

**From:** [Rosalyn Charles](#)  
**To:** [Jen Simon](#)  
**Subject:** FW: Oct. 11 FORA agenda item 8c  
**Date:** Friday, November 01, 2013 3:17:04 PM  
**Attachments:** [Oct11Consistency.pdf](#)

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Rosalyn

-----Original Message-----

From: Haines Jane [<mailto:janehaines@redshift.com>]  
Sent: Thursday, October 10, 2013 8:19 AM  
To: FORA Board  
Cc: Michael Houlemard; Spencer Craig; Jonathan Garcia  
Subject: Oct. 11 FORA agenda item 8c

Dear FORA Board of Directors,

The attached letter addresses agenda item 8c for tomorrow's meeting, consistency of the 2010 Monterey County General Plan with the Base Reuse Plan.

Sincerely,  
Jane Haines

## JANE HAINES

October 10, 2013

Fort Ord Reuse Authority Board of Directors  
920 2nd Avenue  
Marina, CA 93933

Re: October 11 Agenda - Item 8c - Consistency Determination:  
2010 Monterey County General Plan

Dear FORA Board of Directors:

The 2010 Monterey County General Plan is inconsistent with the 1997 Base Reuse Plan (BRP) because it omits applicable BRP programs. Certification of consistency between the two plans should be delayed until the omitted programs are added to the General Plan. Otherwise, the plans are inconsistent and the California Environmental Quality Act (CEQA) will require environmental review of impacts that could result from the inconsistencies.

This letter will explain which BRP programs have been omitted from the 2010 General Plan and how omitting those programs will result in potentially significant environmental impacts.

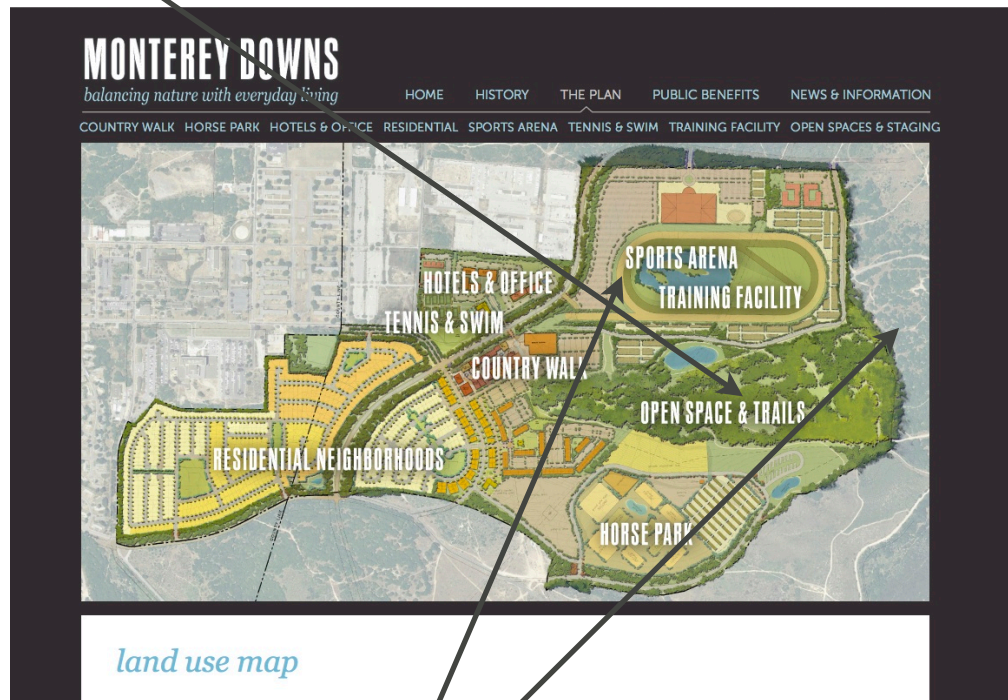
FORA's October 11 and the County's September 17 staff reports discount the publics' comments on the inconsistencies by saying that implementation is a different matter than consistency. However, I and others are commenting about the **omission** of BRP programs from the 2010 Monterey County General Plan. The omission of applicable programs is **not** an implementation issue.<sup>1</sup> It is a consistency issue as well as a CEQA issue.

The following page uses the proposed Monterey Downs project to illustrate the potentially significant environmental impacts from omitting three applicable programs, assuming that Seaside will annex Monterey County land for Monterey Downs, although of course the impacts would also occur to other County projects too. There will be arrows pointing to various locations on the Monterey Downs land use map. The arrows are connected to boxes which explain the BRP program that was omitted from the County's 2010 General Plan, and how omission of that program is likely to cause a significant adverse environmental impact.

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<sup>1</sup> Implementation is defined in the Oxford dictionary as "the process of putting a decision or plan into effect." Consistency is defined as "conformity in the application of something, typically that which is necessary for the sake of logic, accuracy, or fairness."

**Recreation/Open Space Land Use Program A-1.2.** This Open Space & Trails parcel is 72.5 acres entitled Parcel E19a.2 . The HMP designates it for Habitat Reserve. BRP Recreation/Open Space Land Use Program A-1.2 states: “The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.” (A natural ecosystem deed restriction is intended to mitigate the cumulative effects of development on sensitive soils, including Arnold and Oceano soils. Parcel E19a.2 is comprised of Arnold soil.) Without Recreation/Open Space Land Use Program A-1.2, Monterey County will not have to record a Natural Ecosystem Easement deed restriction on Parcel E19a.2. Thus, the natural ecosystem on Parcel E19a.2 will not be protected. Program A-1.2 is on page 270 of Volume II of the BRP, but it is omitted from the Monterey County 2010 General Plan.



**Noise Program B-1.2.** The Sports Arena Training Facility adjoins CSUMB. Students who are studying or in lectures could be distracted by shouting, loud speakers and other noisy activities at the Sports Arena. BRP Noise program B-1.2 on page 412 of BRP Volume II states: “Whenever practical and feasible, the County shall segregate sensitive receptors, such as residential land uses, from noise generators through land use.” Noise program B-1.2 is omitted from the Monterey County 2010 General Plan. It must be included to protect CSUMB against distracting noises from the Sports Arena.

**Recreation/Open Space Land Use Program B-2.1.** Nearly the entire eastern edge of Monterey Downs adjoins a habitat management area. (Continued next page.)

**(Recreation/Open Space Land Use Program B-2.1 continued).** BRP Recreation/Open Space Land Use program B-2.1 is partially included in the 2010 Monterey County General Plan although the final two sentences are omitted. The final two sentences prohibit general purpose roads within a 150 feet buffer area adjoining habitat management areas. BRP Recreation/Open Space Land Use Program B-2.1 states on pg. 270 of BRP Vol. II: “The County of Monterey shall review each future development project for compatibility with adjacent open space land uses and require that suitable open space buffers are incorporated into the development plan of incompatible land uses as a condition of project approval. **When buffers are required as a condition of approval adjacent to habitat management areas, the buffer shall be at least 150 feet. Roads shall not be allowed within the buffer area except for restricted access maintenance or emergency access roads.**” (Emphasis added to final two sentences to identify the two sentences omitted from the 2010 Monterey County General Plan Recreation/Open Space Land Use Program B-2.1.) Without the complete text of Program B-2.1 to protect it, the adjoining habitat management area can be adversely impacted.

The above omissions do **not** pertain to implementation. Rather, they pertain to **inconsistency** between the BRP and the 2010 Monterey County General Plan. They and other omitted or misstated BRP policies<sup>2</sup> make the 2010 Monterey County General Plan inconsistent with the BRP.

#### **FORA Master Resolution Section 67675.4**

In addition to the inconsistency issues described above, I want to mention Master Resolution section 67675.4 which required FORA to set a date for Monterey County to submit to FORA its zoning ordinances and other implementing actions pertaining to Fort Ord land after the 2001-2002 certification of consistency between Monterey County’s General Plan with the BRP.

Section 67675.4 states:

*(a) Within 30 days after the certification of a general plan or amended general plan, or any portion thereof, the board shall, after consultation with the county or a city, establish a date for that county or city to submit the*

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<sup>2</sup> Additional omissions and errors can be identified by comparing BRP Hydrology and Water Quality programs B-2, B-1.3, B-1.4, B-1.5, B.1.6 and B-1.7 on page 353 (and 347) of BRP Volume II with pages FO-38, 39 in the Monterey County General Plan (MCGP). Additional omissions and errors are in BRP Hydrology and Water Quality program C-6.1 on page 4-66 of BRP Vol. II which does not appear on page FO-41 of the MCGP, which is where it would be located if it were included. Also, compare the words “concurrently with development approval” in Pedestrian and Bicycles program B-1.2 on page 310 of BRP Vol. II with the omission of those words in program B-1.2 on page FO-29 in MCGP. Also, compare Biological Resources program A-8.1 on page 381 of BRP Vol. II with program A-8.1 on pg. FO-46 of the MCGP. In each instance, a program required by the BRP for Monterey County is either partially or wholly omitted in the 2010 MCGP, or written in a manner inconsistent with the gist of the corresponding BRP program.

*zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of Fort Ord.*

*(b) If the county or city fails to meet the schedule established pursuant to subdivision (a), the board may waive the deadlines for board action on submitted zoning ordinances, zoning district maps, and, where necessary, other implementing actions, as set forth in Section 67675.5.*

Apparently, FORA never required Monterey County to submit its zoning ordinances and other implementing actions, because the 2012 Scoping Report lists the following incomplete implementation of Monterey County zoning ordinances and other implementing actions:

- appropriate infill residential zoning for CSUMB to expand its housing stock (Scoping Report pg. 4-5)
- amend zoning in the Greater Monterey Peninsula Area Plan (Scoping Report pg. 4-8)
- amend zoning ordinance in regard to all Fort Ord areas other than East Garrison (Scoping Report pgs. 4-7, 4-13, 4-20, 4-29)
- amend County Code Chapter 11.24 to regulate card rooms and to prohibit gambling within Fort Ord (Scoping Report pg. 4-27)
- amend County Subdivision Ordinance which identifies a standard of 3 acres per 1,000 people (Scoping Report pg. 4-40)
- amend County's review procedures to ensure compatibility with the historic context and associated land uses as a condition of project approval (Scoping Report pg. 4-158)

Thus, I am requesting that FORA do what it apparently failed to do in 2001-2002, which is to require Monterey County to submit its zoning ordinances and other implementing actions to FORA within 30 days after the certification of the General Plan. The submittal should include the above-mentioned zoning ordinances.

### **Conclusion**

I request FORA to require Monterey County to add the omitted applicable BRP programs to the 2010 Monterey County General Plan and to correct related errors before FORA makes a finding of consistency. I also request FORA to comply with Master Resolution section 67675.4.

Sincerely,

Jane Haines

**From:** [Rosalyn Charles](#)  
**To:** [Jen Simon](#)  
**Subject:** FW: SC letter: MCo GP Consistency Determination by FORA  
**Date:** Friday, November 01, 2013 3:17:14 PM  
**Attachments:** [MCoGP\\_CDbfFORA.pdf](#)  
[P4\\_14BRPvol4\\_EIR.pdf](#)  
[MCoGP\\_ConsistDeterm.pdf](#)

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*Rosalyn*

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**From:** Scott Waltz [mailto:swaltz@csumb.edu]  
**Sent:** Thursday, October 10, 2013 10:53 AM  
**To:** FORA Board; Michael Houlemard; Supervisor Parker; Supervisor Potter  
**Cc:** Rita Dalessio; Joel Weinstein; Larry Silver  
**Subject:** SC letter: MCo GP Consistency Determination by FORA

FORA Board,

Please accept the attached documents on behalf of the Sierra Club, Ventana Chapter as public input on agenda item 8c (11 October FORA Board meeting).

