

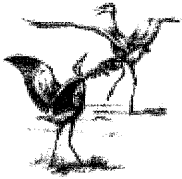
Rosalyn Charles

From: Larry Silver [larrysilver@earthlink.net]
Sent: Monday, March 04, 2013 1:42 PM
To: FORA Board; Michael Houlemard
Cc: Haines Jane; swaltz@csumb.edu
Subject: Letter re: BRP Modifications and FORA's 141 Changes to Chapter 8 of Master Resolution
Attachments: FORA_Houlemard_LETTER.pdf

Please see attached letter.

If you cannot view this document, please contact me at the number below.

Larry Silver
California Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942
510-237-6598
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larrysilver@earthlink.net



CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



Laurens H. Silver, Esq.
P.O. Box 667
Mill Valley, CA 94942
Phone: 415-515-5688 Facsimile: 510-237-6598
larrysilver@earthlink.net

March 4, 2013

Fort Ord Reuse Authority (FORA) Board of Directors
Michael A. Houlemard, Executive Officer
920 2nd Avenue, Ste. A
Marina, CA 93933

email to board@fora.org and
michael@fora.org

Re: Republishing Base Reuse Plan (BRP) Land Use Concept Map Based on Prior Approved Consistency Findings Without California Environmental Quality Act (CEQA) Review. Also, FORA's Changes to Chapter 8 of the Master Resolution

Dear FORA Directors and Mr. Houlemard:

On behalf of the Ventana Chapter of the Sierra Club, I would like to call your attention to two matters. The first is your Board's March 22 consideration of "BRP modifications that do not require CEQA actions." The second matter is FORA's 141 changes to Chapter 8 of the Master Resolution.

Republishing BRP Land Use Concept Map Based on Prior Approved Consistency Findings Without CEQA Review

The staff report for your February 15 Post-Reassessment Policy Options Consideration referred to "BRP modifications that do not require CEQA actions" such as "BRP Land Use Concept Map republishing based on prior approved FORA Board consistency determinations."

The referenced BRP modifications *do* require CEQA review. As explained in the February 19, 2013 letter from Jane Haines to the FORA Administrative Committee, the consistency findings were made using the wrong standard of review and resulted in FORA finding various jurisdictions' general plans to be in substantial conformance with 171 BRP programs which have not been implemented, according to the 2012 Final Reassessment Report. A decision to perpetuate the erroneous determinations by republishing the BRP Land Use Concept Map based on the prior approved consistency findings is a discretionary decision that clearly could affect the environment. Thus, CEQA review is necessary.

FORA's 141 Changes to Chapter 8 of the Master Resolution

The Chapter learned on February 27 that on February 26 FORA had issued a press release announcing "the Authority Counsel recommendation to reverse this single [sic] word change to its original form will be presented to the FORA Board for approval at their March 15, 2013 Board meeting." The mention of a "single word change" refers to Sierra Club's February 14 letter strongly objecting to FORA changing the word "shall" to "may" for consistency determinations, in violation of the 1998 Sierra Club-FORA settlement agreement.

However the press release is misleading because on February 25, one day prior to its issuance, Jane Haines emailed FORA a public records request circling 141 changes FORA had made in Chapter 8 without Sierra Club's knowledge. Thus, at the time FORA issued its press release, it knew that Sierra Club was concerned about 141 changes, rather than a "single" change (most, if not all, of the 141 changes were made in breach of the 1998 Sierra Club FORA settlement agreement).

The 1998 Sierra Club-FORA settlement agreement governs any changes to Chapter 8 as follows:

"FORA agrees that in the event FORA considers any amendment to Chapter 8 of the Master Resolution, FORA shall perform an environmental assessment consistent with the provisions of the California Environmental Quality Act ('CEQA') and the rules and regulations promulgated thereunder prior to consideration of approval of any such amendment. In addition, FORA shall provide the SIERRA CLUB and its attorney of record at least 30 days notice of the preparation of such environmental assessment, which shall include an opportunity to comment on such assessment, and at least 15 days notice of any hearing on any proposed amendment of Chapter 8. The parties further agree that each amendment to Chapter 8 will be reviewed under CEQA as a new project not be subject to the environmental review limitations of Public Resources Code Section 21166."

In other words, such amendments of Chapter 8 require compliance with CEQA and appropriate notice to the Club. However, until Sierra Club receives FORA's response to the February 25 public records request, it will not know whether all 141 changes were made in violation of the settlement agreement, or whether less than 141 were. However, it is clear that a great deal more than a "single" change were made, a fact which FORA knew on February 26, when it issued the misleading press release.

Summary

On behalf of Sierra Club, I request CEQA review for republishing the BRP Land Use Concept Map based on prior approved consistency findings. I will also request FORA to restore the original language of the entire settlement agreement to Chapter 8 (other than any changes which Sierra Club has previously agreed to). After the public records are received that Ms. Haines requested, the Chapter will further communicate with you about these concerns. It is the Chapter's hope that these matters can be resolved amicably, without litigation, but at the present time, I have advised the Chapter that the Authority has breached the 1998 settlement agreement and that legal action is warranted if the changes not agreed to by Sierra Club are not immediately revoked.

This letter notifies you that this office is now Sierra Club's attorney of record. Any written communications to this office should be concurrently emailed to Jane Haines at envirlaw@mbay.net.

Larry Silver, Esq.
CALIFORNIA ENVIRONMENTAL LAW PROJECT



Counsel to Ventana Chapter, Sierra Club

Rosalyn Charles

From: Michael Houlemard
Sent: Monday, March 04, 2013 4:29 PM
To: Larry Silver; FORA Board
Cc: Haines Jane; swaltz@csumb.edu
Subject: RE: Letter re: BRP Modifications and FORA's 141 Changes to Chapter 8 of Master Resolution

Mr. Silver,

Thank you for your letter and your willingness to work through these issues. I look forward to addressing these Chapter 8 changes.

