

Resolution 07-2

Resolution Determining Consistency)
of the City of Marina's Cypress Knolls)
Legislative Land Use Decision)
with the Fort Ord Base Reuse Plan)

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. On June 13, 1997, the Fort Ord Reuse Authority ("FORA") adopted the Fort Ord Final Base Reuse Plan ("Base Reuse Plan") under Government Code Section 67675, et seq.
- B. After FORA has adopted a reuse plan, Government Code Sections 67675, et seq. require each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the Authority Board of FORA adopted policies and procedures implementing the requirements in Government Code Sections 67675, et seq.
- D. The City of Marina ("Marina") is a member of FORA. Marina has land use authority over land within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on November 8, 2006, the Marina Council, approved a land use project known as the Cypress Knolls Project. As part of that approval, the Marina Council, also adopted zoning and General Plan amendments covering lands on the former Fort Ord.
- F. The FORA Board has already found Marina's existing General Plan to be consistent with the Base Reuse Plan. In January 2004, Marina adopted a Housing Element, which provides for a program for local preference in the provision of low and moderate housing, including Marina's territory within the jurisdiction of FORA. The FORA Board has found Marina's Housing Element consistent with the Base Reuse Plan. In January of 2005, the California Department of Housing and Community Development determined that Marina's Housing Element was in compliance with state housing laws. A copy of Marina's submittal and supporting documentation are attached as Exhibits and made a part of this Resolution. *7 see b.d. report (item 10 of 13, 2007) for Exhibits.*
- G. The Marina Council made findings that the Fort Ord Base Reuse Plan Final Environmental Impact Report ("EIR"), certified by the Board on June 13, 1997,

and the supplemental environmental documentation prepared by Marina for the current action, and the Marina General Plan, previously approved by the FORA Board, identified the potential environmental impacts of the project and imposed conditions to mitigate their impacts. The Marina Council found that the environmental documents satisfied and complied with the California Environmental Quality Act ("CEQA"). Marina's Council adopted mitigation measures and a mitigation-monitoring program for identified potential significant environmental impacts. For environmental impacts that could not be reduced to less than significant level, Marina determined that overriding social and economic considerations justified approval. Marina submitted to FORA its documentation and certified environmental documents together with the accompanying entitlement, zoning and General Plan amendments for determination whether they are consistent with the Reuse Plan.

- H. Marina's Environmental Documents considered all significant impacts, mitigation measures, and project alternatives identified in Marina's FEIR and has found that all potentially significant Project impacts have been lessened or avoided to the extent feasible and adopted a mitigation monitoring program to assure compliance.
- I. On November 8, 2006, the Marina Council certified the Final Environmental Impact Report ("FEIR") for the Cypress Knolls Project and Plan amendments, making certain findings and determinations thereto, adopting a statement of overriding considerations, and adopting a mitigation monitoring and reporting program. The City also indicated to FORA that it received a Memorandum from Save Our Peninsula ("SOP") regarding adequacy of the City's EIR and responded by Memorandum dated, November 8, 2006 detailing why the City disagreed with SOP's conclusion. On November 21, 2006, the City forwarded a more detailed response to the SOP letter dated November 20, 2006. Also, on December 5, 2006, SOP provided FORA with a letter objecting to any Finding of Consistency between the Cypress Knolls Project and the Reuse Plan, and attaching much of the foregoing cited materials. FORA staff has reviewed these submittals and the City's response and although careful to note that the City is the lead agency for the purpose of determining the adequacy of its environmental documents, the FORA Board agrees with the City's conclusion that the objections have no merit.
- J. FORA is a Responsible Agency under CEQA. CEQA and the CEQA Guidelines provide that a responsible agency may not approve or carry out a project for which an EIR has been completed and which identifies one or more significant effects of the project unless the responsible agency makes written findings for each of the significant effects, accompanied by a statement of facts supporting each finding for those impacts that are within the responsible agency's jurisdiction.
- K. The Marina Council found the submittal consistent with the Fort Ord Base Reuse Plan, FORA's plans and policies and the Fort Ord Reuse Authority Act.

Further, Marina considered the Fort Ord Base Reuse Plan EIR and adopted Addenda to the EIR, and other evidence supporting the findings.