Sincerely,

sb

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Scott B. Waltz, PhD.  
Associate Professor, Social Foundations of Education  
California State University Monterey Bay  
100 Campus Center, Building 82C  
Seaside, CA 93955-8001

831.582.5334  
[swaltz@csumb.edu](mailto:swaltz@csumb.edu)

"He most honors my style who learns under it to destroy the teacher."  
Walt Whitman, *Song of Myself* (#47)

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Urban Village and Employment Center with approximately 85 acres dedicated to Office/R&D and Business Park/Light Industrial land uses. These manufacturing and possibly labor-intensive uses could create nuisances including increased noise, traffic, and air pollution, which may adversely affect the recreational opportunities and experiences at the Youth Camp District. The ~~MOU~~POST facility would also potentially conflict with the Youth Camp District due to noise and public safety risks.

The following policies and programs developed for the ~~Draft Fort Ord~~ *Reuse Plan* for Monterey County relate to both the protection of open space and compatibility of open space areas with adjacent areas:

### **Land Use Element**

**Recreation/Open Space Land Use Policy A-1:** The County of Monterey shall protect ~~encourage the conservation and preservation of~~ irreplaceable natural resources and open space at former Fort Ord.

Program A-1.1: The County of Monterey shall identify natural resources and open space, and incorporate them into Greater Monterey Peninsula Area Plan and zoning designations.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

**Recreation/Open Space Land Use Policy B-2:** The County of Monterey shall use open space as a buffer between various types of land use.

Program B-2.1: The County of Monterey shall review each development project at former Fort Ord with regard to the need for open space buffers between land uses.

**Recreation /Open Space Land Use:** Program E-1.6: The Youth Camp District in the Reservation Road Planning Area is intended for rehabilitation of the existing travel camp. The County of Monterey shall assure that this planned use is compatible with adjacent land uses which may include a public safety agency training facility with shooting ranges in the East Garrison area located to the East.

**Institutional Land Use Policy A-1:** The County of Monterey shall review and coordinate with the universities, colleges and other school districts or entities the planning of both public lands designated for university-related uses and adjacent lands.

Program A-1.4: The County of Monterey shall minimize the impacts of proposed land uses which may be incompatible with public lands, such as major roadways near residential or university areas, location of the York School augmentation area adjacent to the habitat management area, and siting of the Monterey Peninsula College's MOU law enforcement training program in the BLM Management/Recreation Planning Area.

Further policies regarding the general protection of open space areas can be found in Section 4.3 - Recreation and Open Space Element of the ~~Draft Fort Ord~~ *Reuse Plan*. Additional policies and



## SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

16 September 2013

Dear Monterey County Board of Supervisors:

The Fort Ord Master Plan (FOMP), Chapter 9.E of the 2010 Monterey County General Plan includes a number of significant errors, including mistaken map designations, misaligned land use descriptions, at least one misquoted policy, and the wholesale omission of a program that was described in both the Fort Ord Reuse Plan (FORP) and the FORP Reassessment report. The Sierra Club requests that the Board of Supervisors delay a vote on consistency with the FORP until the errors in the FOMP are corrected. The Sierra Club also requests that the County staff prepare a complete report, with substantiating evidence, regarding all discrepancies between the corrected FOMP and the FORP.

What follows is an identification of the more obvious errors in the publically posted web-version of the FOMP.

### **Map Concerns**

Despite the fact that the text of the FOMP notes that: "...the Land Use Map contained in this plan is the County of Monterey Land Use Plan (Figure 6a) adopted by FORA into the Reuse Plan" (p. FO-4), there are a number of obvious discrepancies between Figure LU6a and FORP County of Monterey Land Use Concept Map 4.1-7/ FORP Land Use Concept Map 3.3-1, including the following:

Although a boot-shaped parcel corresponding to Army Parcel # L.20.2.2 and L.20.2.3.1 is designated Public Facility/Institutional on the FORP Land Use Concept Map 3.3-1 and County of Monterey Land Use Concept Map 4.1-7, the same parcel in Figure LU6a Fort Ord Master Plan-Land Use Plan is labeled Habitat Management and Planned Development Mixed Use.

The square-ish polygon west of Laguna Seca Recreation Area corresponding to Army Parcel # L.20.6 is designated as Open Space/Recreational on 3.3-1 and 4.1-7, but is labeled as Habitat Management in Figure LU6a.

The strip of 7.2 acres that corresponds to Army Parcel # L20.18, acknowledged as Low Density Residential on 3.3-1 and 4.1-7 is represented as roadway in Figure LU6a.

Although the parcel corresponding to Army Parcel # E11b.2 is wholly designated as Development on 3.3-1 and 4.1-7, Figure LU6a labels a significant strip along the west edge as Habitat Management.

These errors render FOMP Figure LU6a inconsistent with FORP maps 3.3-1 and 4.1-7.

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The Board of Supervisors may also wish to consider amending the FOMP to take into account the designation of the National Monument, as this change in designation clearly impacts land use decisions.

### **Error in Land Use Description (or Mapping Designations)**

Although the FORP maps 3.3-1 and 4.1-7 label the more general East Garrison land parcels as a Planned Development Mixed Use District, the HMP includes parcels within this general area as habitat reserve, specifically Army Parcels E11b.7.2, E11b.7.1.2, and E11b.7.1.1. These three parcels are not distinguished as either Open Space/ Recreational or Habitat Management on either the aforementioned FORP maps or LU6a. However, the general language of the FORP addresses Planned Development/ Mixed Use concept as encompassing the juxtaposition of developed areas with habitat areas. The 2002 Assessment report authored by Zander Associates speaks rather clearly to this:

The Base Reuse Plan designated East Garrison as a Planned Development Mixed-Use District. This designation is intended to encourage the development of pedestrian-oriented community centers that support a wide variety of commercial, residential, retail, professional service, cultural and entertainment activities. The Base Reuse Plan concept for East Garrison envisions central core village with *adjacent office and commercial uses transitioning (e.g. with equestrian staging areas, trailheads) from developed areas to HMP-designated habitat reserve lands.* (my emphasis)

This suggests that either the description of Planned Development/Mixed Use on p. FO-5 of the FOMP should clarify that habitat reserve is a key element in this concept of the associated Planned Development/Mixed Use District designation or that both the FORP maps (map3.3-1 and 4.1-7), as well as the FOMP map (LU6a), should be amended to reveal the habitat reserve designation of habitat parcels.

### **Misquoted Policy**

Recreation/ Open Space Land Use Policy A-1, as stated in the FOMP (p. FO-21), misquotes the policy in the FORP and thereby changes its specificity. In order to be in conformance with the FORP, the policy should read: “The County of Monterey shall *protect* irreplaceable natural resources and open space at former Fort Ord.” (my italics to emphasize altered language in the FOMP).

Because the wording in the FOMP – “...encourage the conservation and preservation of...” – is more general and does not convey the same level of responsibility as the FORP language does, it is inconsistent with the FORP.

### **Policy Omission**

The FOMP omits mention of the FORP Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction (FORP Volume 4, p. 270). Program A-1.2 states that “The County of Monterey shall cause to be recorded a Natural Ecosystem Easement restriction that will run with the land in perpetuity for *all identified open space lands.*” (my italics

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to emphasize the breadth of this mandate). Recreation/Open Space Land Use Program A-1.2 is also clearly identified in the Reassessment report (p. 3-48: as an unfinished program).

Omission of an entire program identified in the FORP and the Reassessment report would clearly be inconsistent with the FORP.

The points above are illustrations of apparent errors in the current version of the FOMP, but they likely do not exhaust the changes that would be required before a vote by the Board of Supervisors would be merited. For instance, the header near the bottom of p. FO-4 reads "Design Principals" when it should read "Design Principles".

The Sierra Club looks forward to further work on the Fort Ord Master Plan so that, as described in the Master Resolution, its substantial conformance with the Fort Ord Reuse Plan is assured.

Sincerely,

Scott Waltz, Ph.D.  
Sierra Club, Ventana Chapter  
(SW/RD)



## SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

10 October 2013

Dear Fort Ord Reuse Authority Board Members;

The Sierra Club recommends that the FORA Board find the 2010 Monterey County General Plan, and the included Fort Ord Master Plan (FOMP), inconsistent with the Fort Ord Reuse Plan (FORP) based on evidence that the General Plan does not reflect the appropriate language and programs of the FORP Final Environmental Impact Report (EIR). In point of fact, parts of the FOMP precisely *reverse* specific changes made in and for the FORP Final EIR. Following CEQA law, the Sierra Club expects that the 2010 Monterey County General Plan reflects rather than alters the provisions of the FORP Final EIR before it would be found to be consistent with the FORP.

The Sierra Club further recommends that the FORA Board defer a finding of consistency until the County of Monterey Land Use Plan map (Figure 6a) accurately reflects the FORP County of Monterey Land Use Concept Map 4.1-7 and the FORP Land Use Concept Map 3.3-1. Ensuring that planning maps are carefully aligned in detail and designation will not only support a finding of consistency, but may serve to avoid later conflicts that arise from the differences between the documents.

By way of illustration, this letter will address three specific differences between the 2010 General Plan and the FORP, including:

- 1) The omission in the FOMP of the FORP Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction (FORP Volume 2, p. 270).
- 2) The reversed articulation of the Recreation/Open Space Land Use Program A-1.
- 3) The mismatched land use designation between the County of Monterey Land Use Plan (Figure 6a) and the FORP County of Monterey Land Use Concept Map 4.1-7/ FORP Land Use Concept Map 3.3-1.

These examples are meant to provide clear differences, but are not meant to represent a complete list of differences between the General Plan and the FORP EIR.

### **Program Omission**

As is clearly shown in the FORP Final Draft EIR (p. 4-14, see attached except of same), the following program in underlined, which means that it was an edit meant to be included in the Final Draft EIR.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

Appropriately, Program A-1.2 also appears in Volume Two: Reuse Plan Elements of the FORP (see page 270).

At the 17 September 2013 Board of Supervisor's meeting, Monterey County staff acknowledged that Recreation/Open Space Land Use Program A-1.2 – Natural Ecosystem Easement Deed Restriction was left out of the FOMP brought forward to the Board. The staff representative went on to note that despite this omission, the county was in the process of having these easements reviewed and approved by FORA, so the county was carrying out this program (captured on the video from the 17 September 2013 Board of Supervisor's meeting, 1:40:10 in the web video record). However, he offered no supporting evidence to

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support this claim. Regardless, the omission still represents a specific and significant alteration of the Final EIR.

The stated omission of a specific Land Use program – a program that is separate from and in addition to the Habitat Management restrictions – renders the FOMP inadequate to carry out the self-same provision of the FORP.

Further, Program A-1.2 is quite specific in the action it proscribes for establishing “criteria and standards for the uses of land, water, air, space, and other natural resources within the area of the base.” (Govt. Code § 67675(c) (1)). This distinguishes it from the latitude that accompanies shifts in land use density with regard to the “integrated arrangement and general location and extent of land, water, air, space, and other natural resources within the area of the base.” Excluding such a specific provision renders the FOMP out of substantial conformance with the FORP.

### **Reversed Articulation of Program**

Recreation/ Open Space Land Use Policy A-1, as stated in the FOMP (p. FO-21), misquotes the policy in the FORP and thereby changes its specificity. In order to be in conformance with the FORP, the policy should read: “The County of Monterey shall *protect* irreplaceable natural resources and open space at former Fort Ord.” (my italics to emphasize the language that was neglected in the FOMP).

Because the wording in the FOMP – “...encourage the conservation and preservation of...” – is more general and does not convey the same level of responsibility as the FORP language does, it represents a notable difference in the policy language. This is underscored by the fact that this is the precise change that was made in the Final Environmental Impact Report: “encourage the conservation and preservation of” is marked by strikethrough text, and “protect” is added, as shown by underlining (p. 4-14, FORP: Final Environmental Impact Report). As with the addition of Program A-1.2 mentioned above, this change in language is also reflected on p. 270 in Volume Two of the FORP.