Michael Houlemard

From: Larry Silver [mailto:larrysilver@earthlink.net]
Sent: Monday, March 04, 2013 1:42 PM
To: FORA Board; Michael Houlemard
Cc: Haines Jane; swaltz@csumb.edu
Subject: Letter re: BRP Modifications and FORA's 141 Changes to Chapter 8 of Master Resolution

Please see attached letter.

If you cannot view this document, please contact me at the number below.

Larry Silver
California Environmental Law Project
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Mill Valley, CA 94942
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Mobile 415-515-5688
larrysilver@earthlink.net



Rosalyn Charles

From: Matthew Michael Parker [mparke05@calpoly.edu]
Sent: Sunday, March 10, 2013 10:32 PM
To: FORA Board
Subject: Fort Ord Reuse Senior Project

Good evening,

My name is Matthew Parker and I am a 4th year Landscape Architecture student at Cal Poly State University San Luis Obispo. I am currently in the process of selecting a site for my senior project. My interests are in revitalization of neglected areas and recently I learned about your efforts to reuse areas of Fort Ord. I am very interested in possibly using Fort Ord for my senior project and would love to get in touch with your staff to see what you had planned and if there is potential for my involvement in the future. Right now I am in the preliminary stages of selecting my site and if I select this location I would not be effectively working on it until the winter of 2014. But in the meantime I'd love to get some feedback from your office regarding my proposal.

Please feel free to contact me via e-mail or call me at 818-730-8038.

Thank you,

Matthew Parker

Rosalyn Charles

From: Haines Jane [envirlaw@mbay.net]
Sent: Monday, March 11, 2013 8:20 AM
To: Michael Houlemard
Cc: Crissy Soares; Jerry Bowden; Lena Spilman; Silver Larry; FORA Board; Mayor Edelen; Scott Waltz
Subject: Re: 030713.Master Res Ch 8 031210 amendments removed, add appeal fee.doc

Michael,

I am very troubled by the Board packet for March 15 as it pertains to Chapter 8 of the Master Resolution. The packet does not inform the reader that Sierra Club has not yet agreed to the important jobs/housing ratio amendments (Sections 8.02.020(t) and 8.02.030(a)(8)). It refers only to Sierra Club's February 14 letter, but not to Sierra Club's attorney's subsequent letter written after our discovery of 140 additional changes (we have now identified 24 more that were made prior to 2010, bringing the total to over 160 changes, each of them comprising a breach of the settlement agreement). The staff report leaves the impression that the amendments were made in order to "clarify" language, yet I have seen no instance in which the original language was less clear than the language replacing it. Rather, the changes inserted ambiguity into a number of previously-clear passages and changed "shall" to "may" in the settlement agreement's most important provision.

After learning from Lena on March 6 that FORA has no record of Sierra Club agreeing to the jobs/housing ratio amendments, I contacted several former Sierra Club officers to learn what they recall about Sierra Club's 2004 position with respect to Sections 8.02.020(t) and 8.02.030(a)(8). As I informed you last week, we will probably need to wait until the former Sierra Club officer who has Sierra Club's 2003-04 minutes returns from her vacation, which will be on March 14, before I can inform you whether or not Sierra Club agreed to Sections 8.02.020(t) and 8.02.030(a)(8).

The Board was not informed in 2010 that it was breaching a settlement agreement, and the Board packet for March 15 also does not inform the Board of pertinent information.

Jane Haines

On Mar 8, 2013, at 2:41 PM, Haines Jane <envirlaw@mbay.net> wrote:

Michael,

I have no idea what you plan to say in the package that goes to the Board. Thus, I can't concur in anything other than that the version of Chapter 8 that Crissy last sent me looks correct to me, assuming that the Board is informed that the highlighted portions of Section 8.02.020(t) and 8.02.030(a)(8) are still in issue and that the highlighted portion of Section 8.01.050(a) is not in issue because it was agreed to by both Sierra Club and the FORA Board in July, 2012.

Jane Haines

On Mar 8, 2013, at 2:12 PM, Michael Houlemard <michael@fora.org> wrote:

I have been monitoring these exchanges and it appears we now have "general" concurrence in a package to go to the Board for their consideration.

Michael

Sent from my iPad

On Mar 8, 2013, at 1:49 PM, "Haines Jane" <envirlaw@mbay.net> wrote:

Crissy, I see no formatting problems in the pdf version you just sen me. I use Mac computers and apparently you use a PC; that mismatch apparently caused the formatting irregularities. As long as the version you just sent me goes to the Board in the pdf format, I think that will be fine. Jane

On Mar 8, 2013, at 11:52 AM, Crissy Soares <Crissy@fora.org> wrote:

I think there might be a problem with the way your computer is opening the document. The formatting issues you have identified are not on my version; the two noted areas are highlighted in yellow. I have attached a pdf version to see if it opens the way it ought to. Please let me know.

Crissy Soares

Grants and Contracts Coordinator

910 2nd Avenue Ste. A

Marina, CA 93933

831.883.3672

www.fora.org

<image001.jpg>

From: Haines Jane [<mailto:envirlaw@mbay.net>]

Sent: Friday, March 08, 2013 11:45 AM

To: Crissy Soares

Cc: Michael Houlemard; Jerry Bowden; Lena Spilman

Subject: Re: 030713.Master Res Ch 8 031210 amendments removed, add appeal fee.doc

On Mar 8, 2013, at 10:53 AM, Crissy Soares <Crissy@fora.org> wrote:

Ms. Haines,

Per your email to Jerry this morning, I have attached Master Resolution Chapter 8 reflecting the additional revisions you pointed out.

Please note that in Section 8.03.080 (last section, last page), you circled the capital **A** of the last "Article" indicating it should be a lower case **a**. "Article" appears three times in this section. In the original 1998 version, all three "article"s began with lower case **a**'s - so I changed all three to match the original instead of just the last one. I agree with the way you handled this.