- L. Consistent with the Implementation Agreements between FORA and the City of Marina, prior to November 21, 2006, Marina provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the Marina Council action, a reference to the environmental documentation and/or CEQA findings, and findings and evidence supporting its determination that any Entitlement and Plans are consistent with the Fort Ord Base Reuse Plan and the Fort Ord Reuse Authority Act (collectively, "Supporting Material"), [and copies of the Disposition and Development Agreement, reuse valuation, and Memorandum of Agreement] establishing financial terms. Marina requested that FORA certify the update as being consistent with the Fort Ord Base Reuse Plan for those portions of Marina that lie within the jurisdiction of the Fort Ord Reuse Authority.
- M. FORA's Executive Officer and Administrative Committee reviewed Marina's application for consistency evaluation. The Executive Officer submitted a report recommending that the FORA Board concur in Marina's Finding of Consistency as submitted. The Administrative Committee reviewed, received additional information, and concurred with the Executive Officer's recommendation. The Executive Officer set the matter for public hearing regarding consistency of the application and General Plan Amendments before the FORA Board on December 8, 2006 and January 12, 2007. The FORA Board requested that the hearing and decision for the project entitlement take place at the February 9, 2007 meeting.
- N. On or about December 5, 2006, FORA received an appeal of Marina's approval of the Cypress Knolls project by Save Our Peninsula, filed by Mr. Richard Rosenthal. The project entitlement was therefore forwarded to the Board for final consideration and review. Master Resolution, Chapter 8, Section 8.01.050 provides that the Board's determination of the appeal, is to be based solely upon whether or not the project is consistent with the FORA Base Reuse Plan. On January 12, 2007, the FORA Board carried over this appeal of the project entitlement to its February 9, 2007 meeting to coincide with proper noticing of the hearing.
- O. Master Resolution, Chapter 8, Section 8.02.010(a) contains the standards for making a finding of consistency. That subsection reads in part: "(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land uses decision for which there is substantial evidence supported by the record, that [it] (4) [p]rovides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property..." (emphasis added). The Board interprets sub-section (a)(4) to mean that a finding of consistency is appropriate if there is substantial evidence in the record that the proposed land use is compatible with land uses allowed by the Reuse Plan. Also, Master

Resolution 8.01.020(d) provides that the FORA Board must make a finding of consistency when substantial evidence shows that a legislative act is consistent with the Reuse Plan.

- P. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- Q. FORA's consistency determination must be based upon the overall congruence between the submittal and the Reuse Plan, not on a precise match between the two.

NOW THEREFORE be it resolved:

1. The FORA Board has reviewed and considered the Fort Ord Base Reuse Plan Final Environmental Impact Report and Marina's Environmental Material Addendum (collectively, the "Environmental Documentation") and concurs in Marina's determination that the Environmental Documentation is adequate and complies with the California Environmental Quality Act. The FORA Board finds further that these documents are sufficient for purposes of FORA's determination of consistency of Marina's General Plan amendments; and
2. The Board has considered the legislative land use materials submitted with this application, the recommendation of the Executive Officer and Administrative Committee concerning the application and oral and written testimony presented at the hearings on the consistency determination, which are hereby incorporated by reference; and
3. The Board finds that, in regard to the legislative land use submittal, Marina followed the procedures and fulfilled the requirements of the Implementation Process and Procedures of the Fort Ord Base Reuse Plan and the Master Resolution and has met the requirements of Government Code section 67675, and following; and
4. The Board finds that Marina has provided substantial evidence that the legislative land use submittal is consistent with the Fort Ord Base Reuse Plan, and that none of the conditions set forth in Master Resolution 8.02.030 (for denying consistency) exist. The Board further finds that Marina's legislative decision was based in part upon the substantial evidence submitted regarding allowable land uses, a weighing of the Base Reuse Plan's emphasis on a resource constrained sustainable reuse that evidences a balance between jobs created and housing provided, and that the cumulative land uses contained in Marina's submittal are not more intense or dense than those contained in the Base Reuse Plan; and

5. Marina's legislative land use submittal will, considering all its aspects, further the objectives and policies of the Final Base Reuse Plan. The Marina legislative land use decision application is hereby determined to satisfy the requirements of Title 7.85 of the Government Code and the Fort Ord Base Reuse Plan; and
6. The Board finds that Marina's legislative land use submittals are consistent with the previously FORA certified Marina Housing Element, and meet FORA's affordable housing unit goals and policies as listed in Resolution 04-01.

Upon motion by Director McCloud, seconded by Director Pendergrass, the foregoing resolution was passed on the 12th day of January 2007, by the following vote:

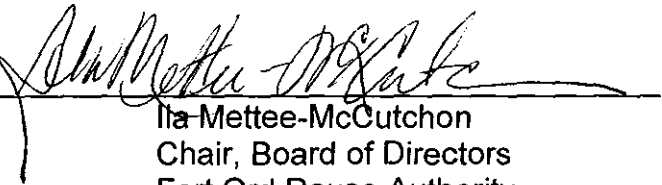
AYES: 10 Directors Russell, Della Sala, Mettee-McCutchon, Morrison, Rubio, Mancini, Pendergrass, Barnes, Davis, and McCloud
NOES: -0-
ABSTENTIONS: -0-
ABSENT: 3 Directors Potter, Smith, and Calcagno

I, Mayor Mettee-McCutchon, Chair of the Board of Directors of the Fort Ord Reuse Authority of the County of Monterey, State of California, do hereby certify that the foregoing is a true copy of an original order of the said Board of Directors duly made and entered under Item 6d, Page 2, of the board meeting minutes of January 12, 2007, thereof, which are kept in the Minute Book resident in the offices of the Fort Ord Reuse Authority.

Dated

1-31-07

By



Ila Mettee-McCutchon
Chair, Board of Directors
Fort Ord Reuse Authority