Monterey County staff’s response to the Board of Supervisors regarding this point (captured on the video from the 17 September 2013 Board of Supervisor’s meeting, 1:40:00 in the web video record) was that the “protect” language *was changed to* the “encourage” language. It is not clear how the precise language that was altered for the Final EIR could or would have been returned to the very same language that was altered. It is also not clear which succession of document represent this reversion. Again, Monterey County staff offered not evidence to support their claim.

### **Mismatched maps**

The Reassessment process has brought to light the importance of FORP maps that align with the specific provisions of the FORP and subsequent determinations of consistency. The Category II considerations in the Reassessment Report are testimony to this point. Withholding a finding of consistency *until* the FOMP Figure 6a accurately reflects both FORP County of Monterey Land Use Concept Map 4.1-7 and FORP Land Use Concept Map 3.3-1 would ensure the land use designations accurately describe the provisions of the FORP. For an extended, but not exhaustive list of the errors in the FOMP Figure 6a, see attached 16 September 2013 letter to the Monterey County Board of Supervisors.

The response of the Monterey County staff to each of the errors identified on FOMP Figure 6a is available by viewing the web video from the 17 September 2013 Board of Supervisor’s meeting. The primary defense offered by the County staff was that FOMP Figure 6a, as is, was found consistent in 2001. The Sierra Club would point out that increased attention to accuracy, despite past oversights, serves to guide all parties more effectively in the realization of the FORP.

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The points above are illustrations of apparent errors in the current version of the FOMP, but they likely do not exhaust the changes that would be required before a vote of consistency by the FORA Board would be merited. For instance, the header near the bottom of p. FO-4 reads “Design Principals” when it should read “Design Principles”.

The Sierra Club looks forward to further work on the Fort Ord Master Plan so that, as described in the Master Resolution, its substantial conformance with the Fort Ord Reuse Plan is assured.

Sincerely,

Scott Waltz, Ph.D.  
Sierra Club, Ventana Chapter  
(SW/RD)

**From:** [Rosalyn Charles](#)  
**To:** [Jen Simon](#)  
**Subject:** FW: Deposition Transcript in Case No. M116438  
**Date:** Friday, November 01, 2013 3:17:27 PM  
**Attachments:** [13.10.10.FORA.Board.ltr.to.re.Bowden.depo.transcript.pdf](#)  
[Depo.Transcript.Jerry.Bowden.pdf](#)

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*Rosalyn*

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**From:** Jennifer McNary [mailto:mcnary@stampaw.us]  
**Sent:** Thursday, October 10, 2013 3:53 PM  
**To:** FORA Board  
**Subject:** Deposition Transcript in Case No. M116438

Chair Edelen and Members of the FORA Board of Directors:

Please see the attached correspondence and deposition transcript.

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

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October 10, 2013

Via Email

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

Re: Deposition Transcript in Case No. M116438

Dear Chair Edelen and Members of the FORA Board of Directors:

Attached for your information is a copy of the transcript of the deposition of FORA counsel Jerry Bowden in the litigation between Keep Fort Ord Wild and Fort Ord Reuse Authority under the California Public Records Act. In our view, this deposition transcript appears to relate directly to important financial matters on your agenda. It should be considered a public record.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP



Michael W. Stamp

Attachment: Deposition transcript dated June 5, 2012  
Keep Fort Ord Wild v. Fort Ord Reuse Authority (Case No. M116438)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MONTEREY

KEEP FORT ORD WILD, )  
)  
Petitioner, )  
)  
vs. ) No. M116438  
)  
FORT ORD REUSE AUTHORITY, )  
)  
Respondent. )  
\_\_\_\_\_ )

DEPOSITION OF JERRY BOWDEN

Date: Tuesday, June 5, 2012  
Time: 10:26 a.m.  
Location: LAW OFFICES OF MICHAEL STAMP  
479 Pacific Street  
Monterey, California 93940  
Reported by: ROBIN E. RIVIELLO, CSR, RPR  
License No. 11694



A P P E A R A N C E S

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3  
4 For the Petitioner: LAW OFFICES OF MICHAEL STAMP  
5 BY: MICHAEL W. STAMP,  
6 MOLLY E. ERICKSON,  
7 Attorneys at Law  
8 479 Pacific Street  
9 Suite 1  
10 Monterey, California 93940  
11 (831) 373-1214

12 For the Respondent: KENNEDY, ARCHER & HARRAY  
13 BY: DAVID W. BALCH,  
14 Attorney at Law  
15 24591 Silver Cloud Court  
16 Suite 200  
17 Monterey, California 93940  
18 (831) 373-7500

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I N D E X O F E X A M I N A T I O N S

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JERRY BOWDEN,

called as a witness, having been first duly sworn by the Certified Shorthand Reporter to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY MR. STAMP

Q. Could you state your name for the record, please.

A. Gerald, known as Jerry, Douglas, Bowden, B-o-w-d-e-n.

Q. And you have a position at FORA. Is that correct?

A. Yes.

Q. What is that position?

A. I'm the authority counsel.

Q. How long have you been with FORA, Fort Ord Reuse Authority?

A. I believe 12 years.

Q. Have you been authority counsel the entire time?

A. Yes.

Q. Do you work at the FORA headquarters?

A. Sometimes.

Q. Do you have an office outside of the FORA

1 headquarters?

2 A. Yes.

3 Q. Where is that?

4 A. My office is currently in my home.

5 Q. Do you also have an office at FORA?

6 A. Yes.

7 Q. And do you have a contract with FORA for your  
8 services?

9 A. Yes.

10 Q. And as I recall, that contract has a maximum  
11 number of hours per week of something like 19 hours. Is  
12 that correct?

13 A. I don't know. It doesn't matter. I work as  
14 much as is needed.

15 Q. Do you work more than 19 hours a week?

16 A. Usually.

17 Q. Are you paid for each hour?

18 A. No.

19 Q. Are the paid a flat fee?

20 A. Yes.

21 Q. Is that flat fee shown in your contract?

22 A. Yes.

23 Q. I think that is \$10,000 a month. Is that  
24 correct?

25 A. I don't know.

1 Q. Is that approximately how much you make?

2 A. Approximately, I think.

3 Q. Are there weeks when you work less than  
4 19 hours?

5 A. Maybe. I don't keep track of my time.

6 Q. Do you track your time as to specific projects?

7 A. No.

8 Q. Why not?

9 A. Because I'm not paid by specific projects.

10 Q. Do you keep any kind of time sheets or diaries  
11 of what work you have done in any given week?

12 A. Sometimes.

13 Q. Under what circumstances do you do that?

14 A. If I'm asked to keep track of my time on a  
15 certain project because FORA bills according to the time  
16 spent on that project, then I keep track of my time on  
17 it.

18 Q. And how often does that happen?

19 A. Very rarely.

20 Q. Less than five percent of the time?

21 A. I would say yes.

22 Q. Do you have other clients that you work for  
23 other than FORA?

24 A. Only one.

25 Q. Who is that?

1           A.     Pajaro Dunes Homeowners Association.

2           Q.     Are you affiliated with, a member of, or of  
3 counsel to a law firm?

4           A.     Not any longer.

5           Q.     When did that end?

6           A.     I'm not sure.  Maybe five years ago.  I was a  
7 partner at a firm in Scotts Valley.

8           Q.     And what are your duties as FORA's authority  
9 counsel?

10          A.     I draft contracts, respond to some  
11 correspondence, give advice to staff members, attend  
12 meetings of the executive committee and the FORA board,  
13 and I edit a great many legal documents.

14          Q.     And documents written by somebody else?

15          A.     That's right.

16          Q.     By whom?

17          A.     It depends on who wrote it.  I don't know.  
18 Sometimes I don't even know who wrote it.  I get a lease  
19 or a contract, and I don't know where it came from, but  
20 I read it and I edit it.

21          Q.     Are there other lawyers other than Mr. Balch on  
22 this particular litigation and the other pieces of  
23 litigation that we have?  Are there other lawyers who  
24 provide services to FORA?

25          A.     Yes.

1 Q. How many of them?

2 A. The only one I know is the firm of Kutak Rock  
3 in Washington DC. And they have at least four lawyers  
4 who work for FORA depending on the topic, different  
5 lawyers do different things.

6 Q. That includes Barry Steinberg?

7 A. That's correct.

8 Q. And what is Barry Steinberg's area of  
9 representation for FORA?

10 A. Kutak Rock in general's specialty is Defense  
11 Department law. Barry Steinberg was a career JAG  
12 officer. That stands for Judge Advocate General. And  
13 his expertise is in insurance, and, I should say,  
14 environmental law.

15 Q. How long has Kutak Rock been working on behalf  
16 of FORA?

17 A. I don't know.

18 Q. Were they there when you started?

19 A. Long before I started.

20 Q. And has Mr. Stenberg been one of the lawyers  
21 consistently over the period that you have been there?

22 A. Yes. In fact, they have all been there. There  
23 are new lawyers added since I came to work at FORA.

24 Q. And what is the subject matter of the other  
25 representation provided by Kutak Rock?

1           A.     Joey Fuller does real estate transactions.  
2                     George -- I don't remember George's last name.  
3     It is a "Berg."

4           MR. BALCH:   Schlossberg?

5           MR. STAMP:   That is fine.  If it comes to you  
6     later, let us know.  Otherwise that is fine.

7           THE WITNESS:  He does miscellaneous clean up  
8     and contract -- federal contracting law.

9     BY MR. STAMP:

10          Q.     Okay.  Real estate transactions.  What George  
11     does plus what Barry does.  Is there another lawyer?

12          A.     I don't remember the other lawyer's name, and I  
13     encounter him seldom.

14          Q.     Do you know what his general area of  
15     representation is?

16          A.     No, I don't.

17          Q.     Does anyone other than you advise FORA on  
18     Public Records Act matters?

19          A.     No.

20          Q.     With the exception, obviously, of Mr. Balch's  
21     involvement in this litigation, during the time that you  
22     have been authority counsel at FORA, have you responded  
23     to Public Records Act requests from the public?

24          A.     I have helped.  Responding to Public Records  
25     Act requests is not normally my prime responsibility.



1 It is normally the prime responsibility of the clerk,  
2 and that person when I came to work was Linda Stiel,  
3 S-t-i-e-l, and then Daylene Alliman, A-l-l-i-m-a-n. And  
4 it is now Lena Spillman, S-p-i-l-l-m-a-n. And they are  
5 predominantly responsible.

6 I did respond to Public Records Act requests  
7 periodically between -- in the hiatus between each of  
8 their departures and new arrivals.

9 Q. How long has Ms. Spillman been clerk? Your  
10 best knowledge.

11 A. Maybe six months. Maybe eight months. Less  
12 than a year.

13 Q. To your knowledge has she had experience with  
14 Public Records Act requests before coming to work at  
15 FORA?

16 A. She has had quite a bit of experience.

17 Q. What was that, to your understanding?

18 A. She worked for a couple of other public  
19 agencies. One was a small special district, and the  
20 last one was the City of Palo Alto.

21 Q. What was the special district, do you know?

22 A. Don't know.

23 Q. How many years has she been involved in Public  
24 Records Act requests?

25 A. Don't know. Couldn't have been very many. She

1 seems very young. Probably, I'm guessing, four or  
2 five years.

3 Q. Is it your understanding that she came from  
4 Palo Alto to FORA?

5 A. Yes.

6 Q. And that was roughly six months?

7 A. As I said, six or eight months, I would guess.

8 Q. And what is Ms. Spillman's -- her title is  
9 clerk. Is that correct?

10 A. Technically Michael Houlemard,  
11 H-o-u-l-e-m-a-r-d, is the clerk, and she is the deputy  
12 clerk, deputized by Michael, who is the executive  
13 officer. But in practice she is the clerk.

