

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 189 (Monning) – As Amended June 17, 2019

SENATE VOTE: 38-0

SUBJECT: Fort Ord Reuse Authority: member agencies: land use and zoning: dissolution.

SUMMARY: Extends the repeal date for the Fort Ord Reuse Authority (FORA) for two years and makes a number of changes to FORA's governing statutes to wind down the agency.

Specifically, **this bill:**

- 1) Extends FORA's operations until June 30, 2022, and alters FORA's composition, powers and duties, beginning on July 1, 2020, as follows:
 - a) Alters FORA's member agencies by eliminating the cities of Carmel, Sand City, Pacific Grove, and Salinas and retaining the County of Monterey (Monterey County) and the cities of Del Rey Oaks, Marina, Monterey, and Seaside;
 - b) Makes the following changes to the FORA Board of Directors (Board):
 - i) Reduces the 13-member Board to five members, eliminating seats for the cities of Carmel, Sand City, Pacific Grove, and Salinas, and removes weighted votes for the cities of Marina and Seaside (two votes each), and Monterey County (three votes). The reconstituted Board consists of Monterey County and the cities of Del Rey Oaks, Marina, Monterey, and Seaside, each with one vote;
 - ii) Requires a vote of a majority of the total membership of the Board to pass or act upon any matter properly before the Board, and requires each member of the Board to have one vote;
 - iii) Removes all ex officio nonvoting members except representatives designated by the United States (US) Army and the Chancellor of the California State University (CSU), and adds a representative designated by the Marina Coast Water District;
 - iv) Eliminates the Board's authority to appoint or remove ex officio nonvoting members, and to appoint additional advisory committees to provide the Board with analysis;
 - v) Eliminates fees that member agencies and non-voting members pay to FORA;
 - c) Makes the following changes to FORA's planning and development powers and duties:
 - i) Prohibits additions to the Fort Ord Reuse Plan (Reuse Plan), including the capital improvement program (CIP);
 - ii) Eliminates the following:

- (1) Requirements that: each county or city with territory occupied by Fort Ord submit to the Board its general plan or amendments to it; these plans satisfy specified conditions; and, the Board certify portions of the general plan applicable to the territory of Fort Ord for purposes of consistency with the Reuse Plan;
 - (2) A requirement that the county and cities submit zoning ordinances and other zoning actions to the Board for approval;
 - (3) Rules governing changes to the Reuse Plan that affect territory in only one member agency's jurisdiction;
 - (4) Provisions prohibiting a county or city from approving development projects or changes of use within the area of Fort Ord that are not consistent with Reuse Plan, related Board oversight over development projects, and the Board's authority to charge fees related to Reuse Plan change reviews;
 - (5) The Board's responsibility to prepare environment impact reports (EIRs) for the Reuse Plan in compliance with the California Environmental Quality Act (CEQA);
 - (6) A provision allowing the Board to construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located;
 - (7) A provision allowing a city or county or a local redevelopment agency (RDA) to construct or otherwise act to improve a basewide public capital facility only with the consent of the Board;
 - (8) Provisions related to the transfer of the Fritzsche Army Airfield to the City of Marina, and the transfer of Army golf courses to the City of Seaside; and,
- d) Eliminates the Board's authority to issue bonds to finance basewide public facilities.
- 2) Enacts the following provisions from July 1, 2020, until June 30, 2022, to wind down FORA:
- a) Requires, by June 30, 2022, FORA to negotiate and secure successor agencies to implement all obligations under the transition plan;
 - b) Alters a requirement that the Monterey County Local Agency Formation Commission (LAFCO) provide for the orderly dissolution of FORA by specifying that this action occur once an agreement with a successor agency has been finalized;
 - c) Requires, upon dissolution of FORA, all remaining Community Facilities District (CFD) revenues to be transferred to Monterey County;
 - d) Requires Monterey County to disburse CFD revenues to each underlying land use jurisdiction on a pro rata basis, based on the source of the revenue or another equitable method that Monterey County determines is reasonable;

