

Veteran internment

Sperling, Nichole [Nichole.Sperling@va.gov]

Sent: Sunday, June 26, 2016 11:15 AM

To: FORA Board

Hello, I'm a social worker at the San Jose Clinic on Great Oaks Blvd. I have a veteran, Mr. Beecher whose wife, Joan Beecher submitted an application for internment at Fort Ord. Veteran is on hospice now w/ maybe weeks to live. She is overwhelmed and so, on her behalf, I am inquiring about her application and what steps she needs to take next, if any, to have the veterans ashes interned at Fort Ord. Can you please contact me as I am trying to help this family in their difficult times. Thank you! Greatly appreciate it!

Nichole Sperling, MSW

408-363-3000 x 72075

Today's meeting, agenda item 9c -- MBI opinion

Molly Erickson [erickson@stamplaw.us]

Sent: Friday, June 10, 2016 2:23 PM

To: FORA Board; Michael Houlemard; Maria Buell; Mary Israel

Attachments: 16.06.10.KFOW.ltr.to.FORA.~1.pdf (674 KB)

FORA Board:

Attached please find a letter for your prompt attention. The letter is also being hand delivered to you. Thank you.

Mr. Houlemard, Ms. Buell, and Ms. Israel -- please distribute this letter to the Board prior to consideration of item 9c, the MBI opinion. Thank you.

Regards,

Molly Erickson

STAMP ERICKSON

479 Pacific Street, Suite One

Monterey, CA 93940

tel: 831-373-1214, x14

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214
F: (831) 373-0242

June 10, 2016

Via E-mail and Hand Delivery

Frank O'Connell, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Re: Objection to acceptance of Michael Baker Intl. opinion (agenda item 9c)

Dear Chair O'Connell and members of the FORA Board of Directors:

Keep Fort Ord Wild objects to the acceptance of the Michael Baker International (MBI) opinion ("opinion") regarding categories I and II of the Reassessment Report, for all the reasons stated in this letter and by KFOW and others. We urge the FORA Board to carefully review this letter before taking any action on the item. The FORA Board controls the time frame, and has the discretion to continue this item to a future meeting to allow more time to review the issues and the objections. If FORA chooses to act now instead of taking more time, FORA does so at its own risk.

Keep Fort Ord Wild does not have sufficient information to provide complete comments on the item. The staff report omits the initial study, the greenhouse gas analysis, the air quality analysis, and the Habitat Management Plan assessment, and the legal opinion prepared pursuant to the FORA contract with Michael Baker International. The opinion fails to adequately consider, quantify or disclose the issues of greenhouse gas, air quality and habitat impacts. Alan Waltner specifically recommended that an initial study be prepared.

The project that is proposed is not clear. The Board of Directors and KFOW need to see the actual typographic changes and maps changes so the decision makers and KFOW understand what the changes would be. If there are changes to the text and the maps that are part of the project to be considered, those materials must be available for review by the decision makers and KFOW prior to approval. Absent that critical information, KFOW is unable to make complete comments.

The changes pursuant to Category I have not been presented to the current decision makers on this item. The current Board makeup is materially different from the Board members in 2012 when the Reassessment Report was done and in 2013 when the Report was considered. The FORA Board specifically directed that the Category I changes, including all proposed changes to text and maps, are to be brought before the Board for Board approval (May 10, 2013 Board minutes, item 7b; March 22, 2013 Board minutes, item 6a). That has not been done. FORA staff has failed to tell the

current Board about those unanimous Board directions with which FORA staff has failed to comply.

The same problems exist with the Category II changes – neither the decision makers nor KFOW and the public have seen the changes proposed. KFOW is unable to make complete comments and the Board cannot make an informed decision unless and until the project has been presented to the Board – not as paraphrased material and not in general and truncated terms and language, but completely and exactly as proposed to amend the Reuse Plan. The MBI opinion does not list all the consistency determinations that MBI claims will be used to amend the Reuse Plan, and FORA does not list them either. The evidence is that there is no complete list of the projects and consistency determinations that MBI has reviewed and analyzed in making its opinions, and which MBI purports to include in its opinion to the FORA Board. The MBI opinion does not refer to the plans, projects, or consistency determinations with adequate specificity. The MBI opinion is materially flawed with errors and omissions. The dates provided in the MBI opinion are not the dates of the consistency determinations, where such determinations have been made, so KFOW cannot check FORA Board records for those dates. The opinion fails to identify which plans and projects have obtained a consistency determination from FORA, and which have not.