14 Q. So as a matter of standard practice, if a  
15 Public Records Act request comes in --

16 A. She handles it. Yes.

17 Q. And does she handle it with the assistance of  
18 anybody else on staff?

19 A. Always.

20 Q. Who assists her?

21 A. It depends on the request.

22 Q. As to meeting the legal requirements of the  
23 Public Records Act such as the ten-day response period  
24 and the additional 14-day period in contents of  
25 documents, the exemptions, what is a public record, what

1 is not a public record, that type of material, does  
2 Ms. Spillman rely upon you?

3 A. Yes.

4 Q. Does she rely upon anybody else for legal  
5 advice on that?

6 A. I doubt it.

7 Q. As far as you know is there any indication that  
8 she had been relying on anyone else?

9 A. She mentioned that she had gone to a seminar  
10 given by a group of lawyers, and she told me some of the  
11 advice that they had given at the seminar. So I imagine  
12 she relied on that.

13 Q. As a part of your practice do you review her  
14 responses to Public Records Act requests?

15 A. If she asks me to, I do.

16 Q. And under what circumstances does she ask you?

17 A. I wouldn't know.

18 Q. Are there any criteria for when she must ask  
19 you?

20 A. No.

21 Q. Any criteria for when she should ask you?

22 A. Only common sense.

23 Q. Are there any directives or policies as to the  
24 role of authority counsel in regard to Public Records  
25 Act responses?

1           A.     No.    There are none.    I serve at the pleasure  
2     of the Board.    And the only criterion of that kind is  
3     that the Board have confidence in the work that I'm  
4     doing.

5           Q.     Mr. Balch has produced to me three documents  
6     here.

7                    Today are there other ones that this witness is  
8     producing?

9           MR. BALCH:   No just those three.    And I had  
10    indicated in my e-mail to you that there were others  
11    such as the policy and ESCA agreement that would refer  
12    to some of his background correspondence.    But you have  
13    those letters and the agreements.

14    BY MR. STAMP:

15           Q.     Okay.    So what we have here, Mr. Bowden, is  
16    first of these is a February 7, 2012, e-mail to you and  
17    to Mr. Cook.    Correct?

18           MR. BALCH:   If I could -- as an add-on to what  
19    I just said, I also informed you earlier that there was  
20    a February 7 e-mail to Mr. Bowden, which I think you are  
21    looking at, that was the result of a preliminary e-mail  
22    from Mr. Bowden over to ARCADIS that we will look for.  
23    It was a simple transmittal e-mail.    He can testify to  
24    it, though, and the record will reflect there was a  
25    prior e-mail that we will be looking for.

1 MR. STAMP: So just I'm clear, David, this  
2 February 7 e-mail is a response to an e-mail from  
3 Mr. Bowden. Is that --

4 MR. BALCH; That is my understanding. I'm going  
5 to invite you to ask him.

6 MR. STAMP: I will get to that. I want to list  
7 what the documents are first.

8 So we have the February 7, 2012, e-mail. We  
9 have a records retention policy.

10 THE WITNESS: Staff report.

11 BY MR. STAMP:

12 Q. Staff report for the June 8, 2012, meeting.  
13 Correct?

14 A. I concede that is what it is.

15 Q. And then we have a draft public record  
16 retention and management policy from an earlier period.  
17 Correct?

18 A. Yes. I believe that was prepared by Linda  
19 Stiel an indeterminate number of years ago.

20 Q. As to that draft policy from Linda Stiel, did  
21 you review this before it reached this stage?

22 A. I don't recall.

23 Q. If you look at it, would it help you understand  
24 whether you reviewed it or not?

25 A. No, it would not. I looked at it recently, and

1 it didn't jog my memory. This is a document that goes  
2 back necessarily quite of number of years because Linda  
3 Stiel has been gone for a number of years. And I review  
4 documents every day. I have no special knowledge of  
5 having reviewed that one.

6 I can say in the normal course of my work I  
7 would review it. Whether I reviewed it prior to the  
8 stage that you are looking at now or not, I don't  
9 recall. But it is my job to review documents like that.

10 Q. Do you have any specific recollection of seeing  
11 this document in the past?

12 A. Yes. I saw it earlier today.

13 Q. Before today do you have any recollection of --

14 A. Seeing this document? No specific  
15 recollection.

16 Q. It has a footer on page 4. I don't know if  
17 your eyes are any better than mine.

18 A. My eyes are pretty good when I take my glasses  
19 off.

20 Q. It seems to state 2008 document.

21 A. It says, "Linda Winword/Public Request  
22 Requests/Public Records Policy Draft 031008.doc." That  
23 is what it says.

24 Q. Do you recognize the format of that footer?

25 A. No, I don't.

1 Q. Does it refresh your recollection whether this  
2 was prepared in 2008?

3 A. I'm pretty sure it would have been earlier than  
4 that but only -- I base that -- I'm speculating, only  
5 because I don't think Linda Stiel was working for FORA  
6 in 2008. That was about the time she left. However, it  
7 could have been prepared in 2008.

8 Q. Is Linda Stiel the same as Linda Winwood?

9 A. No. Winword. That sounds like a software  
10 program.

11 Q. Her first name is Linda with an "I"?

12 A. L-i-n-d-a S-t-i-e-l.

13 Q. Okay. Before the current controversy over  
14 public records retention and management policies, the  
15 2012 issue raising this issue, was there any previous  
16 time in your last 12 years at FORA as authority counsel  
17 when the issue of public records retention and  
18 management policies was brought to your attention?

19 A. No.

20 Q. Do you have any recollection of anyone at the  
21 FORA Board or staff ever talking to you about public  
22 records retention and management policies before, let's  
23 say, May of 2012?

24 A. Possibly. I have never -- the direct answer to  
25 your question is no. However, I recall having been

1 admonished by our IT staff member person in charge of  
2 the computers and computer programs repeatedly that we  
3 needed to free up space on the server and that we were  
4 being remiss in not deleting more data not ever  
5 identified by species of data but merely x's and o's  
6 from our hard drive because the hard drive had a limited  
7 capacity, and would we please start getting rid of  
8 things that we don't need from our hard drive,  
9 principally e-mails.

10 Now, no one ever used the words "public  
11 records" because the IT person probably had never heard  
12 the phrase "public records." It was purely a space  
13 issue.

14 Q. And when was this I guess ongoing discussion  
15 about the space issue?

16 A. Constant. From the time I came, presumably,  
17 before that, but from the time that I came until very  
18 recently.

19 Q. What do you mean by very recently?

20 A. We hired a new IT person, and I haven't heard  
21 her say that recently.

22 Q. When did you hire the new IT person?

23 A. Maybe about the time that Linda Spillman came  
24 on board, which would have been, perhaps, six months  
25 ago.



1 Q. Lena Spillman?

2 A. No. The new unit IT person is Jen Simon.  
3 S-i-m-o-n.

4 Q. I thought you referred to Linda Spillman.

5 A. I said -- what I meant to say, and I may have  
6 misspoke, is that the IT person came on about the same  
7 time as Linda Spillman.

8 MR. BALCH: Lena.

9 THE WITNESS: Oh, I'm sorry. Okay. I did  
10 misspeak.

11 BY MR. STAMP:

12 Q. There is only one --

13 A. Lena Spillman. I misspoke.

14 Q. Is there only one Spillman as far as you know  
15 that works at FORA?

16 A. That's right. Lena Spillman. And Jen Simon  
17 came on board at about the same time. That is what I  
18 meant to say.

19 Q. After Jen Simon came in, you haven't had any  
20 discussion then about public records retention and  
21 management policy?

22 A. We have had numerous conversations about it.  
23 What I said was that she has not admonished us to delete  
24 documents, including e-mails, from our hard drives.

25 Q. To the best of your knowledge, has anyone at

1 FORA in the last five years done any kind of analysis or  
2 study as to how to preserve more documents as opposed to  
3 eliminating more documents?

4 A. I wouldn't know. I have nothing to do with the  
5 computer side of FORA's operations.

6 Q. Would you consider yourself computer savvy?

7 A. No, not at all. I'm computer hostile.

8 Q. You have been designated by counsel here for  
9 FORA as the person to respond to certain categories.  
10 I'm going to start by giving you the list of the  
11 deposition notice here.

12 (Deposition Exhibit 1 was marked for identification.)

13 BY MR. STAMP:

14 Q. Let me give you the document first. This is  
15 the modified deposition notice.

16 Did you want to respond to something?

17 A. Well, it is the fact that I may be the person  
18 most knowledgeable about these subjects does not mean  
19 that I'm knowledgeable about these subjects. And for  
20 example, many of the subjects on this Exhibit 1 have to  
21 do with insurance. I have -- let me tell you before we  
22 even start on the subject of insurance, I have no  
23 expertise in the field of insurance and I have done none  
24 of the work on behalf of FORA on insurance. None.

25 Q. Okay. I appreciate the clarification. That is

1 helpful.

2 As you probably understand, because FORA is a  
3 corporate entity as opposed to a live human being, if we  
4 want to take the deposition of FORA, what we do is we  
5 typically require FORA to designate the person most  
6 knowledgeable, whether that person knows anything or  
7 not.

8 A. I don't know what David has told you, but the  
9 person -- the lawyer for FORA who is the most  
10 knowledgeable about insurance is -- in fact, the only  
11 person knowledgeable about insurance, as far as I know,  
12 is Barry Steinberg. And you can take Barry Steinberg's  
13 deposition if you want, but I can't -- I'm not likely to  
14 be of very much help to you.

15 Q. I appreciate that. And it may make it go a  
16 little faster.

17 David has also provided me with a list of areas  
18 where it would be better areas to question you than  
19 others, and I think the insurance policy and the way all  
20 the insurance pieces fit together or don't fit together  
21 is probably not on David's list or on my list.

22 A. Okay. Well, go ahead. I wanted to warn you  
23 that I know next to nothing about any of the insurance  
24 issues that are on this list.

25 MR. BALCH: Let me state for the record I think

1       there were 19 categories, some overlapping and some open  
2       to interpretation. We're doing the best job we can  
3       today to produce the people we feel are most  
4       knowledgeable, Michael.

5                If for some reason on one of the categories you  
6       say that you thought of it as "x" and I thought of it as  
7       "y," obviously we will go back and keep the deposition  
8       open to get the person that would be right; or, for  
9       example, if Jerry can only give a partial answer on one  
10      of the questions, obviously I know you reserve your  
11      right to keep it going and bring in someone else, and I  
12      would not object to that.

13      BY MR. STAMP:

14            Q.     There are -- again, for clarification so we  
15      have a clean record, there are a total of 19 categories;  
16      however, we have eliminated a number of those.

17            MR. BALCH:   Agreed.

18            MR. STAMP:   There are much fewer than 19. And  
19      Mr. Bowden has been designated as of 9:40 last night  
20      when somebody was working on less than eight of them, I  
21      think. On eight of them. So it is not 19. It is just  
22      a limited number.

23            THE WITNESS:   Correct.

24            MR. STAMP:   Why don't we start with that.

25            THE WITNESS:   By my count you have eliminated

1 14 of the 19. I counted ones that have been struck out.

2 BY MR. STAMP:

3 Q. There are two documents I think, Mr. Bowden.

4 A. Okay.

5 Q. One is the document request and one is the  
6 notice of deposition.

7 A. Okay. Sorry.

8 Q. So but we are down to -- for you, there are  
9 eight of them. If you don't know anything about these  
10 fields, you as person most knowledgeable doesn't know  
11 anything about them.

12 The first is number 1 on that chart on the list  
13 in front of you, which is FORA'S document retention  
14 policies in effect, if any, at any time in the past five  
15 years.