- e) Requires, if FORA has any remaining outstanding debt at the time of its dissolution, property tax revenues to continue to be paid to Monterey County in accordance with provisions governing the Redevelopment Agency of Fort Ord (RAFO) related to the distribution of tax increment revenue upon FORA's dissolution, as specified. Upon this retirement of debt or FORA's dissolution, whichever occurs later, any remaining property tax revenues shall be transferred to the auditor-controller of Monterey County for appropriate distribution;
 - f) Provides that, if Monterey County succeeds to any FORA financial obligation as a result of the disbursement of remaining revenues or the retirement of debt, this obligation shall not constitute a debt or liability of the county, or any other member agency, but shall be payable solely from the remaining revenues provided for purposes of that obligation in the transition plan; and,
 - g) Allows Monterey County, before disbursing revenues as provided in this bill, to deduct an amount equal to the reasonable cost of administering this bill out of remaining FORA revenues to be disbursed.
- 3) Provides that, on and after July 1, 2020, all of the following shall apply:
- a) FORA may do all of the following:
 - i) Implement the transition plan;
 - ii) Manage the CFD boundaries;
 - iii) Make appropriate revisions to the boundaries of the CFD established by the Board as replacement funding mechanisms are created by underlying land use jurisdictions pursuant to b), below. Revisions shall be made by filing an amended map of the CFD;
 - iv) Collect and disburse CFD revenues;
 - v) Collect and disburse property tax revenues;
 - vi) Disburse CFD and property tax revenues for the purposes of the habitat conservation plan, transportation, transit, and water supply pursuant to the FORA Act, as specified;
 - vii) Continue as the local reuse authority for purposes of the federal government and property transfers, including receipt of federal grant funding; and,
 - viii) Ensure that all pledges, contracts, or obligated payments are funded and appropriately carried out;
 - b) Allows any underlying land use jurisdiction to adopt a substitute funding mechanism in lieu of the CFD established by the Board, in which case the Board shall adjust the boundaries of the CFD accordingly;

- c) Requires an underlying land use jurisdiction that adopts a substitute funding mechanism pursuant to this bill to commit, either in that substitute funding mechanism or otherwise in a written agreement, to continue funding regional needs in the former Fort Ord on a pro rata basis, to FORA's satisfaction. For purposes of this requirement, "regional needs" includes, but is not limited to, habitat conservation, transportation, transit, and water supply augmentation; and,
 - d) Requires the transition plan adopted by the Board for organizational changes to be exempt from CEQA, as specified.
- 4) Finds and declares that the transition plan, adopted by FORA, will ensure that ongoing, mandated requirements continue to be funded and addressed within the region covered by FORA, which will collect and distribute revenue for the limited environmental and infrastructure mission.

EXISTING LAW:

- 1) Establishes FORA and vests it with various responsibilities for the reuse of the former Ford Ord military base, including collecting and disbursing revenue and overseeing land use decisions on the base, and provides the FORA board with specific powers to carry out these responsibilities, including the ability to override certain land use changes.
- 2) Provides the FORA Board the authority to levy assessments, reassessments, or special taxes, and issue bonds to finance public facilities, including CFD taxes pursuant to the Mello-Roos Community Facilities Act.
- 3) Allows FORA to receive property tax revenues as pass through payments from city and county RDA successor agencies related to project areas within FORA's boundaries.
- 4) Specifies that, when FORA dissolves, the property tax revenues allocated to FORA will be used to service specified debt incurred by FORA, with the remainder divided as follows: 54% to city or county RDAs, 38% to the county, and 8% to other affected tax agencies.
- 5) Authorizes FORA to operate until the Board determines that 80% of the territory that is designated for development or reuse in the Reuse Plan has been developed or reused in a manner consistent with the plan, or on June 30, 2020, whichever occurs first.
- 6) Requires FORA's Board to approve and submit a transition plan to the Monterey County LAFCO by December 30, 2020, or 18 months before FORA's sunset, whichever occurs first.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains:

- 1) Unknown, potentially significant increase in General Fund expenditures, likely in the low hundreds of thousands in 2020-21 and 2021-22. Absent the bill, a portion of the property tax revenues allocated to FORA would likely be reallocated to local school entities, beginning in 2020-21. This shift in property tax revenues from FORA to schools would result in a commensurate decrease in General Fund spending, pursuant to the Proposition 98 minimum funding guarantees. Extending FORA's sunset by two years would result in increased

General Fund expenditures over that period to offset continued diversions from the local school share of property taxes to FORA.