You will see that I have highlighted 8.02.020(t) and 8.02.030(a)(8) pending further review by the Sierra Club. They are not highlighted in the copy I received. It is important to show clearly that these sections are still at issue.

Please review the attached and confirm that it has been corrected per your instruction. There are many formatting errors. I circled them in red in attachment "C." Please return this for my review after these matters are corrected.

Thank you,
Crissy Maras

<030713.Master Res Ch 8 031210 amendments removed, add appeal
fee.doc>

<030713.Master Res Ch 8 031210 amendments removed, add appeal
fee.pdf>

Rosalyn Charles

From: Olga Mikheeva [mikheeva@stamplaw.us]
Sent: Thursday, March 14, 2013 4:16 PM
To: FORA Board
Cc: Molly Erickson; Michael Stamp
Subject: March 15, 2013 agenda item 8b - Chapter 8 of the Master Resolution
Attachments: 13.03.14.FORA.ltr.to.re.Chapter.8.changes.pdf

Chair Edelen and Members of the Board of Directors:

Attached please find a letter from Keep Fort Ord Wild for tomorrow's meeting.

Thank you.

Olga Mikheeva
Attorney
Law Offices of Michael W. Stamp
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214
fax: 831-373-0242

LAW OFFICES OF
MICHAEL W. STAMP

Michael W. Stamp
Molly Erickson
Olga Mikheeva
Jennifer McNary

479 Pacific Street, Suite One
Monterey, California 93940

Telephone (831) 373-1214
Facsimile (831) 373-0242

March 14, 2013

Jerry Edelen, Board Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Re: March 15, 2013 agenda item 8b – Chapter 8 of the Master Resolution

Chair Edelen and Members of the Board of Directors:

This Office represents Keep Fort Ord Wild, which urges you to amend the Master Resolution to undo the changes made in March 2010.

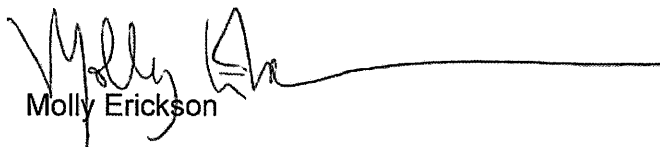
The March 2010 changes to Chapter 8 were made without notice to the Sierra Club and without the knowledge and approval of the Sierra Club. The March 2010 changes violate the FORA/Sierra Club settlement agreement.

If FORA's right and duty to amend the Master Resolution overrides the claims of Brian Boudreau and Monterey Downs LLC on this point. Unless a project has met specific requirements or milestones, the project does not have a vested right to any language in a plan, zoning ordinance, or resolution. Monterey Downs LLC has not met any of the specific requirements or milestones, and does not have any vested rights as to language in the Master Resolution. Monterey Downs LLC does not have vested rights under common law (the *Avco* rule), does not have a development agreement with FORA, and does not have a vesting tentative map. To the extent that Monterey Downs LLC might argue that it was misled, FORA would not be liable. (See, e.g., Gov. Code, § 818.8 [public entity not liable for misrepresentation, regardless of whether misrepresentation is negligent or intentional]).

Please amend the Master Resolution to undo the March 2010 changes. Thank you.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP


Molly Erickson

Rosalyn Charles

From: Haines Jane [envirlaw@mbay.net]
Sent: Friday, March 15, 2013 7:56 AM
To: FORA Board; Michael Houlemard
Cc: Scott Waltz
Subject: FORA 3/15/13 Agenda item 2e - Performance evaluation of Authority Counsel
Attachments: Item 2e.pdf; ATT00001.htm

Dear FORA Directors:

The Sierra Club hopes that your Board will immediately relieve the Authority Counsel from any position of influence at FORA for the reasons described in the attached letter.

Sincerely,
Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

March 15, 2013

email to board@fora.org
and michael@fora.org

Fort Ord Reuse Authority (FORA) Board of Directors
Michael A. Houlemard, Executive Officer
920 2nd Avenue, Ste. A
Marina, CA 93933

Re: 3/15/13 Agenda item 2e - Performance Evaluation of Authority Counsel

Dear FORA Directors:

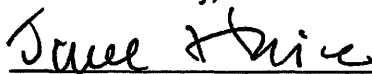
It is a Sierra Club goal to work toward making existing institutions more responsive and accountable to community and environmental needs. In keeping with that goal, the Ventana Chapter of the Sierra Club respectfully requests that your Board immediately relieve the current Authority Counsel from any position of influence at FORA.

The Authority Counsel's 2010 and 2013 explanations about why extensive changes were made to Chapter 8 of FORA's Master Resolution fail to disclose to your Board and to the public that the changes were made in violation of the 1998 FORA-Sierra Club settlement agreement. Such lack of disclosure is readily seen on page 91 of your 3/15/2013 Board Packet and in FORA Resolution #10-06 which was attached to Sierra Club's 2/14/2013 letter to the FORA Board of Directors.

Additionally, the Authority Counsel has allowed FORA's consistency determinations made on 1/18/2002 pertaining Monterey County's general plan and on 9/14/2007 pertaining to Marina's general plan, and other legislative consistency determinations, to be made based on the inapplicable standards in Title 7 of the California Government Code, rather than the applicable standards in Title 7.85. Such application of erroneous standards for determining consistency has resulted in over 150 programs of the 1997 Base Reuse Plan still being not implemented, including many programs which FORA adopted in 1997 to protect the natural environment at Fort Ord.

The FORA Board will be neither responsive nor accountable to community and environmental needs if it allows the Authority Counsel to remain in a position of influence at FORA. We request your immediate action to prevent further actions of the types described above.