16 Now we know that FORA does not have a written  
17 public records retention and management policy.  
18 Correct?

19 A. Correct.

20 Q. Has FORA at any time had something that was not  
21 written but which you believe served the functions of a  
22 public records retention and management policy?

23 A. Yes.

24 Q. And what is that?

25 A. The policy is that any piece of paper that

1 transacts public business that comes in to the FORA  
2 offices or leaves the FORA offices is scanned by  
3 Charlotte Ellsworth, E-l-l-s-w-o-r-t-h. And she scans  
4 it into a program that I have been told is called  
5 DOCSTAR, in all capital letters, D-O-C-S-T-A-R. And it  
6 is retrieved electronically.

7 E-mails are handled by different methods by  
8 different people. Anything having to do with litigation  
9 is automatically saved. Issues that have to do with  
10 transacting public business are sometimes -- well, as I  
11 said, different staff members have different ways of  
12 dealing with them. Some are archived. Some are sent on  
13 to someone else for storage.

14 In my case, I save e-mails that give me  
15 direction or enunciate a policy or seek or alert me to  
16 some ongoing progress on a matter that is assigned to  
17 me. Matters that have nothing to do with me I delete.

18 I don't know what the policies of other members  
19 of the staff are, but I have been told that they retain  
20 e-mails that concern transaction of public business in  
21 one fashion or another.

22 Q. Why is none of this written?

23 A. No need to. We have only a 12-member staff.  
24 This is not a city or a county. We have a very small  
25 staff. Furthermore, FORA is a temporary entity, and all

1 of our functions are specified in the FORA Act, and this  
2 is not one that the FORA Act directs us to do anything  
3 with.

4 Q. Of the 12 employees now working at FORA, how  
5 many of those have come to work in the last three years?

6 A. About a quarter, four or five.

7 Q. And when a new employee comes on at FORA, are  
8 they given anything to talk about record retention?

9 A. I don't know. I'm not in charge of training.  
10 I don't specifically talk to them about the Public  
11 Records Act or the Brown Act or any of the other myriad  
12 statutes that we have to deal with.

13 Q. Have you ever had a staff meeting where you  
14 have described or any other communications of some kind  
15 where you have described for the staff what it means to  
16 save documents that have to do with litigation?

17 A. Yes.

18 Q. What does that phrase mean? What does it  
19 encompass?

20 MR. BALCH: To you.

21 THE WITNESS: To me. Well, we have talked at  
22 staff meetings. We have a staff meeting every Tuesday  
23 morning, and we've talked about the need to protect  
24 documents that concern litigation on numerous occasions.

25 //

1 BY MR. STAMP:

2 Q. What is the definition that you have in mind  
3 for documents that concern litigation?

4 A. Any document that threatens litigation, that  
5 discusses litigation involving FORA.

6 Q. Anything else?

7 A. I think it is -- generally, I think anyone  
8 would understand that a document that relates to in any  
9 way litigation would fall under that heading.

10 Q. So is "relates to litigation" different than  
11 "concern litigation"?

12 A. No, it is not.

13 Q. And is "has to do with litigation" different  
14 than the other two --

15 A. No.

16 Q. -- definitions you have given?

17 A. No.

18 Q. Is there an employee manual at FORA?

19 A. Yes.

20 Q. Is that given to each employee when they come  
21 to work there?

22 A. Yes.

23 Q. Is there anything in there about public records  
24 or retention of documents?

25 A. No.



1 Q. Why not?

2 A. No need to.

3 Q. Is there anything in there about, for example,  
4 expenditures appropriate to travel?

5 A. Don't know. I don't recall that there is.  
6 When these issues arise, they are dealt with.

7 Q. Are there any written policies that are  
8 provided to new employees that talk about what expenses  
9 are allowable or not for reimbursement?

10 A. Written policies?

11 Q. Is there a policy manual or group policy given  
12 to new employees?

13 A. No.

14 MR. BALCH: I object. The document does speak  
15 for itself.

16 BY MR. STAMP:

17 Q. The document is not here, so Mr. Bowden can  
18 speak for the document.

19 A. I think I can speak for the document.

20 MR. BALCH: I'm preserving the objection. I  
21 don't know if that document would have been requested to  
22 the extent it went to reimbursements.

23 That being said, if you know the answer, please  
24 feel free to answer.

25 THE WITNESS: I don't really remember

1 specifically that it discusses that. The employee  
2 handbook predominantly talks about employees'  
3 responsibilities with respect to sexual harassment and  
4 discrimination and sick leave and the general personnel  
5 type of issues. I don't think that the financial issues  
6 are covered in there. But I'm just trying to be  
7 helpful, and to a large degree I'm speculating because I  
8 read that handbook before it was formally adopted, and I  
9 don't recall anything in it as, I sit here today, about  
10 financial matters. I could be wrong.

11 BY MR. STAMP:

12 Q. By financial matters, that is having to do with  
13 my question about reimbursement?

14 A. Right, or anything else of a financial nature.

15 MR. STAMP: I would like to get that policy.

16 MR. BALCH: And if it is --

17 MR. STAMP: Table of contents would be fine.

18 MR. BALCH: Okay. And for purposes of today, I  
19 will agree to that as a Public Records Act request. I  
20 will pass it on. I will get it to you prior to the ten  
21 days. I will get it to you as soon as I can.

22 MR. STAMP: Why don't you just send me the  
23 table of contents.

24 MR. BALCH: Perfect.

25 MR. STAMP: That is fine.

1 BY MR. STAMP:

2 Q. And you said e-mails are handled in a different  
3 way than pieces of paper.

4 A. That's right.

5 Q. And why is there a distinction between the  
6 e-mails and piece of paper?

7 A. Because a piece of paper can be scanned and  
8 e-mail can't.

9 Q. An e-mail can't be scanned?

10 A. No.

11 Q. Can it be preserved?

12 A. Sure.

13 Q. So if somebody sends out a document that talks  
14 about pending litigation and they do it only by e-mail,  
15 couldn't that e-mail be preserved?

16 A. Sure.

17 Q. So I'm trying to understand the distinction  
18 between piece of paper and e-mails in terms of why they  
19 are saved or not saved.

20 A. Well, that wasn't your question. Your question  
21 was why aren't the rules the same. And I told you that  
22 the rules are different because a piece of paper is  
23 different from a string of electrons on a hard drive.  
24 They can both be saved, but they can't be saved in the  
25 same way. The hard piece of paper you put on a plate

1 and you push scan and you give it a name and you store  
2 it someplace. An e-mail you save in a different manner.  
3 I don't know how you do it. You archive it. I just  
4 leave it in my inbox, is what I do with it. But there  
5 are two different ways of storing documents.

6 Q. Have you ever tried to save an e-mail?

7 A. I save a lot of e-mails just by not deleting  
8 them.

9 Q. Okay. Have you ever tried to scan an e-mail?

10 A. No. I have never tried to scan an e-mail. I  
11 think I could, I suppose, if I printed it out. I can't  
12 scan anything. I can't scan pieces of paper. I can't  
13 scan anything.

14 Q. Okay.

15 A. I have never scanned a document in my life.

16 Q. Is Mr. Houlemard subject to the same unwritten  
17 policies that you have described for me having to do  
18 with pieces of paper and e-mail?

19 A. Those policies are not specific to individual  
20 staff members, so the answer is yes.

21 Q. Have you ever discussed any of these policies  
22 with Mr. Houlemard?

23 A. Numerous times.

24 Q. Has Mr. Houlemard ever indicated that he was  
25 complying with them?

1           A.     Yes.

2           Q.     In what way?

3           A.     In the way that we've talked about.

4           Q.     What was the discussion?

5           A.     I can't remember the discussion.  There  
6           were -- there have been many discussions.  I imagine we  
7           talked about how these things are done mechanically.  
8           How these records are preserved mechanically, but I have  
9           no specific recollection of a conversation with him and  
10          he said this and I said that and he replied this and I  
11          replied that way.  I can't do that.

12                  MR. BALCH:  I do want to state for the record,  
13          Mr. Bowden is an attorney.

14                  And so Jerry, you are probably in the best  
15          position to know in the answers on these questions what  
16          would be attorney/client privilege and what would not.  
17          I will remind you that to the extent that you're  
18          discussing conversations, there is a potential for  
19          privilege.

20                  MR. STAMP:  He's also the person designated  
21          most knowledgeable on this subject --

22                  MR. BALCH:  Understood.

23                  MR. STAMP:  -- of the document retention  
24          policies.  So I think I have a little bit farther range  
25          than I might otherwise have.

1                   MR. BALCH: You do. And that is why I did not  
2 object. It was just a reminder on the record.

3 BY MR. STAMP:

4           Q. Are you familiar with the production of e-mails  
5 that came from Barry Steinberg?

6           A. No.

7           Q. Before I mentioned it, did you know that Barry  
8 Steinberg's e-mails had been or a number of them had  
9 been turned over to us?

10          A. Yes.

11          Q. Have you talked to Mr. Houlemard about any of  
12 the contents of the Steinberg e-mails?

13          A. No.

14          Q. I'm going to represent to you that in  
15 Mr. Steinberg's e-mails there are hundreds of e-mails  
16 from Mr. Houlemard, yet FORA has not produced any from  
17 the FORA files, any e-mails.

18          A. Okay.

19          Q. Have you been asked to do any kind of  
20 investigation or look into why Mr. Houlemard's e-mails  
21 appear to exist only in Kutak Rock and do not exist at  
22 FORA?

23          A. No. But I can tell you that I'm not surprised  
24 by that.

25          Q. Why not?

1           A.     Because a couple of years ago we had a total  
2     server failure and lost all our documents that were  
3     backed up on the server.  And we tried to retrieve them  
4     by some professional who came in and extracted the hard  
5     drive.  And my recollection is that I was told that a  
6     few of the records could be retrieved from that hard  
7     drive.

8           Q.     You had an entire system failure?

9           A.     Yes.

10          Q.     Every computer at FORA?

11          A.     No, not every computer, although we have had  
12     individual failures at FORA.  But the backup server --  
13     bear in mind, I'm not a computer person.  I'm talking  
14     only about what people have told me.

15                 But I remember what I just told you from having  
16     been around at the time that this happened; that the  
17     backup documents on the server, which is where  
18     apparently a lot of people -- as I mentioned before, the  
19     IT person said our server backup, main server, is  
20     loaded.  That was the server that went down.

21          Q.     I know you are not the computer person, but do  
22     you know whether any efforts was made to retrieve the  
23     documents --

24          A.     I have already testified --

25          Q.     -- on the server?

1           A.    I have already testified --

2                   MR. BALCH:  Let him finish his question.

3  BY MR. STAMP:

4           Q.    The documents on the server.

5           A.    Are you through?

6           Q.    Yes.

7           A.    I have testified to that.  They hired a  
8 professional to come in and extract the hard drive,  
9 attempt to retrieve documents.  And apparently some data  
10 were retrieved from the hard drive and most was not.

11          Q.    And how about the individual computers?

12          A.    How about them?

13          Q.    Was there some effort to retrieve documents off  
14 the individual computers to replace or supplement --

15          A.    I don't know.

16          Q.    -- what would have been deleted from the  
17 server?

18          A.    I don't remember any conversation of that.

19          Q.    When was this system-wide crash?

20          A.    A couple years ago.

21          Q.    What is your best estimate when it was?

22          A.    A couple years ago.

23          Q.    Five years ago?

24          A.    No.

25          Q.    Two years?



1           A.    Yeah.  Something like that.

2           Q.    Four years ago?

3           A.    A couple years ago.  I can't be more specific  
4 than that.

5           Q.    Who handled this IT failure on behalf of FORA?

6           A.    A person named Tom.

7           Q.    Do we have a last name for Tom?

8           A.    I don't.  It is a professional company, and  
9 this Tom person comes in whenever we have these problems  
10 and blows smoke and shakes salt and prays to chicken  
11 bones and does whatever he does.

