



Fort Ord Reuse Authority

MEDIA RELEASE

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FORA Responds to Sierra Club Letter – Plans to Correct Error in Master Resolution

On February 14, 2013, the Fort Ord Reuse Authority (FORA) Board received a letter from the Sierra Club alleging that FORA committed an actionable breach of contract when it amended the word “shall” to “may” in FORA Master Resolution section 8.02.010 (a).

The amendment in question was adopted by the FORA Board in March 2010, as part of an omnibus amendment of the entire Master Resolution. Adoption occurred at a public meeting after broad distribution of the proposed changes to all interested parties. The word “shall” appeared 424 times prior to the 2010 edits. A total of 17 “shalls” were changed to “may” throughout the document. The word “shall” appears five times in the current version.

Authority Counsel Jerry Bowden states that “The amendment of section 8.02.101 (a), which modified the word ‘shall’ to ‘may,’ was a regrettable and unintentional oversight that FORA plans to correct as soon as possible.” Mr. Bowden explains, however, that “The Sierra Club Agreement is a discrete document and it remains unaltered. Its amendment, like any contract, would require mutual written consent of both parties.” Instead, the amendment, the subject of the February 14, 2013 letter from the Sierra Club, constituted a change to the part of the Agreement that was duplicated in Chapter 8 of the Master Resolution. The partial copy of the Agreement found in the Master Resolution is not the Settlement Agreement.

The FORA Board has not made any decisions based on the wording change, and none are pending. FORA Chair Jerry Edelen indicated, “This is obviously a mistake and one that can be corrected.”

The item will be agendaized for discussion/consideration at the March 6, 2013 FORA Administrative and Executive Committee meetings, and the Authority Counsel recommendation to reverse this single word change to its original form will be presented to the FORA Board for approval at their March 15, 2013 Board meeting.