- 2) No reimbursable state mandate costs. The bill places new duties on the Monterey County LAFCO to implement FORA's transition plan, but LAFCO operating costs are generally split among constituent local agencies. LAFCO itself is not eligible for mandate reimbursement, and the local agencies that support LAFCO activities can recover any increased costs through planning fees.

COMMENTS:

- 1) **Background.** Established in 1917, Ford Ord closed in 1994 during the federal Base Realignment and Closure process. The base comprised an area of about 44 square miles in northwest Monterey County. Of these 28,000 acres, 4,100 acres were within the City of Seaside, 3,400 acres were within the City of Marina, and 20,000 acres were within unincorporated areas of Monterey County. The cities of Del Rey Oaks, Monterey, and Sand City abutted the base.

When the closure was announced, including a desire of the federal government to hand over the land to a single entity, local agencies attempted to form a Joint Powers Agency to accept and manage the former base lands. However, these efforts stalled. With rapidly approaching land transfers scheduled for April of 1994, SB 899 (Mello), Chapter 64, Statutes of 1994, created FORA to facilitate the transfer and reuse of the former military base. SB 899 established FORA's powers, duties, jurisdiction, governance structure, and other matters. FORA's original members included Monterey County and the cities of Carmel, Del Rey Oaks, Marina, Sand City, Monterey, Pacific Grove, Salinas, and Seaside. Each member agency was allotted one seat on the FORA Board, with the exceptions of Monterey County (three seats) and the cities of Marina and Seaside (two seats each).

SB 899 required the FORA Board to prepare, adopt, review, revise from time to time, and maintain a plan for the future use and development of the former base. This Reuse Plan was required to contain the following elements: land use, transportation, conservation, recreation, and a CIP that included the identification of base-wide facilities and local facilities. SB 899 also allowed FORA to use a number of financing mechanisms, including the creation of a CFD via the Mello-Roos Community Facilities Act. SB 899 also authorized the FORA Board to establish an RDA. (RAFO was eventually created via SB 1600 (Mello), Chapter 1169, Statutes of 1994.) SB 899 vested FORA with additional powers and duties to carry out its mission.

SB 899 provided that FORA was to become inoperative when the FORA Board determined that 80% of the Fort Ord territory designated for development or reuse in the Reuse Plan had been developed or reused, or June 30, 2014, whichever occurred first. The bill contained a repeal date of January 1, 2015. SB 899 also required the Monterey County LAFCO to "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."

FORA adopted its Final Base Reuse Plan in 1997. This plan lays out the future land uses for the 45-square mile former Army base, including areas for housing, commerce, recreation, public uses, and open space.

- 2) **First FORA Extension.** As FORA neared its original sunset, AB 1614 (Monning), Chapter 743, Statutes of 2012, was introduced. According to the Assembly Local Government Committee analysis of AB 1614, “Delay and restrictions are probably the most important and costly factors affecting reuse of the former Fort Ord. The biggest unforeseen problem that was encountered was a regional community interest lawsuit against the Army regarding its munitions removal processing, which delayed property transfers for five years. This caused the delay of early project approvals and resulted in all of the reuse projects being subjected to the economic recession of the past decade. Other factors contributing to the goals of FORA’s recovery not being met were that the scope of the munitions and explosives remediation was greater and more costly than anticipated, and that federal and state Habitat Conservation Plan (HCP) approval delays precluded progress. The current economic cycle is further exacerbating the delay. Due to all of these circumstances, FORA’s June 30, 2014, sunset date, which anticipated that 80% of the reuse recovery plan would be completed, cannot be achieved. Fort Ord reuse is currently 17-20% complete – not near the expected 80%.”

AB 1614 extended FORA’s operative date to June 30, 2020, and its repeal date to January 1, 2021. It also required the FORA Board to approve and submit a transition plan to the Monterey County LAFCO on or before December 30, 2018, and required the transition plan to assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.

FORA’s Board voted to approve a transition plan in December 2018. This transition plan assigns FORA’s assets and liabilities in the event it dissolves. Despite the upcoming sunset of FORA, only 40% to 50% of the territory designated for development has been developed or reused.

- 3) **Bill Summary and Author’s Statement.** This bill extends FORA for two additional years, alters its powers and responsibilities with a re-focus on winding down the affairs of the agency, outlines a limited set of powers for the reconstituted Board, and further details the FORA dissolution process.