12          Q.    Was there somebody on behalf of FORA who was  
13 dealing with Tom on this issue?

14          A.    It would have been the IT person.  Sharon  
15 Strickland was her name.  She is now in Texas, I  
16 believe.

17          Q.    When did Sharon Strickland leave FORA?

18          A.    Within the last year.  She was replaced by Jen  
19 Simon.  And she would have been -- it would have been, I  
20 don't know, eight, ten months ago maybe.

21          Q.    Let's go back to Exhibit 1.  And let's talk  
22 about item number 6 where you have also been designated  
23 as the person most knowledgeable.

24                    Let me mark as Exhibit 2.

25                    (Deposition Exhibit 2 was marked for identification.)

1 BY MR. STAMP:

2 Q. This is Mr. Balch's list to me from this  
3 morning. I'm trying to work with this list here to  
4 figure out which ones you would testify to.

5 A. I may not know much about computers, but I know  
6 how to increase the font size. I will explain how to do  
7 that to you. This is very difficult to read.

8 BY MR. STAMP:

9 Q. Well, let me tell you that category 6 through 8  
10 of Exhibit 1 -- if you go back to this category 6, 7,  
11 and 8 of this exhibit, they are the ones where you have  
12 been designated. In tiny print. Yes.

13 A. No. That Exhibit 1 print is fine. It is  
14 Exhibit 2 that is the problem.

15 Q. Right.

16 A. But I can read it.

17 Q. Exhibit 2 is the one that designates you for  
18 items 6, 7 and 8.

19 A. Okay.

20 Q. But you are telling me that you are not the  
21 insurance guy. Is that --

22 A. Not at all.

23 Q. Okay.

24 A. The sole insurance person is Barry Steinberg.  
25 And the people who work with him, Kathy Geddes, is the

1 name I remember who works for the broker, Marsh.

2 MR. STAMP: We're still getting Marsh  
3 documents?

4 MR. BALCH: I think I spoke with you about that  
5 last week.

6 THE WITNESS: And there may be --

7 MR. BALCH: I sent you an e-mail asking you if  
8 you needed them, and you said you weren't sure.

9 MR. STAMP: We'll talk about it.

10 MR. BALCH: On number 6, I sort of use 6, 7,  
11 and 8 as the reference to the FORA letter of March 5th,  
12 2012, page 1. I understood those questions not to be  
13 about, for example, how the policy was entered into, but  
14 more a document production issue with respect to this  
15 lawsuit.

16 MR. STAMP: Okay.

17 MR. BALCH: And if you had a broader view of  
18 number 6, that would be helpful to know what that was.  
19 And Stan Cook might be able to answer some of those  
20 questions if they were broader in nature.

21 MR. STAMP: Let's mark next as Exhibit 3, which  
22 is the March 5th FORA letter.

23 (Deposition Exhibit 3 was marked for identification.)

24 BY MR. STAMP:

25 Q. You provided me a sheet that says George

1 Schlossberg. That is the other attorney at Kutak Rock.

2 A. Yes.

3 Q. Thank you.

4 Mr. Bowden, this is the March 5th, 2012,  
5 letter. Did you author this?

6 A. Yes, I did.

7 Q. And is that your signature on page 2?

8 A. Yes, it is.

9 Q. Let's go through some of the contents of this,  
10 if we can. On request -- where it says request 1A, what  
11 does "EPP" stand for?

12 Your response was that FORA has only a specimen  
13 specific version of this policy. Is that correct?

14 A. That is what it says.

15 Q. Was that an accurate statement?

16 A. It was as far as I knew at the time. I have  
17 since learned that buried in our files was a complete  
18 version of the policy. You know, I could be talking  
19 about another policy here. But I believe that we have  
20 since found a copy of this policy buried in the files.

21 Q. Before writing your letter of March 5th, did  
22 you do any investigation as to whether FORA had the EPP  
23 policy?

24 A. Yes, I did.

25 Q. What did you do?

1           A.     I asked the person who would have the policy  
2 whether we had it. I asked several people. I asked  
3 Charlotte whether it was available. Excuse me.  
4 Charlotte was ill at the time. I would have asked  
5 Charlotte, but I didn't because she was in the hospital.  
6 I asked Stan Cook, who is in charge of the ESCA,  
7 E-S-C-A, program. And he said no, we just have the  
8 specimen version.

9           And I had a fuzzy memory from eight or nine  
10 years ago when this issue was before the Board of a  
11 conversation between Barry Steinberg and the Board about  
12 our ability to see the policy. And my recollection was  
13 that Barry had told the Board that we would only have  
14 the specimen policy and I remember that it was only a  
15 specimen policy that was provided to the Board. And so  
16 on the basis of my memory and my conversation with Stan  
17 Cook, I thought this was correct.

18          Q.     Did you ask Mr. Houlemard if there was a copy  
19 of the policy?

20          A.     I believe I did.

21          Q.     What did he tell you?

22          A.     I believe he told me the same thing. In fact,  
23 I know if I did talk to him, he told me the same thing.

24          Q.     Do you have a recollection whether you talked  
25 to him or not?

1           A.     No.  I do not have a specific recollection.  
2     Michael Houlemard is frequently in Washington DC,  
3     Sacramento, or some other city in the United States on  
4     FORA business.

5           Q.     Is there anyone who is designated as his chief  
6     deputy or person to supervise or serve in his capacity  
7     when he is gone?

8           A.     Yes.

9           Q.     Who is that?

10          A.     Steve Endsley, E-n-d-s-l-e-y.

11          Q.     How long has Mr. Endsley been designated as  
12     such?

13          A.     I don't -- oh, it would have been  
14     approximately, I'm going to say, two years.  I don't  
15     know exactly.

16          Q.     And was there an assistant or a deputy before  
17     Mr. Endsley?

18          A.     Yes, there was.

19          Q.     Who was that?

20          A.     Jim Feeney, F-e-e-n-e-y.

21          Q.     Mr. Feeney left FORA at some point?

22          A.     About the same time as -- well, he would have  
23     left shortly before Steve Endsley was designated in his  
24     place as assistant or deputy or whatever the title is.

25          Q.     Was Mr. Endsley a new hire at that time?

1 A. No.

2 Q. Promotion?

3 A. No. It was a promotion.

4 Q. Did you ask Mr. Endsley about the EPP policy?

5 A. I don't recall.

6 Q. The letter says FORA has only a specimen  
7 version of this policy. What is a specimen version?

8 A. I don't know what it is. It was -- in my fuzzy  
9 memory of that policy, and I believe you have been given  
10 a copy -- in fact, I know you have been given a copy of  
11 that specimen policy. It redacts something. I have  
12 never read it.

13 Q. So the specimen version might be a redacted  
14 version?

15 A. Redacted version. What is redacted, I don't  
16 know. I have never looked at it.

17 MR. BALCH: I will note we have been going  
18 about an hour. Maybe finish up whatever line of  
19 questions you have got on this category if you want. I  
20 want to make you aware of that for the court reporter's  
21 sake.

22 MR. STAMP: That is fine. If anybody wants a  
23 break, say so at any point, Mr. Bowden, please. I'm  
24 happy to provide any. You don't have a give me a  
25 reason.

1           B on this says FORA is only entitled to see the  
2 policy in the event of a claim. Do you see that?

3           A. Yes.

4           Q. Did you write that?

5           A. Yes.

6           Q. And what was that statement based upon?

7           A. Same fuzzy memory and a desire to be helpful.

8           Q. I understand the first. What is the second  
9 one?

10          A. I was trying to be helpful in responding to  
11 this request for the policy by saying that we don't have  
12 the policy. And my fuzzy memory was that, again, based  
13 on an eight- or nine-year old conversation that George  
14 or that Barry Steinberg had with the Board, that in the  
15 event there was a claim, that the policy would be  
16 produced. I have since learned that is incorrect.

17          Q. Have you ever seen an insurance policy before  
18 that carried a provision that said that the people  
19 paying for the insurance wouldn't be allowed to see it?

20          A. No. I have never seen a policy that had a  
21 nondisclosure agreement either.

22          Q. Okay. And it says only see the policy in the  
23 event of a claim. A claim by whom?

24          A. I don't know. A claim against the policy,  
25 presumably.



1 Q. And what types of claims have been made against  
2 the policy?

3 A. I don't know. I don't believe any claims have  
4 been made against the policy. I have never heard of a  
5 claim being made.

6 Q. And the response under B goes on to talk about  
7 a confidentiality agreement with the insurance company  
8 that issued it. Do you see that?

9 A. I do.

10 MR. BALCH: I would clarify for the record that  
11 I think the confidentiality agreement refers to the PLL  
12 policy.

13 THE WITNESS: Yes.

14 BY MR. STAMP:

15 Q. What is the PLL policy?

16 A. Pollution legal liability.

17 Q. Is that different than the EPP policy?

18 A. You know, it has never been clear to me, the  
19 difference between those policies.

20 Q. And your letter says that the PLL policy, as  
21 Mr. Balch has pointed out to us, is subject to a  
22 confidentiality agreement with the insurance company  
23 that issued it.

24 A. Uh-huh.

25 Q. Was it your understanding that the EPP policy

1 was also subject to a confidentiality requirement?

2 A. I just said I have never been clear about the  
3 difference between the two policies. So your question  
4 presumes that I had an understanding, and I never really  
5 did.

6 Q. I appreciate that clarification.

7 So you don't know whether the EPP policy had a  
8 confidentiality agreement or not?

9 A. No, since I don't know the difference between  
10 the two policies. I had always conflated all of these  
11 policies. They seem to talk about -- when Barry  
12 Steinberg would come to the Board, he seemed to talk  
13 about them as if they were all the same thing. But they  
14 were all so complicated and so intricate that I think  
15 like members of the Board, I never really understood  
16 what was the differences. Now, I may have understood at  
17 the time, but it certainly hasn't lasted eight years.

18 Q. What was the source of your information that  
19 one or both of the policies was subject to a  
20 confidentiality agreement?

21 A. I just said the --

22 Q. Fuzzy memory?

23 A. That fuzzy memory of Barry Steinberg talking to  
24 the Board.

25 Q. So when you wrote the letter on March 5th, you

1 were -- on that issue about the confidentiality  
2 agreement, you were relying solely upon your fuzzy  
3 memory?

4 A. Yes. My memory was sufficiently clear that I  
5 definitely remembered that there was a confidentiality  
6 agreement.

7 Q. Did you make a legal determination that the  
8 confidentiality agreement had some bearing upon a  
9 request under the Public Records Act?

10 A. No. I have never seen the confidentiality  
11 agreement. And I have never seen any of these policies.

12 MR. STAMP: Let's take a break at this point.

13 Come back in ten minutes.

14 (Break taken.)

15 BY MR. STAMP:

16 Q. Back on the record. You are still under oath.

17 Exhibit 3 is the March 5th, 2012, letter we've  
18 been going through.

19 Let's go to the second page of this,  
20 confidential business records. The response, "FORA is  
21 contractually obligated to protect the confidentiality  
22 of the PLL policy."

23 You wrote that. Correct?

24 A. Yes. I wrote everything in here.

25 Q. And what information did you have that went

1 into that statement?

2 A. I have already testified to that.

3 Q. Meaning the fuzzy recollection?

4 A. That's right, and the confidentiality  
5 agreement.

6 Q. What confidentiality agreement?

7 A. Well, I had -- we have already gone over that.  
8 In talking about the EPP policy and about how I was --  
9 that I had no clear distinction in my mind between any  
10 of these policies, so I thought that the PLL policy was  
11 subject to a confidentiality agreement.

12 Q. Mr. Bowden, if you were, as you are saying, not  
13 distinguishing between the two policies and not knowing  
14 the difference between them, did you at some point seek  
15 assistance from somebody else in order to respond to  
16 Public Records Act requests?