Yours sincerely,



Jane Haines, member
Sierra Club FORA subcommittee



Scott Waltz, member
Sierra Club FORA subcommittee

Rosalyn Charles

From: Haines Jane [envirlaw@mbay.net]
Sent: Friday, March 15, 2013 7:57 AM
To: FORA Board; Michael Houlemard
Cc: Scott Waltz
Subject: FORA 3/15/13 Agenda item 8a - Consistency Determination City of Seaside Local Coastal Program
Attachments: 8a.pdf; ATT00001.htm

Dear FORA Directors:

The attached letter explains that Sierra Club supports Seaside's application for a consistency determination provided that one sentence is changed in your resolution.

Sincerely,
Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 95021

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

March 15, 2013

email to board@fora.org
and michael@fora.org

Fort Ord Reuse Authority (FORA) Board of Directors
Michael A. Houlemard, Executive Officer
920 2nd Avenue, Ste. A
Marina, CA 93933

Re: 3/15/13 Agenda item 8a - Consistency Determination City of Seaside Local Coastal Program

Dear FORA Directors:

Sierra Club supports Seaside's application for the consistency determination described in Agenda item 8a **provided that** the final sentence in paragraph 4 on page 77 of your Board packet is changed to state: "The Board intends that this finding of consistency with the Base Reuse Plan allow the BRP Land Use Concept Ultimate Development Figure 3.3-1 to be amended accordingly."

The result of modifying the current language on page 77 using the above language would allow your Board to make the consistency determination without violating the rule that a finding must be supported by evidence in the record. Sierra Club can find no evidence in the record to support the current wording which states: "As with previous consistency determinations, this finding is subsumed into, and modifies, the BRP Land Use Concept Ultimate Development Figure 3.3-1." We have searched for, but have not found, any previous consistency determination which states an intention to modify the BRP Land Use Concept Ultimate Development Figure 3.3-1.

Moreover, on Tuesday morning of this week, Sierra Club requested FORA to identify at least one previous consistency finding which states an intention to modify the BRP Land Use Concept Ultimate Development Figure 3.3-1. FORA has not responded.

By amending that one sentence, your Board will achieve Seaside's objective of obtaining a consistency determination. It will also achieve the objective of stating an intention to modify Figure 3.3-1. Additionally, it will avoid a legal challenge that could result from making a finding that is not supported by evidence in the record.

Yours sincerely,

Jane Haines, member
Sierra Club FORA Subcommittee

Scott Waltz, member
Sierra Club FORA Subcommittee

Rosalyn Charles

From: Haines Jane [envirlaw@mbay.net]
Sent: Friday, March 15, 2013 7:58 AM
To: FORA Board; Michael Houlemard
Cc: Scott Waltz
Subject: FORA 3/15/13 Agenda item 8B - Amend the FORA Master Resolution
Attachments: Item 8b.pdf; ATT00001.htm

Dear FORA Directors:

The attached letter explains that the language of Chapter 8 of the Master Resolution which appears on pages 92-109 of the 3/15/13 Board packet, accurately replicates the language that Sierra Club and FORA previously agreed to *except* for the highlighted sections on pages 105 and 106.

Sincerely,
Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

March 15, 2013

email to board@fora.org
and michael@fora.org

Fort Ord Reuse Authority (FORA) Board of Directors
Michael A. Houlemard, Executive Officer
920 2nd Avenue, Ste. A
Marina, CA 93933

Re: 3/15/13 Agenda item 8b - Amend the FORA Master Resolution

Dear FORA Directors:

Sierra Club will be satisfied by FORA's amendment of Chapter 8 as set forth on pages 92-109 of the 3/15/2013 Board packet *provided that* the highlighted portions on pages 105 and 106 are excluded from Chapter 8. (The highlighted portions are Sections 8.02.020(t) and 8.02.030(a)(8), which FORA adopted on 4/16/2004.)

On March 6, FORA notified us that it has no evidence that Sierra Club agreed to those provisions. Subsequently, Sierra Club reviewed the minutes of Sierra Club meetings in 2003 and 2004. We too have found no evidence that Sierra Club agreed.

The evidence that Sierra Club found in its 2003-2004 minutes is inconclusive. Some entries in the minutes indicate that if Sierra Club had taken a position, it might have opposed those provisions. On the other hand, there are other indications that Sierra Club might have supported them. What is clear is that as of this point in time, there is no definitive evidence showing either Sierra Club's agreement or opposition. It is also clear that the 1998 Sierra Club-FORA settlement agreement was breached if FORA added the sections without complying with terms of the agreement.

The 1998 FORA-Sierra Club settlement agreement did not include Section 8.02.020(t) and 8.02.030(a)(8) in Chapter 8. Thus, in light of the absence of any evidence one way or the other, Sierra Club declines to agree to the addition of Sections 8.02.020(t) and 8.02.030(a)(8). If evidence should surface in the future showing that Sierra Club did agree to those provisions, we will of course agree to having those sections added to Chapter 8.

Yours sincerely,

Jane Haines, member
Sierra Club FORA subcommittee

Scott Waltz, member
Sierra Club FORA subcommittee

Rosalyn Charles

From: Jennifer McNary [mcnary@stamplaw.us]
Sent: Friday, March 15, 2013 3:09 PM
To: FORA Board
Cc: Molly Erickson
Subject: March 15, 2013 agenda item 7e - Category 1 Changes as identified in the Reassessment Report
Attachments: FORA.ltr.to.13.03.15.re.reassessment.Cat.1.EMC.pdf

Good afternoon,

The attached letter is regarding an item on today's agenda. Please distribute the letter to the Board for today's meeting.

Thank you.

Jennifer McNary
Law Offices of Michael W. Stamp
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214
fax: 831-373-0242

LAW OFFICES OF
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Michael W. Stamp
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Telephone (831) 373-1214
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March 15, 2013

Jerry Edelen, Board Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Re: March 15, 2013 agenda item 7e – Category 1 Changes as identified in the Reassessment Report

Chair Edelen and Members of the Board of Directors:

This Office represents Keep Fort Ord Wild, which urges you to continue agenda item 7e and to not approve the proposed Category 1 changes.