According to the author, “Since its establishment in 1917, the Fort Ord Military Base has been an integral part of the Monterey Bay region’s economy. When the base was closed in 1994, the California State Legislature established FORA to complete the planning, financing, and management of the former Fort Ord facility as described in the 1997 Reuse Plan developed by FORA.

“FORA needs two additional years to allow local jurisdictions to implement adequate funding mechanisms to support projects identified in the FORA Transition Plan, as well as to ensure contracts are established for all Transition Plan Implementing Agreements. SB 189 will ensure that there will be no gap in funding for vital regional projects and obligations subject to the FORA Transition Plan once FORA is dissolved.”

This bill is sponsored by the author.

- 4) **Arguments in Support.** The City of Monterey, in support, writes, “The City of Monterey supports a temporary extension of the legislation with the understanding of defining a timed hand over of responsibilities to newly formed joint power agencies between communities and (a) successor agency...FORA was created as a multi-jurisdictional agency with the objective to jointly develop a vacated military base. The fees generated on the land were calculated to attribute individual responsibilities to our communities in order to improve the overall economic and social health of our region. The County, the cities of Marina and Seaside have already accomplished a great deal with the help and support of the other jurisdictions including CSU Monterey Bay – it is now time to allow Monterey and Del Rey Oaks to take their turns.”

The United Veterans Council of Monterey County, in support, writes, “We believe that the extension of FORA as proposed in SB 189 is critical to the successful and complete transition of historic Ft. Ord to civilian uses. There are many programs and projects that are not yet finished but are required under provisions of the Base Reuse Plan. Among these are complete funding of the Habitat Management Plan, completion of the approved Ft. Ord Trail and Greenway Plan, transportation corridors which are mandated by the FORA EIR as well as numerous agreements relative to the smooth transition to local land use jurisdictions. Most of these projects and agreements will require funding mechanisms which are not yet established and may not be in place prior to June 2020. The CFD operating under FORA’s establishing documents is the only real source of this funding. More time is required for the various jurisdictions to complete their individual funding strategies.

“The proposed reduction in size and scope proposed under SB 189 significantly lessens the power and authority of FORA while leaving in place the necessary funding source for equitable transition. Land use jurisdictions will have control over their own lands with some funding provided from FORA. The abrupt end currently foreseen without SB 189 will create local chaos while the County and cities scramble to meet their responsibilities without adequate funding in place. That neither enhances the process nor upholds the spirit of the legislation that created FORA. We urge you to take the prudent course of action to allow the time required to carefully complete financing arrangements...This action will provide certainty during a time when thoughtfulness and careful consideration are what is required.”

- 5) **Arguments in Opposition.** The City of Marina, in opposition, writes, “FORA was created in 1994 to address the regional needs created by the closure of the former Fort Ord. The creation of CSU Monterey Bay, the removal of munitions, dedication of over 80% of the former Fort Ord property into open space and habitat management areas, and the construction of over \$60 million dollars of primarily regional road projects have been great successes of the FORA Board and the Base Reuse Plan.

“Now is the time for the Board to step aside and allow Marina and Seaside as well as the other Fort Ord land jurisdictions cities of Del Rey Oaks, Monterey and Monterey County the ability to fully move forward to address these remaining critical problems of infrastructure, blight, affordable housing, job creation and economic development. These remaining challenges are best solved by our local elected officials on the front lines working with our local businesses and citizens, still working cooperatively with our regional neighbors but able to set priorities that work best for us locally and with the ability now to use all the financial and land tools provided to us by the Legislature.

“FORA has adopted the required transition plan to prepare for its dissolution and the member agencies are proceeding with implementation of the transition plan. The extension of FORA to implement the transition plan is unnecessary. The underlying land use jurisdictions are prepared to work together during the next year to address issues related to the funding of regional needs. If necessary, the underlying land use jurisdictions can create joint powers authorities to address these needs. Thus, the continuation of a state created regional entity with extensive powers only serves to extend an additional layer of bureaucracy over the continued implementation of the base reuse.”

REGISTERED SUPPORT / OPPOSITION:

Support

California State University, Monterey Bay President Eduardo Ochoa
City of Monterey
County of Monterey (if amended)
The United Veterans Council of Monterey County

Opposition

City of Marina
City of Seaside (prior version)
League of Women Voters of Monterey County (prior version)
Monterey County Supervisor Jane Parker (prior version)

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958