17 A. No.

18 Q. Why not?

19 A. Because I thought I knew.

20 Q. And now you realize you didn't?

21 A. That's correct. That's correct.

22 Q. Let's go to the next category, which is records  
23 pertaining to the applications process. Do you have an  
24 understanding what the application process was?

25 A. No. Let me tell you again, I have no

1 recollection. I never was involved in the insurance  
2 part of this. And as my response to that says, I will  
3 quote, "All, or substantially all, of this communication  
4 was handled by FORA's insurance broker and/or FORA'S  
5 special counsel."

6 Q. Special counsel is Barry Steinberg?

7 A. We've gone into that. Yes.

8 Q. And FORA's insurance broker was whom?

9 A. I believe it was Marsh, and I believe the  
10 person's name was Kathy Geddes. Don't ask me to spell  
11 it.

12 MR. BALCH: Mike, I don't mean to interrupt,  
13 but I just got a copy of the table of contents of the  
14 personnel handbook and I'm forwarding it over to Molly  
15 right now.

16 MR. STAMP: Thank you.

17 BY MR. STAMP:

18 Q. Response said, "We do not have application  
19 process records."

20 But you don't know what the application process  
21 was. Correct?

22 A. I asked whether we had any, and I was told we  
23 did not.

24 Q. As you sit here now, do you know what the  
25 application process was?

1           A.    No.  I have already testified to that.

2           Q.    Do you know what documents exist in the  
3 possession of Barry Steinberg or anyone else about the  
4 application process?

5           A.    No, I do not.

6           Q.    Did you make any effort to contact  
7 Mr. Steinberg to find out what the application process  
8 records might be?

9           A.    I did contact him about this request, and I got  
10 -- and Barry told me that he wasn't sure what he had,  
11 that he had nothing in his office, and that he didn't  
12 know whether he had it in deep storage.  Apparently they  
13 have some kind of a storage facility off site.  He  
14 didn't know whether they had anything about that in  
15 their off-site storage or whether it existed at all in  
16 his files.

17          Q.    Did you find that surprising?

18          A.    No, because I don't know very much about how  
19 these insurance matters are transacted, but I thought  
20 that perhaps our broker would have done the application.

21          Q.    But if Mr. Steinberg was one of the two people  
22 handling the application, wouldn't you -- the policy is  
23 in the 80 to 100 million dollar range?

24          A.    Are you asking me what I should have done?

25          Q.    No.  I'm asking why it didn't trigger some

1 concern for you about the fact that if somebody says  
2 they don't know if they have the application process  
3 documents, did that trigger concern for you?

4 A. No.

5 Q. For the reasons that you stated?

6 A. Yes.

7 Q. And same page, page 2 of Exhibit 3, the ARCADIS  
8 LFR invoices. Do you know who LFR is?

9 A. ARCADIS and LFR are the contractors that FORA  
10 is in contract with to clean up the unexploded ordnance  
11 on Fort Ord.

12 Q. And your position was that the invoice is not  
13 public records under the Government Code. Correct?

14 A. Well, no. That wasn't my position. That was  
15 the position of ARCADIS. I asked LFR in an e-mail  
16 whether they regarded these records as public record or  
17 whether they considered them to be proprietary. I sent  
18 them the Public Records Act. I asked them to -- I asked  
19 the person in charge, name of Christy Reimer,  
20 R-e-i-m-e-r, to consult with her superiors and get back  
21 to me and tell me whether they were going to assert this  
22 privilege. And she did.

23 Q. And she did assert a privilege?

24 A. She did. Well, ARCADIS did. Whether she had  
25 anything to do with it, I doubt. I note that on the

1 February 7 e-mail to me there are a lot of names in  
2 ARCADIS, one of which is their in-house counsel. And I  
3 don't know who in the ARCADIS organization made this  
4 decision, but I doubt that it was Christy Reimer.

5 Q. Did you talk with anyone at FORA, including  
6 Mr. Houlemard, about whether you should be deferring to  
7 Christy Reimer or anybody else about your obligations  
8 under the Public Records Act?

9 A. No. I considered this a legal question; and  
10 when I got the e-mail from LFR telling me if we were to  
11 release this information, it would cause them damage, I  
12 concede that if FORA made the decision itself that it  
13 was not protected by the confidential business records  
14 exception to the public records definition, that we  
15 would be liable to ARCADIS if they were to sustain the  
16 damages that they were telling us they would sustain.

17 Q. Is there some documents where they itemize  
18 damages?

19 A. No, but they told us that they would be  
20 damaged.

21 Q. They say that the documents can be used by a  
22 competitor to our disadvantage.

23 A. That is the same thing as damage.

24 Q. Okay. Did they ever explain to you how a  
25 competitor would use any these policies --



1 A. Yes.

2 Q. -- to their disadvantage?

3 A. Yes, they did.

4 Q. What did they say?

5 A. In a meeting with Christy Reimer and her boss,  
6 Frank Lorentz, L-o-r-e-n-t-z --

7 MR. BALCH: I think it is L-o-r-i-n-c-z.

8 THE WITNESS: Okay. Believe him. Don't  
9 believe me. I'm dyslexic.

10 I met with Christy Reimer and Frank Lorincz  
11 days after this e-mail was received.

12 BY MR. STAMP:

13 Q. Days after the February 7 e-mail?

14 A. That's correct. And Frank Lorincz was at that  
15 time the CFO of ARCADIS. He told me that if we were to  
16 release these documents, it would give, in his words, a  
17 blueprint to their competitors of the way ARCADIS does  
18 business and would put their competitors at a  
19 competitive advantage over ARCADIS because the  
20 competitors would know how to bid future jobs.

21 Q. Did you ask for specifics?

22 A. No.

23 Q. Did you ask whether the policy was adaptable  
24 for other competitors or for their use?

25 A. I didn't cross-examine him at all.

1 Q. Did you ask him to provide any additional  
2 information?

3 A. No. No.

4 Q. Why not?

5 A. Because I could see that he was telling me that  
6 if I released these records, they would be damaged. And  
7 if they were damaged, they would look to FORA to be made  
8 whole for those damages. And his explanation and  
9 precisely how they would be damaged made sense to me.

10 Q. Did Mr. Houlemard express any opinion as to  
11 whether to release the documents or not?

12 A. Mr. Houlemard had nothing whatever to do with  
13 this decision. It was entirely my decision.

14 Q. Did Mr. Endsley have anything to do with it?

15 A. I have just told you it was entirely my  
16 decision.

17 Q. The concluding portions of Exhibit 3, page 2,  
18 talk about we have no legal obligation to create any  
19 records to satisfy your request or to seek elsewhere for  
20 records in third-party files.

21 What are you referring to as third-party files?

22 A. Files outside of the files that are subject to  
23 the Public Records Act.

24 Q. I'm sorry; could you explain that.

25 A. Do I have to?

1 Q. It would help. I didn't understand.

2 A. Public Records Act pertains to public agencies.

3 Q. Correct.

4 A. FORA is a public agency. It is not subject to  
5 the Public Records Act, but we try to comply with it  
6 anyway. Agencies outside FORA that are not governed by  
7 the Public Records Act are autonomous.

8 Q. By agencies, what are you referring to?  
9 Private individuals?

10 A. Well, I'll give you an example. ARCADIS is an  
11 example. Member jurisdictions, the County of Monterey,  
12 the City of Marina. I don't know what they have in  
13 their files.

14 Q. Did you make any effort to find out what those  
15 other public agencies had in their files?

16 A. No.

17 Q. Why not?

18 A. I just explained. They are not subject. And I  
19 explained in the letter they are -- the Public Records  
20 Act does not require any agency to go to another  
21 independent agency and try to gather their records.  
22 Public Records Act says that the agency who holds the  
23 records has to produce them if they are public records.  
24 It doesn't apply to third parties.

25 Q. What if they are business entities to whom the

1 agency has downloaded documents?

2 A. Are you asking me for a legal --

3 MR. BALCH: Hold on. I will object to the  
4 extent --

5 MR. STAMP: I will withdraw it.

6 BY MR. STAMP:

7 Q. In your discussion here of the facts, you state  
8 that FORA has no legal obligation to seek  
9 elsewhere for records in third-party files. Does that  
10 -- does third-party files include the files of  
11 contractors of FORA?

12 A. It depends on whether we have a right to those  
13 files or not. If FORA has right to files of contractors  
14 who do business with FORA by virtue of the contract with  
15 FORA, then it does not apply to them. We do have the  
16 right and in fact the legal obligation to get those  
17 obligations (sic) from those contractors. If, however,  
18 the contractor has records that don't pertain to our  
19 contract, we have no right to those records.

20 Q. Did any of the contractors in this situation  
21 have a contractual obligation to FORA to provide  
22 records?

23 A. I believe so.

24 Q. Which ones?

25 A. ARCADIS.

1 Q. So the reference to seek elsewhere for records  
2 in third-party files does not include ARCADIS?

3 A. It does include ARCADIS, but only to the extent  
4 that ARCADIS may have records that are proprietary to  
5 ARCADIS and do not pertain to the contract with FORA.

6 Q. Up until the public records requests in this  
7 case were made starting back in late 2011 by Keep Fort  
8 Ord Wild, was there ever a request made or anything  
9 connected with any of the insurance policies?

10 A. No.

11 MR. BALCH: I object. Vague and ambiguous.  
12 You mean were there any prior public records requests  
13 from other entities?

14 MR. STAMP: Any record requests from anybody.

15 THE WITNESS: I don't recall. We have gotten a  
16 lot of Public Records Act requests over the years. I  
17 don't remember any that had to do with insurance  
18 policies.

19 (Deposition Exhibit 4 was marked for identification.)

20 BY MR. STAMP:

21 Q. Exhibit 4 is a media release dated March 8,  
22 2012. Are you familiar with that?

23 A. Vaguely.

24 Q. Did you have any input into that?

25 A. No.

1 Q. Did you see it before it went out?

2 A. Don't recall.

3 Q. Do you know who wrote it?

4 A. Michael Houlemard.

5 Q. Do you know whether he had any assistance from  
6 anyone?

7 A. He may have had assistance from me.

8 Q. Pardon me?

9 A. He may have had assistance from me. I  
10 frequently edit documents like this. I'm speculating  
11 again.

12 MR. BALCH: We would instruct you not to  
13 speculate.

14 THE WITNESS: I can tell you in the normal  
15 course of my work, Michael asks me to review records. I  
16 have no specific or general recollection of having  
17 edited this document. I know I did not write it.

18 BY MR. STAMP:

19 Q. On the second page, middle of the first full  
20 paragraph, paragraph starts, "What then happened."  
21 There is a statement under number 3; "In addition, LFR  
22 was paid approximately 6.1 million for surplus lines  
23 taxes."

24 Do you see that?

25 A. Yes.

1 Q. Do you know anything about that subject?

2 A. No, I do not know a thing about that subject.

3 Q. And at the end of that paragraph, the  
4 penultimate sentence says, "To date, AIG has paid LFR  
5 \$44.3 million for work performed on the Fort Ord  
6 project."

7 Do you know anything about that statement?

8 A. Only what it says.

9 Q. Do you have any information of any kind as to  
10 where the number \$44.3 million came from?

11 A. I have no idea.

12 Q. Do you have any idea whether that is an  
13 accurate or inaccurate number?

14 A. I wouldn't know.

15 MR. BALCH: I would note for the record that  
16 there was a specific category about that statement in  
17 the oral deposition notice, and that category was x'd  
18 out for the revised deposition.

19 MR. STAMP: Yes.

20 MR. BALCH: I have no problems with you asking  
21 the question.

22 BY MR. STAMP:

23 Q. Last paragraph, first sentence, do you have any  
24 recollection as to providing any input into that  
25 sentence?