Conflict of Interest

The Reassessment Report was prepared by FORA consultant EMC Planning. Keep Fort Ord Wild has filed a lawsuit against FORA due to the conflict of interest of EMC, which is also working for the City of Seaside and being paid with money from Monterey Downs LLC. Seaside and Monterey Downs have a financial interest in the outcome of the Reuse Plan reassessment process.

KFOW has asked the Court for an order prohibiting FORA's use of the Reassessment Report due to EMC's conflict of interest, and additional legal briefing is currently underway. KFOW has also asked for injunctive relief under Code of Civil Procedure section 526a, which could lead to a finding that those participating on FORA's behalf are required to pay for the costs associated with the tainted process. If FORA decides to proceed with making changes to the Reuse Plan in reliance on the conflicted Reassessment Report, FORA would be proceeding at its own risk.

Violates CEQA

Multiple Category 1 items would be substantive changes that are subject to the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.). Those changes include, for example, removing roads from a map, relocating road alignments, adding the Veterans Cemetery to a map, adding an interchange on Highway One, changing right-of-way widths, and other map changes, etc.

The changes would be a project under CEQA (Pub. Resources Code, § 21065). In order to approve a project, prior CEQA review is required. FORA has not done any CEQA review on the proposed Category 1 changes.

The FORA Board should not rely on staff's opinion that the Category 1 edits "are of a 'housekeeping,' non-substantive nature," because that opinion is inaccurate and unreliable. That was the same position FORA staff took as to the March 2010 changes to the Master Resolution. As has been revealed, those March 2010 changes violated the FORA/Sierra Club settlement agreement.

KFOW also joins in the objections of the Sierra Club, as stated in the Sierra Club's March 2013 letters. KFOW objects to any changes to Reuse Plan maps without prior adequate CEQA review that is clearly disclosed and identified in the materials presented to the FORA Board.

To the extent that FORA is relying on prior CEQA review, the materials presented to the FORA Board and the public should describe the specific determination made, the agency that made the determination, the identity of the decisionmaker, the date of the determination, and where the CEQA documentation is available and accessible. The approach used in the FORA staff reports is not adequate.

Proposed Changes Are Not Shown

The documents presented to the Board and to the public fail to adequately show what exactly is proposed for the many "figure corrections": what changes, what edits, what new language, what new road alignment, what new interchange. Until that information is presented for adequate and timely public review, and the proposed revisions are shown in map form, the FORA Board should not act to approve the proposed "corrections," many of which appear to be substantive.

Inconsistent Treatment

The changes proposed to Volume II, page 347, proposes that Marina be responsible for the cited programs. The County is proposed to be deleted from responsibility as to the programs. The County policy on page 353 of the Reuse Plan refers to the City's policy. Striking out the County, as proposed, would appear to be an attempt to remove the County from accountability for these Conservation programs, or any other Reuse Plan programs, that is a project under CEQA, and no CEQA review has been performed. Similar language is proposed for the County, but using different language and numbering system, which makes no sense and would be confusing for FORA to administer and confusing to the public. The County has control over large amounts of land in Fort Ord. The proposed changes should be clarified and corrected and the impacts should be analyzed. As proposed the changes would be preferential treatment of the County, and could have a potentially significant environmental impact.

Chair Edelen and Members of the Board of Directors
Fort Ord Reuse Authority
March 15, 2013
Page 3


Continue Agenda Item 7e

For all the above reasons, Keep Fort Ord Wild urges you to continue agenda item 7e and not to approve the proposed Category 1 changes.

Thank you.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP



Molly Erickson

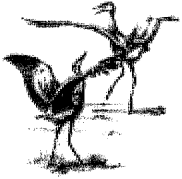
Rosalyn Charles

From: Larry Silver [larrysilver@earthlink.net]
Sent: Tuesday, March 19, 2013 8:50 PM
To: FORA Board; Michael Houlemard
Cc: Haines Jane; swaltz@csusb.edu
Subject: Letter re: Board Action of March 15, 2013 Breaching Sierra Club Agreement
Attachments: FORA_Houlemard_LETTER2.pdf

Please see attached letter.

If you cannot view this document, please contact me at the number below.

Larry Silver
California Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942
510-237-6598
Mobile 415-515-5688
larrysilver@earthlink.net



CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



Laurens H. Silver, Esq.
P.O. Box 667
Mill Valley, CA 94942
Phone: 415-515-5688 Facsimile: 510-237-6598
larrysilver@earthlink.net

March 19, 2013

Fort Ord Reuse Authority (FORA) Board of Directors email to board@fora.org and
Michael A. Houlemard, Executive Officer michael@fora.org
920 2nd Avenue, Ste. A
Marina, CA 93933

Re: Board Action of March 15, 2013 Breaching Sierra Club Agreement

Dear FORA Directors and Mr. Houlemard:

I am writing to inform you that on March 15, 2013, the FORA Board of Directors breached the 1998 FORA-Sierra Club settlement agreement by changing Chapter 8 of FORA's Master Resolution without complying with the following applicable procedure:

“FORA agrees that in the event FORA considers any amendment to Chapter 8 of the Master Resolution, FORA shall perform an environmental assessment consistent with the provisions of the California Environmental Quality Act (‘CEQA’) and the rules and regulations promulgated thereunder prior to consideration of approval of such amendment. In addition, FORA shall provide the SIERRA CLUB and its attorney of record at least 30 days notice of the preparation of such environmental assessment, which shall include an opportunity to comment on such assessment, and at least 15 days notice of any hearing on any proposed amendment of Chapter 8. The parties further agree that each amendment to Chapter 8 will be reviewed under CEQA as a new project not be subject to the environmental review limitations of Public Resources Code Section 2166.” (1998 FORA-Sierra Club settlement agreement, Terms, paragraph 4.)

