

September 27, 2018

Via E-Mail

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

Subject: Item 8a: Consistency Determination: City of Seaside Zoning Code

Chair Rubio and Board of Directors:

We represent Keep Fort Ord Wild, which objects to a determination of consistency for the zoning ordinance.

The Seaside zoning ordinance is not consistent with Reuse Plan.

Problem: The zoning ordinance would allow high density residential development to be developed in the community park designated in the Reuse Plan.

The Seaside zoning ordinance is not consistent with Reuse Plan Recreation/Open Space Land Use program C-1.3:

Program C-1.3: The City of Seaside shall designate land uses for the following park locations and acreages:

- Community Park in housing area (Polygon 18): 50 acres.

Reuse Plan table 4.3-3 reiterates this 50-acre park designation, as shown below:

TABLE 4.3-3
FORT ORD - 2015 PARK PROGRAM FOR ALL JURISDICTIONS

Name	Type	Total Size (acres)	Area Developed by 2015	Total Developed Area
MARINA				
Park in Polygon 4	Community/	20	10	
	Neighborhood Park	10	10	
Park in Polygon 2B	Neighborhood Park			
Park in Polygon 2G	Community Park	39.5	5	
Park in Polygon 17A	Community Park	46	17	
TOTALS				42 Acres
SEASIDE				
Park in Polygon 18	Community Park	50	12	
Park in Polygon 15	Neighborhood Park	0	0	

The proposed zoning ordinance determination would allow high density residential development in the designated Community Park in polygon 18, which is inconsistent with Recreation/Open Space Land Use Program C-1.1:

Program C-1.1: The City of Seaside shall amend its General Plan and zoning ordinance to designate appropriate park and recreation facilities at the former Fort Ord to serve the needs of their community area, appropriate and consistent with the recreation standards established for the Fort Ord Reuse Plan.

Programs C-1.1 and C-1.3 implement Recreation/Open Space Land Use Policy C-1:

The City of Seaside shall designate sufficient area for projected park and recreation facilities at the former Fort Ord.

Proposed Seaside Zoning Ordinance Fails the Test in the Master Resolution.

As to the 50-acre Community Park in Polygon 18, the proposed Seaside Zoning Ordinance fails the test set forth in the Fort Ord Master Resolution.

Master Resolution: the FORA “Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that” would allow “more intense” or “more dense” land uses than those permitted in the Reuse Plan. (Master Resolution, § 8.02.010(a)(1)-(2).)

- There is no dispute that high-density residential development is more intense and more dense than a community park.

Master Resolution: the FORA “Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that” would allow uses which are “not in substantial conformance with applicable programs specified in the Reuse Plan” or “conflict or are incompatible with uses permitted or allowed in the Reuse Plan.” (Master Resolution, § 8.02.010(a)(3)-(4).)

- There is no dispute that high-density residential development is not in substantial conformance with Reuse Plan program C-1.3 which required Seaside to designate 50 acres in polygon 18 as a community park.
- There is no dispute that high-density residential development is incompatible with the Reuse Plan use as a community park.

In sum, the consistency determination cannot be legally made as to the zoning ordinance on each of these four independent grounds.

The Reuse Plan Is the Controlling Document.

The Reuse Plan is the controlling document, instead of the Seaside General Plan. The FORA Act makes this clear, and it is confirmed in the Master Resolution:

§ 8.01.010(b): The Reuse Plan, including all elements, policies and programs adopted in conjunction with the Reuse Plan, and any amendments thereto, shall be the official and controlling plan for the reuse of the Fort Ord Territory for the purposes specified or inferred in the Authority Act.

Inaccurate Comments Made at August 10, 2018 FORA Meeting.

The video of the August 10, 2018 FORA board meeting shows that Seaside representative, Kurt Overmeyer stated that Seaside had recently signed a settlement legally requires that parcel remain as a habitat. That is not accurate.

FORA should not rely on oral representations. What matters is the ordinance, and the ordinance before you is not consistent with the Reuse Plan under the Master Resolution.

You Control the Schedule. Please Consider This Carefully.

You should take time to consider these comments carefully, because FORA has shown a pattern and practice of deeming legislative and development actions as consistent with the Reuse Plan when they are not in fact consistent, and shown a similar approach in FORA's failure to enforce and implement the Reuse Plan policies and programs by ensuring they are adopted by the land use jurisdictions. This ongoing failure is inconsistent with the law and is causing ongoing harm. KFORW urges you to consult with your legal counsel, and research the issue carefully to satisfy yourselves. If FORA proceeds, it does so at its own risk.

There is no urgency to the action before you today. As Mr. Overmeyer explained on August 10, 2018, Seaside is in the process of updating its General Plan. You should wait until the zoning ordinance is in compliance with the Reuse Plan, or with until the General Plan comes before you and ensure that the zoning ordinance and General Plan are both consistent.

I would like to speak with you about this issue, but the Board Chair has taken the strong position to prohibit public comment on second votes. For that reason KFORW and I are reluctant to expend resources to come to the meeting and wait for an unknown amount of time and then be prohibited from saying anything. KFORW offers to meet with FORA to discuss these concerns before FORA takes a vote on the item 8z.

Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment A. Master Resolution, § 8.02.020 (excerpts below)

Attachment A

Excerpt of FORA Master Resolution:

Article 8.02. CONSISTENCY DETERMINATION CRITERIA.

8.02.010. LEGISLATIVE LAND USE DECISION CONSISTENCY.

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that

(1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;

(2) Provides a development more dense than the density of use permitted in the Reuse Plan for the affected territory;

(3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;