LAFCO's correspondence to FORA in August and September 2018, which informed FORA that the California Government Code does not invest LAFCO with authority to make assignments, designations or provisions in the event the transition plan approved by the FORA Board failed to do so, nor does it make the provisions of the Cortese-Knox-Hertzberg Act applicable to the FORA transition process.

3. Clearly state whether current Fort Ord water allocations are intended to continue post-FORA dissolution or not.

LAFCO requests that FORA definitively state whether, and how, the Fort Ord water allocations are intended to survive FORA dissolution. The 2020 Transition Plan section 2.2.6 does not provide a clear and definitive statement regarding survival of Fort Ord water allocations after June 30. The draft Multi-Agency Transition Plan Implementing Agreement does not appear to commit to the current allocations. FORA member agencies have raised concerns that the draft TPIA does not require Marina Coast Water District to abide by the water allocations. In addition, it appears to be increasingly unlikely that FORA and its member agencies will finalize the draft TPIA by June 30. In the absence of finalizing the draft Transition Plan Implementing Agreement and individual Water/Wastewater Service Agreements between MCWD and FORA member agencies, the FORA Board should state definitively its intentions as to whether or not Fort Ord water allocations are intended to continue post-dissolution.

4. Execute an agreement by June 30 with the County of Monterey, a City member of FORA, or a third-party fiduciary to complete FORA's post-dissolution administrative affairs.

Following dissolution, the County is anticipated to take responsibility for managing FORA's records. Numerous other tasks for winding up FORA's administrative affairs remain unassigned, including responsibilities for conducting FORA's final fiscal year audit, paying FORA's post-dissolution bills through FORA-provided funds, paying FORA's CalPERS termination liability through FORA's 115 trust account, and completing final payroll documentation. LAFCO requests that the FORA Board move quickly to execute an agreement with the County, a City member of FORA, or a third-party fiduciary to serve as the successor agency for purposes of winding up FORA's administrative affairs. LAFCO's oversight role will be to review and monitor the successful completion of these tasks.

Conclusion

Thank you for your consideration of these requests. We will continue to work closely with your staff, counsel and consultants throughout the process, and appreciate the opportunity to be of service to FORA and the Monterey Bay communities.

Sincerely,



Kate McKenna, AICP  
Executive Officer

Attachment: Requested corrections to recitals F, G, and H of the draft Transition Plan Implementing Agreement

**TRANSITION PLAN IMPLEMENTING AGREEMENT**

Attachment

This Transition Plan Implementing Agreement (this “Agreement”) is dated for reference purposes \_\_\_\_\_, 2020 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey”),
- (f) Fort Ord Reuse Authority (“FORA”),
- (g) California Department of Parks and Recreation (“State Parks”),
- (h) Regents of the University of California (“UC”), and
- (i) Board of Trustees of the California State University on behalf of the Monterey Bay campus (“CSUMB” and collectively with County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, and UC, the “Parties”).

**RECITALS**

**A.** The Fort Ord Reuse Authority (“FORA”) was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 et seq. and referred to herein as the “FORA Act”) as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to various municipalities and other public entities or their designees.

**B.** FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the “EDC Agreement”). FORA has delivered to each of the Parties a complete copy of the EDC Agreement as executed and including all amendments and attachments.

**C.** In 2001, FORA entered into certain implementation agreements with the County of Monterey and the Cities of Del Rey Oaks, Marina, Monterey, and Seaside, each more particularly identified in Section 1 below (collectively, the “Implementation Agreements”).

**D.** Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve.

**E.** Pursuant to the requirement expressed in Section 67700(b)(2) of the FORA Act, FORA’s Board of Directors approved and on December 27, 2018 submitted to the Local Agency Formation Commission of Monterey County (“LAFCO”) a transition plan (the “2018 Transition Plan”). As required by Section 67700(b)(2) of the FORA Act, the 2018 Transition Plan assigned assets and liabilities, designated responsible successor agencies, and provided a schedule of remaining obligations.

**F.** Pursuant to the requirement expressed in Section 67700(b)(1) of the FORA Act, LAFCO is required to provide for the orderly dissolution of FORA (the “Dissolution”), including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by FORA are honored and properly administered, and that all assets of FORA are appropriately transferred. ~~LAFCO has not taken any action to approve or accept the 2018 Transition Plan, but rather has acknowledged receiving it.~~

~~**G.** Many of the assignments and designations of successors set forth in the 2018 Transition Plan were predicated and dependent upon the exercise by LAFCO of powers to impose and enforce such assignments and designations in the event that contracts relating to such assignments and designations were not arranged between FORA and the assignees and designees. LAFCO has taken the position that (i) the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “Reorganization Act”) does not apply to the Dissolution and (ii) that LAFCO lacks any power under the Reorganization Act, the FORA Act, or any other applicable law to impose or enforce such assignments and designations in the absence of contracts voluntarily entered into with the assignees and designees. This Agreement is being entered into in connection with an effort to update the 2018 Transition Plan to more closely align with the limited role being taken by LAFCO in the Dissolution.~~

**H.** Although FORA has successfully negotiated the assignment of certain other contracts, FORA has not found any assignee willing and able to accept assignment of FORA’s rights and responsibilities under the Implementation Agreements. ~~Because LAFCO will not impose any assignment of the Implementation Agreements, after the Dissolution there may be no party still in existence with the power to enforce the Implementation Agreements against the county and respective cities.~~

**I.** By its entry into this Agreement, FORA neither intends to (i) terminate the Implementation Agreements nor (ii) contend that the Implementation Agreements remain enforceable. Further, FORA does not by its entry into this Agreement intend to alter the meaning or effect of any of the Implementation Agreements to the extent, if any, that they may remain enforceable after the Dissolution.