The March 4, 2013 letter from this office to the FORA Board and Mr. Houlemard requested “...FORA to restore the original language of the entire settlement agreement to Chapter 8 (other than any changes which Sierra Club has previously agreed to).” By email dated March 6, Authority Counsel informed me that he intended to recommend that to your Board. On the morning of March 15, Sierra Club emailed a letter to the FORA Board and staff informing them that the text on pages 93 to 109 of the Board packet would be acceptable to Sierra Club provided that the highlighted portions on pages 105 and 106 were eliminated and that Section 8.01.050(a) would be changed in the manner shown on page 98.

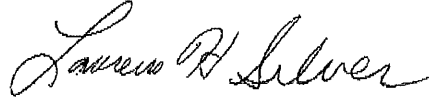
During the March 15 hearing, it became apparent to Sierra Club's representative that Authority Counsel was recommending that the Board change Chapter 8 in a manner contrary to Sierra Club's agreement for change. Sierra Club's representative stated that such a change was not acceptable to Sierra Club as a party to the Settlement Agreement. Nonetheless, the Board accepted Authority Counsel's recommendation, disregarding all the changes made to the Settlement Agreement by FORA between 1998 and 2010, including pre-2010 changes explicitly brought to FORA staff's attention by Sierra Club's representative on March 14, and included the

Fort Ord Reuse Authority (FORA) Board of Directors
and Michael A. Houlemard, Executive Officer
Page 2

passages on pages 105 and 106 which Sierra Club objected to. A motion was made to bring the matter back to your Board in April, but that motion was not passed.

The FORA Board's March 15 actions once again breached the 1998 settlement agreement. Still hoping that this can be resolved amicably, Sierra Club offers to refrain from pursuing remedies to enforce the Settlement Agreement in Monterey County Case No. 112014, provided that an action item pertaining to this matter will be on the agenda for the April 12, 2013 FORA Board meeting, and that the Board adopts the changes in Chapter 8 of FORA's master resolution agreed to by Sierra Club's representative on March 15, 2013.

Larry Silver, Esq.
CALIFORNIA ENVIRONMENTAL LAW PROJECT

A handwritten signature in cursive script that reads "Larry Silver".

Counsel to Ventana Chapter, Sierra Club

cc: Jane Haines
Scott Waltz

Lena Spilman

From: Haines Jane [envirlaw@mbay.net]
Sent: Wednesday, March 20, 2013 7:43 AM
To: FORA Board; Michael Houlemard
Subject: March 22 FORA Workshop
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.

[ATT00001.txt](#) (14B)

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Dear FORA Directors

Attached is a letter from Sierra Club which addresses Category II -1 described at the top of page 25 in your March 22 Board packet.

Sincerely,
Jane Haines



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

March 20, 2013

email to board@fora.org
and michael@fora.org

Board of Directors and
Michael Houlemard, Executive Director
Fort Ord Reuse Authority (FORA)
910 2nd Avenue, Ste. A
Marina, CA 93933

Re: March 22 - Base Reuse Plan Reassessment Workshop - Category II

Dear FORA Directors and Michael:

Regarding Category II to be considered at your March 22 Reassessment Workshop, this letter will explain why FORA must conduct California Environmental Quality Act (CEQA) review before using prior FORA Board legislative consistency determinations to modify Land Use Concept Ultimate Development Figure 3.3-1. This letter will also explain why applicable law requires that the 2001 Base Reuse Plan (BRP) be modified **before** legislative consistency determinations are made, rather than the reverse process which FORA would be using if it allowed the prior legislative consistency determinations to modify Figure 3.3-1.

We will begin by discussing the difference between Title 7 of the California Government Code, which is *not* applicable to FORA's legislative consistency determinations, compared to Title 7.85, which is applicable.

FORA's prior legislative consistency determinations were made under Title 7 of the Government Code, rather than under Title 7.85

Every prior legislative land use consistency determination that FORA has made contains a factual finding that "consistency" is defined therein in the same way that "consistency" is defined in the context of general plan consistency findings. General plan consistency findings are governed by Title 7 of the California Government Code. They are based on functional consistency with the concept of the general plan. In contrast, instead of the broad discretion allowed by Title 7, consistency findings with the Fort Ord Base Reuse Plan are governed by Title 7.85 of the Government Code, including Government Code section 67850.5 which authorizes the FORA Board to enter into agreements to mitigate impacts of the reuse of Fort Ord. Pursuant to Title 7.85, the FORA Board in 1998 entered into such an agreement with the Sierra Club. The agreement is referred to as the 1998 FORA-Sierra Club settlement agreement ("Sierra Club settlement agreement") and it governs how FORA's legislative consistency findings must be made.

...To explore, enjoy, preserve and protect the nation's forests, waters, wildlife and wilderness...

Title 7.85 of the Government Code and the Sierra Club settlement agreement describe a process for modifying the Base Reuse Plan that is the reverse of the process described on page 37 of 125 in the March 15, 2013 Board Packet. Page 37 states:

“The purpose of compiling Board actions and publishing the BRP from time to time is to keep the BRP up to date with approved consistency determinations.”

The above statement turns Title 7.85 on its head by assuming that FORA can certify general plans as being consistent with the BRP and on that basis modify the BRP. Nowhere does Title 7.85 state that a city’s or county’s general plan, even if found consistent with the BRP, can modify the adopted BRP. Rather, Title 7.85 states the opposite. Government Code section 67675.2(a) requires that the BRP be modified **before** the general plan can be certified as being consistent with the BRP, so that the general plan can be carried out in a manner “fully in conformity with [Title 7.85].” Government Code section 67675(f) states that in revising the reuse plan, the FORA Board shall be consistent with county-wide or regional plans required by federal or state law “*other than local general plans.*” (Govt. Code § 67675(f). (Emphasis added).) Moreover, Title 7.85 states that the “*adopted*” plan (emphasis added) shall be the official local plan for the reuse of the base for all public purposes. (Govt. Code § 67675(a).) The current “adopted” BRP is the 2001 BRP and will be until it is modified in compliance with Title 7.85 and the Sierra Club settlement agreement.