The City of Monterey General Plan and the County of Monterey General Plan have not been determined by FORA to be consistent with the Reuse Plan, although that is required by the Master Resolution and the FORA/Sierra Club settlement agreement. The MBI opinion asserts that FORA has not analyzed the County General Plan for consistency. The MBI opinion omits the material fact that the FORA Board refused to certify the County General Plan. Thus, the Category II changes should not include those two plans. No legislative act is final unless the act is certified pursuant to the Master Resolution requirements. (Master Resolution, sec. 8.01.020.f.)

These problems are fatal. The Board should not amend the Reuse Plan without knowing exactly what changes and amendments are being proposed, which should be attached to the Board resolution. The use of the MBI opinion is unknown and not identified and not disclosed to KFOW, despite our many efforts to stay informed and participate in the FORA process. The Board should not and cannot amend the Reuse Plan through the back door, such as possibly proposed here -- by merely accepting a third party opinion without the exercise of independent judgment.

Keep Fort Ord Wild made a California Public Records Act request seeking some of the information that underlies the FORA consultant Michael Baker International report "Determination Opinion of Categories I and II" dated May 3, 2016, and by FORA in recommending the FORA Board's approval of that opinion. In that report, numerous references are made to consistency determinations but dates and resolution numbers are not provided for the consistency determinations and the determinations are not otherwise easily accessible to the public. Also in that report, numerous references are

made to CEQA documents. None of this is supported or disclosed to the public or to your Board.

Keep Fort Ord Wild asked to inspect “1. The consistency determinations relied upon by Fort Ord Reuse Authority consultant Michael Baker International in writing its report “Determination Opinion of Categories I and II” dated May 3, 2016, and by FORA staff in recommending that the FORA Board approve that opinion.” and “2. The CEQA documents relied upon by FORA consultant Michael Baker International in writing its report “Determination Opinion of Categories I and II” dated May 3, 2016, and by FORA staff in recommending the FORA Board’s approval of that opinion.” and “3. Lists of Fort Ord Reuse Authority consistency determinations.” (May 17, 2016 letter.) KFOW pointed out that “The records should be relatively simple to find because the Michael Baker Report squarely addressed the CEQA documents and consistency determinations.” (*Ibid.*)

In response, FORA did not produce any records showing that what consistency determinations FORA had provided for the consultant, and FORA merely produced a link to a list of consistency determinations in the scoping report that was only 5 pages long and ended in 2007. (FORA response, May 26, 2016.) FORA evidently does not have a complete list of the consistency determinations, and thus it is unclear to KFOW and the decision makers what consistency determinations are included in the Category II changes. Absent that information, KFOW cannot make adequate informed comment and the decision makers cannot make an informed decision.

We ask for Fort Ord Reuse Authority's help in identifying the records we seek, but got none. KFOW also emphasized that “Time is of the essence. KFOW asks to have access to the records prior to the next FORA Board Meeting when the Michael Baker International report is discussed.” That critical information has not been provided and FORA has delayed producing it or has destroyed the records sought.

The project before you has been inadequately defined. A fixed and stable project description is critical. It must be provided as part of the staff report and for adequate review by KFOW, other members of the public, and decision makers before the Board takes action on this item and/or purports to amend the Reuse Plan.

The impacts of redesignating land on Reuse Plan maps as “Veterans Cemetery” have not been analyzed adequately. A veterans’ cemetery location is not shown in the 1996 public draft version of the Fort Ord Reuse Plan, nor in the Fort Ord Reuse Plan EIR. A “VC” and cemetery designation was included on the 2001 Fort Ord Reuse Plan Land Use Concept map but that change was done absent any formal approval of the Board to amend the Reuse Plan and absent adequate and necessary CEQA review. The CEQA analysis to date of the entire cemetery is incomplete. Because that analysis is not final, FORA cannot legally change the designation, and the proposed change to show the cemetery on the Reuse Plan requires CEQA review and an appropriate public

process. This is not to say that KFOW opposes a cemetery. It is simply to say that the cemetery cannot legally be shown on the Reuse Plan map and the Reuse Plan cannot be changed to allow a cemetery until adequate CEQA review has been performed on the impacts of the entire cemetery at buildout. That analysis has not yet happened. The Reassessment Report admitted (at p 3-117) that “The public draft BRP Land Use Concept maps (May 1996) do not indicate a veterans’ cemetery or a land use designation specifically for cemeteries. The cemetery site was . . . not included on the BRP Land Use Concept map adopted on June 13, 1997.” The Reassessment Report said this: “The Seaside General Plan designates the cemetery site as Parks and Open Space (the same designation as the City’s existing cemetery), which Seaside and the FORA Board found consistent with the BRP in 2004 (refer to Pages 4-180 and 4-181, and Figures 5 and 6 in the Scoping Report). Within Monterey County, the BRP and the Fort Ord Master Plan designate the veterans’ cemetery location as Low Density Residential.” The inconsistency between those designations and the redesignation as a cemetery has not been determined and FORA has not determined consistency for the Cemetery in Seaside or the County. Again, this is not opposition to the cemetery. It is a request for legal and adequate analysis and required planning efforts. The issues are transparency and law.

