



July 12, 2018

Mayor Ralph Rubio, Chair  
Fort Ord Reuse Authority (FORA) Board of Directors  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933

Dear Chair Rubio and Board of Directors:

LandWatch asks that FORA's staff, counsel, or Board members be prepared to address the following questions at the Transition Board Study Session scheduled for Friday, July 13.

**1. Why hasn't FORA staff identified a proposed Implementation Local Redevelopment Authority ("Implementation LRA") as required by federal law?**

Unaccountably, FORA's June 5, 2018 Draft Transition Plan does not identify a successor Implementation LRA that would actually receive surplus property and quitclaim it to developers; seek, monitor, and implement Public Benefit Conveyances and Homeless Assistance Provider land conveyances; or manage financing of the BRP economic development objectives, including infrastructure requirements.

According to FORA's federal law counsel's (Kutak Rock LLP's) January 19, 2018 memorandum to FORA regarding the "Role of Federally Recognized Local Redevelopment Authorities," the Army will recognize only a single Local Redevelopment Agency (an "Implementation LRA") during the implementation phase of a Base Reuse Plan for the purpose of conveying surplus federal property, including water rights. Surplus property has previously been conveyed to FORA at no cost through an Economic Development Conveyance ("EDC") for FORA's subsequent conveyance of that property to developers. The EDC has been amended seven times between 2000 and 2018 and the memorandum states that there will likely be many more amendments to the EDC as surplus federal land is redeveloped. Under 32 C.F.R section 174.9(b), only the Implementation LRA can seek and enter these amendments.

The Kutak Rock memo also states that the Implementation LRA must

- Seek, monitor, and implement Public Benefit Conveyances and Homeless Assistance Provider land conveyances, a continuous process that must be in accord with Base Reuse Plan.
- Have segregated funding and ability to finance economic development objectives, including infrastructure requirements, in the BRP.

- Be able to accept and account for federal funding without co-mingling assets.

## **2. What parcels remain to be conveyed for future development?**

Consideration of a transition plan should be informed by the identification of the status of undeveloped surplus property. It is unclear to the public what surplus parcels still held by public agencies are expected to be developed in the future and which public agency currently owns these parcels, e.g., the Army, FORA, or FORA member agencies. We ask that FORA provide this information in a systematic form, including maps and a list of parcel numbers with ownership and land use designation under the local General Plans and the Base Reuse Plan, since it would affect post-FORA actions, e.g., the ability to convey and condition development parcels.

## **3. What were the prior FORA deliberations on the transition issues that should have been anticipated?**

Inexplicably, the staff report and draft transition plan make no reference to prior FORA deliberations on transition issues, deliberations that should have taken place at the time the existing commitments were made and that may help inform choices at this point.

For example, when FORA decided to implement a CFD funding arrangement in 2002, it knew or should have known that the CFD mechanism could not survive FORA's then-expected termination date. Before committing FORA to a funding mechanism with such a short shelf life, did FORA consider how it would transition to another funding system when it terminated? If so, what were those plans? Or, for example, at the time it adopted the prevailing wage requirement in the Master Resolution, what plans did FORA have to ensure the continued payment of prevailing wages after FORA sunsets?

## **4. Please provide a legal opinion with respect to the proposed CEQA exemption.**

The draft transition plan makes two arguments without any substantive legal analysis that the transition plan should be exempt from CEQA review.

First, the draft transition plan characterizes the transition plan as a mere administrative or financial reorganization that could not have any effect on the physical environment. However, the transition plan would apparently alter or abandon specific provisions of the BRP that were identified as CEQA mitigation when the BRP was adopted, including numerous specific policies and the entire DRMC system. CEQA requires that an agency make findings that altered mitigation will remain effective or that there is no feasible alternative to abandonment of mitigation. How does FORA intend to address this obligation, especially in light of the repeated statements in the draft transition plan that it is unclear whether BRP policies will even continue to apply in the future?

Second, the draft transition plan claims that the adoption of a transition plan is ministerial because state law mandates it. State law mandates FORA adopt a transition plan just like it mandates that a city adopt a general plan, but it does not mandate the contents of these plans. The contents of the plan are discretionary, and for that reason the transition plan is just as much subject to CEQA as a general plan is.

Thank you for your consideration and timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. DeLapa". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael D. DeLapa  
Executive Director