FORA’s prior legislative land use consistency determinations include the Seaside General Plan (Resolution #04-6), Marina General Plan (Resolution #07-16), Del Rey Oaks General Plan (Resolution #98-2), and County of Monterey General Plan (Resolution #02-3). All four contain factual findings K and L, which state:

K. “In this context, the term ‘consistency’ is defined in the *General Plan Guidelines* adopted by the State Office of Planning and Research as follows: ‘An action, program, or project is consistent with the *general plan* if, considering all its aspects, it will further the objectives and policies of the *general plan* and not obstruct their attainment.’ [Emphasis added.]

L. FORA’s consistency determination must be based upon the overall congruence between the submittal and the Reuse Plan, not on a precise match between the two.”

FORA’s prior legislative consistency determinations do not state that they modified the BRP. They couldn’t, for three reasons. First, they were made under Title 7, rather than under Title 7.85 of the Government Code. Second, Title 7.85 requires that the general plan be consistent with the BRP, rather than that the BRP be consistent with the general plan. Third, Resolutions #04-6, #07-16, #98-2 and #02-3 do not state that they modify the BRP. The only documents stating that FORA’s prior legislative consistency findings modified the BRP are the March 15, 2013 Board packet, page 37, and similar FORA staff opinions. Pursuant to Title 7.85 of the Government Code, none of FORA’s prior legislative consistency determinations have modified the BRP. When FORA

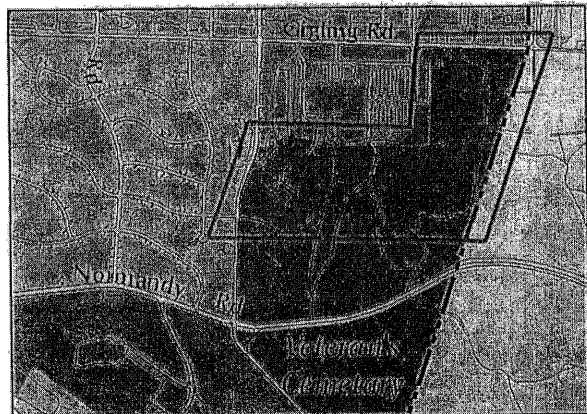
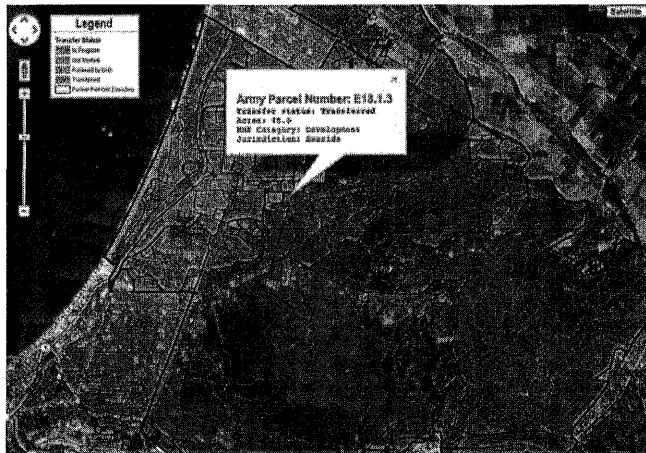
decides to modify the BRP, FORA will need to follow requirements of Title 7.85 of the Government Code. Doing so will involve FORA making a discretionary decision that could affect the environment. Thus, Public Resources Code section 21080 will require that FORA perform CEQA review.

One example of FORA's reversal of the Title 7.85 requirements

The problems that arise from FORA reversing the Title 7.85 requirements for modifying the BRP are illustrated by Parcel E18.1.3. It is depicted in this photograph as it appeared on March 3, 2013 when Scott Waltz took this photo.

Parcel E18.1.3 is a 40-acre parcel that has been transferred from FORA to Seaside with a deed restriction that states it can *only* be used and developed in a manner consistent with the Reuse Plan. It is located just a few blocks from 8th and Gigling.

On December 10, 2004, the FORA Board adopted Resolution #04-6 making a legislative land use consistency determination that the City of Seaside General Plan, which assigns a high density residential use to Parcel E18.1.3, was consistent with the BRP, which assigns open space recreational use to Parcel E18.1.3. An accompanying Seaside staff report made part of Resolution #04-6 states that such redesignation is Seaside's intention, but nowhere does Resolution #04-6 state that the BRP is modified accordingly. Thus Parcel E18.1.3 is redesignated from open space recreational use to high density residential use in Seaside's general plan, but not in the adopted BRP.



Resolution #04-6 is entitled "Resolution Determining Consistency of the City of Seaside General Plans [sic] with the Fort Ord Base Reuse Plan." It states that FORA finds that Seaside has provided substantial evidence that its general plan is consistent with the BRP. Resolution #06-4 contains the above-quoted Findings K and L. Those findings establish that the Seaside General Plan would be consistent with the BRP if the BRP were a general plan, which of course it is not. Most importantly however, Resolution #04-6 nowhere states that it modifies the BRP.

Thus, even though FORA staff appears to believe that FORA's prior legislative consistency findings modified the BRP, no law or evidence supports that belief.

What would Seaside and FORA need to do before the BRP could be modified to make high density residential use on Parcel E18.1.3 consistent with the BRP?

Section 8.02.010(a) of the Sierra Club settlement agreement answers the above question.

Pursuant to subdivision (3) of Section 8.02.010(a), Parcel E18.1.3 would need to be in substantial compliance with BRP programs applicable to high density residential use. FORA staff would need to analyze which programs those are, but they definitely would include Residential Land Use Program 1.1-1 (Prepare Design Guidelines for Development within Former Fort Ord). Of course there are other programs applicable to high density residential use. However, the task of determining what they are should be performed initially by FORA's planning staff.