1           A.     It is not one that I would have let escape my  
2 editorial pen. I would never have written this  
3 letter -- this sentence. And if I had been editing it,  
4 it would have been shortened substantially. So no, I  
5 don't believe I have ever read the sentence before.

6           Q.     And then the last sentence says, the concluding  
7 part of it is, "All funds are accounted for on a very  
8 regular basis."

9                     Do you see that?

10          A.     Yes.

11          Q.     Do you know whether FORA reports the ESCA  
12 cleanup project expenditures on a regular basis?

13          A.     I don't know specifically. I know that the  
14 controller gives periodic reports to the Board about the  
15 ESCA, but you would to have talk to Ivana Bednarik,  
16 B-e-d-n-a-r-i-k.

17                   MR. STAMP: I believe we are going to talk to  
18 Ivana in a short while.

19                   (Deposition Exhibit 5 was marked for identification.)

20 BY MR. STAMP:

21          Q.     This is another press release from FORA. Are  
22 you familiar with this document?

23          A.     As I look at it, it doesn't look familiar. Let  
24 me amplify on that.

25                   I do not write press releases. I sometimes



1 edit things like press releases. Editing is a large  
2 part of my job. And I do not recall this document  
3 having been given to me for editorial assistance.

4 Q. As part of your standard practice when you are  
5 asked to review a press release, if you found something  
6 that you believed to be inaccurate or misleading, would  
7 you comment on that?

8 A. Yes, I would. I would typically make a  
9 marginal note saying do we know that is true or are we  
10 sure about this or something of that kind. That is the  
11 sort of thing I do in my editing.

12 Q. And as to this particular press release, you  
13 have no recollection of ever seeing it before -- at  
14 least before it went out?

15 A. I have never seen it before today; at least I  
16 don't recall seeing it before today.

17 MR. STAMP: Let me take one short break and  
18 we'll finish up.

19 (Break taken.)

20 BY MR. STAMP:

21 Q. Back on the record. Still under oath.

22 Mr. Bowden, category number 19 of Exhibit 1 is  
23 FORA's practice or policy of destroying board meeting  
24 recordings. Is there a policy to destroy board meeting  
25 recordings.

1           A.     Well, I have always been told that recordings  
2 of board meetings are reused so that we don't have a big  
3 file of recordings. I suppose in re-recording over a  
4 cassette tape, the old one is destroyed in the process  
5 of producing a new one.

6                     Your question is, is there a policy? Was that  
7 your question?

8           Q.     Correct; or practice.

9           A.     There is a practice. At least I have always  
10 been told there was a practice of recording over used  
11 cassette tapes. Yes.

12          Q.     And after how much time does a recording of a  
13 previous meeting become subject to being recorded over?

14          A.     Purpose of the recordings is to allow the clerk  
15 to check details in preparation of the minutes, and when  
16 the minutes are concluded or finished and approved by  
17 the board, the tape is history. So it is recorded over  
18 at that point.

19          Q.     Does that same policy apply after 60 days or  
20 90 days or --

21          A.     Depends on when the minutes are approved by the  
22 board.

23          Q.     So as soon as the minutes are approved, the  
24 tape goes into a pile and gets reused at some point?

25          A.     That is my understanding.

1 Q. And the system they're using is a cassette  
2 recording system?

3 A. I believe so. I couldn't swear to it. It is a  
4 tape recording of some kind.

5 Q. Actual tape, not a digital recording?

6 A. Well, I think it is a tape. I have heard them  
7 referred to as tapes.

8 Q. Are they videotaped as well?

9 A. Sometimes, but not by FORA. They hire somebody  
10 to videotape.

11 Q. For what purpose?

12 A. I don't really know. Oh, I do know. To  
13 broadcast them over a community TV station.

14 Q. That is a new policy, isn't it?

15 A. It is not even a policy.

16 Q. Practice?

17 A. But it has been done a couple of times. Maybe  
18 twice. I don't know.

19 Q. Do you know whether Mr. Houlemard has a  
20 FORA-paid computer at home?

21 A. I know that he does not.

22 Q. Do you know whether he has DSL coverage at his  
23 house?

24 A. No, I don't.

25 Q. Do you know whether he has a standalone hard

1 drive paid for by FORA?

2 A. I know that he does not.

3 Q. How do you know that?

4 A. Because he told me.

5 Q. Has he ever had one?

6 A. Don't know that. Hasn't had one for a very  
7 long time.

8 Q. When did he tell you?

9 A. Maybe last week.

10 Q. So if I had an invoice that shows that one was  
11 purchased for him --

12 MR. BALCH: Don't speculate, Jerry. Just  
13 answer the question.

14 THE WITNESS: If you had an invoice --

15 BY MR. STAMP:

16 Q. How would I determine? How would I best  
17 determine whether that invoice reflects something in  
18 Mr. Houlemard's possession or not?

19 A. I don't know, but I know that he -- that FORA  
20 bought a laptop computer for him to use at meetings and  
21 on the road and that sort of thing. I also know that it  
22 is not the computer that he uses at home.

23 Q. And is that because he told you that last week?

24 A. (Witness nodding head.) And I know him to be a  
25 truthful person.

1 Q. I wasn't questioning his veracity. I was just  
2 questioning your background on how you found out the  
3 information.

4 MR. BALCH: And just for the record so we're  
5 clear, before that last answer Mr. Bowden was nodding  
6 his head indicating yes.

7 BY MR. STAMP:

8 Q. Does FORA have a policy on -- to the best of  
9 your knowledge on reimbursing employees if they get  
10 traffic tickets?

11 A. I don't know. I hope so. I think my time is  
12 lapsed in your parking lot.

13 Q. A parking ticket is different than a traffic  
14 ticket.

15 A. Oh, well.

16 MR. BALCH: Don't speculate.

17 THE WITNESS: I have really no idea. I have  
18 never heard word one about that subject.

19 BY MR. STAMP:

20 Q. A traffic ticket is rolling a stop sign or  
21 speeding or --

22 A. Never heard that.

23 Q. -- unsafe lane change.

24 A. Never heard that mentioned.

25 Q. In the FORA manual, the employee manual that we

1 talked about earlier that Mr. Balch sent us the table of  
2 contents for, is that something that is binding upon you  
3 as well?

4 A. Yes, it is.

5 Q. Is it binding on Mr. Houlemard?

6 A. Yes, it is.

7 Q. And if Mr. Houlemard had a question whether a  
8 particular policy applied to him or how it should be  
9 interpreted as to him, is there somebody within FORA who  
10 can make that decision so he is not making the decision  
11 on his own behalf?

12 A. Are you asking about -- is your answer  
13 time-bound in any way? Let me explain. I'm not trying  
14 to be cute.

15 We had a person, Daylene Alliman. When she was  
16 the clerk -- she had a background in HR work. And she  
17 was designated as the HR staff person. And whenever --  
18 in fact, she prepared this personnel handbook. And  
19 whenever anybody had a question about the personnel  
20 policies, we would go to her and she would answer. She  
21 is no longer at FORA. So my question is when are you  
22 talking about?

23 Q. When did she leave FORA?

24 A. I told you that. It was about six months ago.

25 Q. I'm sorry; I didn't realize that she was one of

1 those you listed as leaving six months ago.

2 A. Yeah, she was. She is the one who was replaced  
3 by Lena Spillman.

4 Q. Okay. So if at some point before she left and  
5 before Lena came aboard, if senior management, let's say  
6 in this case Mr. Houlemard by name, but by executive  
7 director by position, if the executive director said, "I  
8 think I'm entitled to greater reimbursement," for  
9 example, is there -- and if this executive director does  
10 not want to be in the position of making a decision that  
11 affects him only, the executive director, is there  
12 checks or balances or place to go, for that executive  
13 director to go to?

14 MR. BALCH: In the interest of efficiency, I  
15 don't think that really applies to any categories that  
16 you have asked for.

17 MR. STAMP: I know, but it is the last thing,  
18 and I think it has some bearing upon the policy issues.

19 THE WITNESS: I will do the best that I can in  
20 answering that question.

21 You're asking if there -- well, your question  
22 assumes facts not in evidence, namely that the policies  
23 pertain to senior management in a way that is different  
24 from anybody else. And they don't. The same rules  
25 apply to the executive officer as apply to everyone

1 else. So Mr. Houlemard would be in exactly the same  
2 position in seeking clarity about personnel policies as  
3 I would be or anyone else would be.

4 And as I mentioned before, when Daylene was the  
5 deputy clerk, she was in charge of answering questions  
6 from everybody; Michael Houlemard, Steve Endsley, Jerry  
7 Bowden, anyone. She answered all personnel questions.  
8 Before that, those questions were often answered by me;  
9 and when I couldn't answer them, we hired a special  
10 attorney whose legal specialty was personnel law, and we  
11 retained that attorney.

12 She has since died of cancer, I believe, but we  
13 went to her with special questions because I have no  
14 special expertise in personnel law.

15 So many of these questions and the question  
16 that you are asking that deals with remuneration for an  
17 expense are answered by Ivana. She is in charge of  
18 deciding whether something is compensable. Last week I  
19 went to Ivana and said, I have got a minimum continuing  
20 legal education requirement; will FORA pay for it? She  
21 told me what the procedures were and gave me a form to  
22 fill out to get my MCLE paid for by FORA.

23 BY MR. STAMP:

24 Q. Did FORA pay for it?

25 A. Yes. Well, they will. She said they will.



1 And so anything that has to do with compensation or  
2 reimbursement is decided by Ivana.

3 Q. And Ivana is the --

4 A. Controller.

5 Q. The final line?

6 A. She is the final line. If Ivana feels that she  
7 lacks sufficient guidance and direction from the board,  
8 she goes directly to first the executive committee, and  
9 if she feels that she needs additional authority, she  
10 goes to the board and gets it. She does not -- Michael  
11 Houlemard does not make reimbursement decisions. She  
12 does. And to the extent that she feels unable to do so,  
13 she gets authority directly from the board.

14 MR. STAMP: And thank you for that. That is  
15 very helpful. I appreciate it. We're off the record.  
16 We're concluded for today.

17  
18  
19 (The deposition was concluded at 12:07 p.m.)  
20  
21  
22  
23  
24  
25

CERTIFICATE OF WITNESS

I, JERRY BOWDEN, the deponent, do hereby certify under penalty of perjury that the foregoing deposition was read by or to me and that I approve of same as a true and correct record of my testimony with changes herein below.

PAGE/LINE ANSWER CHANGED TO (OR ADD OR DELETE WORDS):

Table with 2 columns: PAGE/LINE and ANSWER CHANGED TO (OR ADD OR DELETE WORDS). Rows 6-20 contain dashed lines for input.

IN WITNESS WHEREOF, I have hereunto subscribed my name at \_\_\_\_\_, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

JERRY BOWDEN

1 STATE OF CALIFORNIA )  
 ) ss.  
2 COUNTY OF SANTA CRUZ )

3 I, ROBIN E. RIVIELLO, a Certified Shorthand  
4 Reporter, License No. 11694, do hereby certify:

5 That prior to being examined, the witness named  
6 in the foregoing deposition was by me duly sworn to  
7 testify to the truth, the whole truth, and nothing but  
8 the truth;

9 That said deposition was reported by me in  
10 machine shorthand at the time and place therein named  
11 and was thereafter transcribed by means of  
12 computer-aided transcription, and that it is a true,  
13 correct, and complete transcript of said proceedings.

14 I further certify that I am not of counsel nor  
15 related to any of the parties hereto, nor in any way  
16 interested in the outcome of these proceedings.

17 IN WITNESS WHEREOF, I have hereunto subscribed  
18 my name this 18th day of June, 2012.

19  
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23  
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\_\_\_\_\_  
Robin E. Riviello, CSR, RPR  
License No. 11694