Amending the Reuse Plan is a project, but there has not been a public hearing noticed according to FORA’s procedures for today’s meeting. We know that others are interested in this issue, as shown by the high interest in the County consistency determination for the County 2010 General Plan and Fort Ord Master Plan. There is inadequate notice on the agenda and the staff report for FORA Board to act either on CEQA exemption or to amend the Reuse Plan. No CEQA exemption is listed on the agenda for today’s item. For that reason, the Board cannot act today to approve an exemption pursuant to CEQA.

It is unclear what exemption is being proposed by MBI. The MBI opinion claims that the Category I and II changes are one of the following: are not “ ‘projects’ under CEQA that warrant detailed environmental review”; and are “actions that have been previously reviewed by other agencies.” Those claims are neither accurate nor adequate. We provide here a few of the reasons and examples the problems.

Merely because parts of the land swap MOU have been performed does not mean that environmental review cannot and should not be done or that the impacts should not be mitigated. The impacts have not been identified or disclosed. The land swap conditions may be considered mitigations that have not been adopted and implemented. It is insufficient to say merely that the acts have taken place and therefore the change to the Reuse Plan to reflect those acts are not a project. CEQA analysis can and should be done. The land swap MOU incorporated limitations and conditions that have not been implemented (e.g., Zander report limitation/prohibition on residential use in Parker Flats) and those conditions and limitations are part of the land swap agreement. FORA is taking an inconsistent position – that the portions of the

swap that were done get a free pass and should be incorporated in the reuse Plan, and the portions of the MOU that were not done can be ignored and not incorporated into the Reuse Plan. That selective approach violates CEQA and other planning and zoning laws and is inconsistent with FORA's legal obligations. Deferring the analysis (for example, to Seaside's unfinished and uncertified EIR, see p. 6 of the opinion) is not appropriate or legal.

The MBI opinions and the FORA staff report have failed to disclose the fact that at least several of the consistency determinations were made by the FORA Board during the time that the illegal amendments to Master Resolution Chapter 8 were in place. In March 2010, FORA illegally and improperly amended the chapter 8 requirements to replace many of the "shall" to "may," thus making permissive what the settlement agreement required to be mandatory. When the illegal changes were brought to light by KFOR and the Sierra Club in 2013, the Board reversed the illegal changes. However, FORA did not review the actions taken under the illegal language. Thus, FORA does not know for certain that those determinations were proper or supported. These determinations included the County housing element in 2010, the Seaside housing element in 2011, the Seaside Local Coastal Program in March 2013, and at least two projects, and possibly more. KFOR cannot identify the others with certainty because FORA has been unable to provide a complete list of consistency determinations in response to KFOR's public records request described earlier in this letter.

FORA has failed to ensure that the policies applicable to the County that should also be applicable to Del Rey Oaks (DRO) and the City of Monterey have not been adopted by Del Rey Oaks and the City. Multiple important and material policies applicable to the County should have been made applicable to DRO and the City, including the oak woodlands protection policies, but were not communicated to DRO and the City. No past FORA consistency determinations as to DRO and City plans and projects should be considered to effect changes in the Reuse Plan due to this material failure.

Michael Baker International has a conflict of interest because the same consultant is preparing the EIR for the Monterey Downs project, a project which depends on some of the policies and plans that the opinion proposes for inclusions in the Reuse Plan by amendment. This conflict of interest should be thoroughly investigated and disclosed before proceeding with this opinion.

The matters addressed in this agenda item and opinion letter are made more complex and confusing, and further violate CEQA, Planning and Zoning laws, and other statutes and regulations, because FORA has failed to adequately monitor and enforce the mitigations required pursuant to the Reuse Plan and its EIR. Today's proposed action appears to be part of a pattern and practice by FORA with regard to those

Board of Directors
Fort Ord Reuse Authority
June 10, 2016
Page 6

failures by FORA. FORA has an independent duty to enforce the mitigations, independent of any FORA consistency determinations.

Amendments to the Reuse Plan must be done in a formal amendment process that is properly noticed and described. That process was not followed for this item.

KFOW urges the Board to refuse to accept the opinion, or at the very least continue the item to a future date so the errors and omissions can be corrected first and we and the Board can review the necessary information. I hope to be present in person to present this letter, but due to press of other matter I may be unable to make it to the Board meeting in time. Thank you.

Very truly yours,

STAMP | ERICKSON



Molly Erickson