In addition to subdivision (3), there are also subdivisions (1), (2), (4) and (5) of the Sierra Club settlement agreement Section 8.02.010(a). Analysis of high density residential use on Parcel E18.1.3 would need to be analyzed for consistency with those subdivisions as well.

Seaside would need to apply for modification of the BRP to make the BRP consistent with Seaside's redesignation of Parcel E18.1.3. After ensuring that such modification would be in compliance with Section 8.02.010(a), the FORA Board would need to conduct CEQA review for Seaside's application. An initial study would recommend the extent of necessary CEQA review. If all applicable BRP programs had been implemented and the changed uses were in substantial compliance with those programs, the needed CEQA review would likely be pretty minimal.

Is the same true for modifying the BRP to make FORA's other prior legislative consistency determinations consistent with the BRP?

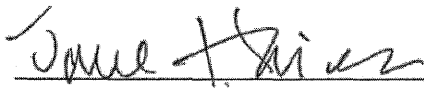
Yes. In the case of Seaside's 2004 application for a consistency determination, there were a total of ten land use designations that differ from the land use designations in

the Base Reuse Plan. Parcel E18.1.3 and the other nine are listed on pages 1 and 2 of the October 21, 2004 supporting documentation submittal by the City of Seaside to FORA, which can be found in the November 19, 2004 FORA Board Packet. A similar analysis would need to be performed for each of the other nine changed land use designations, after which implementation of applicable programs could be completed along with other requirements of the Sierra Club settlement agreement section 8.02.010(a). Thereafter, CEQA review would probably be minimal to modify the BRP accordingly. However, until the above described steps are completed, the FORA Board will be in violation of Title 7.75 of the California Government Code and CEQA if it modifies Land Use Concept Ultimate Development Figure 3.3-1 based on FORA's prior legislative consistency determinations.

Conclusion

Sierra Club acknowledges that the FORA Board has complete discretion as to how it proceeds with the reassessment process as long as the process complies with Title 7.85 and the Sierra Club settlement agreement. However, we respectfully suggest that for the reasons explained in this letter, reversing the order of Category II (Prior Board Actions and Regional Plan Consistency) with Category III (Implementation of Policies and Programs) might prove to be the fastest way to get the former Fort Ord developed in accordance with the BRP.¹

Yours sincerely,



Jane Haines, member
Sierra Club FORA subcommittee



Scott Waltz, member
Sierra Club FORA subcommittee

¹ Category II is explained beginning on page 3-19 of the Final Reassessment Report, and Category III is explained beginning on page 3-32.

Rosalyn Charles

From: Nancy Williams [nlwilliams@comcast.net]
Sent: Saturday, March 23, 2013 9:25 AM
To: FORA Board; gnicastro@yahoo.com
Subject: The Peace Heard Project has my support. <http://www.peaceheard.org>

I want to thank you in advance for your approval of the 5+ acres of the Fort Ord land reserve in California to be used for the *Peace Heard Project*. I can't think of a better use of military land than a tourist attraction which promotes peace, beauty and knowledge as well as a meditative sanctuary.

This may be a bit grandiose, but I image this being the first of many Peace Projects sprouting up around the world. *Wouldn't it be great if this was the one to start it all.*

Sincerely,

Nancy Williams

Rosalyn Charles

From: Mazur, Jacqueline L [jlmazur@hearst.com]
Sent: Monday, March 25, 2013 10:40 AM
To: FORA Board
Subject: KSBW-TV Reporter Seeks Additonal Information

To Whom It May Concern:

Good morning. I am interested in learning if FORA is at all involved with the CA Department of Parks and Rec.

A new report was released from the Little Hoover Commission stating CA has added more parks to its system than it can afford and recommends the state relinquish control of the one-third that lack state significance.

From what I understand, Ford Ord Dunes State Park is considered to be a relatively new park and may be on the chopping block.

If you have any additional information about the topic at hand, please contact me: 831-262-490.

Thank you for your time.

Jacqueline Mazur
Anchor/Reporter
KSBW-TV
jlmazur@hearst.com

Rosalyn Charles

From: Mazur, Jacqueline L [jlmazur@hearst.com]
Sent: Tuesday, March 26, 2013 10:51 AM
To: FORA Board
Subject: KSBW-TV Reporter Seeks Information on E Garrison Project

To Whom It May Concern:

I'm trying to do an update on the East Garrison Project. Wondering where development stands and how much more work needs to be done.

I am aware the Monterey County Supervisors meeting is taking place and I'm curious to learn if any permits have been cleared today.

Any information would be extremely helpful. I can be reached on my cell phone: 831-262-3490.

Thank you.

Jacqueline Mazur
Anchor/Reporter
KSBW-TV
jlmazur@hearst.com

Rosalyn Charles

From: Mark Dylan Farr [mdfarr@calpoly.edu]
Sent: Thursday, March 28, 2013 8:50 AM
To: FORA Board
Subject: Fort Ord Grazing Land

Hello FORA Board of Directors,

My name is Mark Farr, this Spring I will be graduating from Cal Poly SLO with a degree in AG-Business while also focusing on Livestock production and Holistic Management. I am currently looking for land to lease in order to build my small grassfed livestock herd consisting of sheep and cattle that I raise in a holistic management style focusing on improving land quality and wildlife habitat. My senior project at school which I will have completed by June focuses on proving both the financial and environmental attributes of grazing livestock in this manner. I am writing you to inquire about the grazing land on the Fort Ord National Monument or other areas of Fort Ord under your jurisdiction. If you are in control of the open lands or could point me in the right direction of who to talk to, I would love to sit down and talk about my project and hopeful plans for a lease on land in Fort Ord.

thank you for any guidance you may have,

Mark D. Farr

(831) 595-6229