

FORT ORD REUSE AUTHORITY
Resolution 14-12

Resolution of the Fort Ord Reuse Authority Board to retain the Preston Park Property, pursuant to the authority granted to the Board by Government Code section 67678(b)(4)

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

- A. In response to the US Government's closure of the Fort Ord military reservation, the Fort Ord Reuse Authority (FORA) was created by California statute in 1994 (Govt. Code 67650, et seq.) as the Local Reuse Authority for the whole of the former Fort Ord.
- B. FORA is governed by a 13 member Board that includes two representatives from the City of Marina (Marina)(Govt. Code §67660(a)).
- C. FORA is required by statute to plan, finance, and implement Fort Ord's transition from military to civilian use (Govt. Code §67651). FORA's mission is to effect the "transfer and reuse of. . .Fort Ord with all practical speed," and the Legislature declared that mission to be "the policy of the State of California" (Govt. Code §67651). FORA's mission of planning, financing, and managing the reuse of Fort Ord is "a matter of statewide importance" (Govt. Code §67657(c)). Under the Fort Ord Reuse Act, FORA's "board may sell, lease, or otherwise dispose of. . .property at full market value or at less than full market value...in order to facilitate the rapid and successful transition of the base to civilian use" (Govt. Code §67678(a)).
- D. Preston Park is a large townhouse complex located in Marina, originally built by the U.S. Army, and currently owned in fee-simple by FORA.
- E. FORA and Marina split Preston Park's rental proceeds.
- F. FORA's interest in Preston Park is principally governed by: (1) the Fort Ord Reuse Authority Act; (2) the Army/FORA Economic Development Conveyance Agreement (the EDC); and (3) the FORA/Marina Implementation Agreement (Implementation Agreement or IA).
- G. FORA manages Preston Park under a management agreement with Alliance Management, Inc., which rents individual housing units to private citizens.
- H. For years, both Marina and FORA shared the understanding that the IA required Marina to "buy-out" FORA's interest in Preston Park, if Marina wanted to hold title to the property. Based upon this mutual understanding, Marina and FORA have worked together since 2002 to use Preston Park and its revenue as collateral to finance vital FORA projects, many of which directly benefit Marina. This includes Revenue Bonds issued in 2002 to FORA for building removal and roadway construction in the City of Marina, a 2004 loan from Community Bank to pay FORA's Pollution Legal Liability Insurance Policy premium, and a 2006 line of credit from Rabobank to FORA to fund building removal in the City of Marina and other capital projects.

- I. In 2007, Marina bought out FORA's interest in the legally indistinguishable apartment complex known as Abrams B for \$7.7 million, which was one half of the appraised value of the Abrams B property. In the Spring of 2010, Marina and FORA entered into negotiations, similar to Marina's acquisition of Abrams B, for Marina to purchase FORA's interest in Preston Park.
- J. In 2010, FORA borrowed \$19 million from Rabobank, secured by a note and deed of trust on Preston Park.
- K. Marina's representatives on the FORA Board consented to and encouraged Rabobank's secured loan.
- L. For the reasons discussed above, FORA entered into a loan transaction with Rabobank based on its reasonably held belief that FORA would be able to liquidate its interest in Preston Park in a timely fashion.
- M. The remainder of that \$19 million Rabobank loan (approximately \$18 million) is due to be paid on or before June 15, 2014.
- N. In August 2010, Preston Park had an appraised value of \$57.3 million. In February 2012, the updated appraised value of Preston Park was \$60.9 million. As of September 2013, the updated appraised value of Preston Park was \$66.7 million.
- O. On July 10, 2012, Marina filed a lawsuit against FORA, entitled *City of Marina v. Fort Ord Reuse Authority, et al* (Monterey County Superior Court, Case No. M118566). In that currently pending lawsuit, Marina alleges that it is entitled to a "no cost conveyance" of the Preston Park property. FORA disputes that contention.
- P. FORA and Marina have engaged in unsuccessful mediation with retired Monterey County Superior Court Judge Richard Silver of JAMS.
- Q. FORA has a legal obligation under CEQA to mitigate the environmental impacts of base reuse. Those mitigation measures are described in the Environmental Impact Report for the Fort Ord Base Reuse Plan and the FORA Capital Improvement Plan.
- R. If FORA cannot liquidate its interest in Preston Park, FORA will fall approximately \$25 million short of being able to fulfill its CEQA and non-CEQA-mandated capital improvements, which include \$6.2 million in remaining building/blight removal (includes removal of lead-based paint and Asbestos Containing Materials), \$118.2 million in remaining transportation/transit, \$34 million in remaining habitat management, and \$24 million in remaining water augmentation.
- S. FORA has a limited amount of time to accomplish its statutory goals and mandates. The Fort Ord Reuse Authority Act "shall become inoperative when the [FORA] board determines that 80 percent of the territory of Fort Ord that is designated for development or reuse in the plan prepared pursuant to this title has been developed or reused in a manner consistent with the [Base Reuse Plan] . . . or June 30, 2020, whichever occurs

first, and on January 1, 2021, [the Fort Ord Reuse Authority Act] is repealed" (Govt. Code §67700).

T. Government Code §67678(b)(4) provides that:

The [FORA] Board may retain real or personal property received... [if] both of the following occur:

- i. The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.
- ii. The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

NOW THEREFORE the Board hereby resolves that:

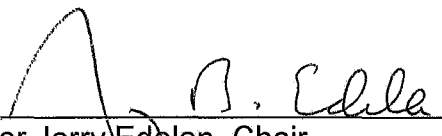
1. The Fort Ord Reuse Authority finds and determines that FORA's retention of the Preston Park property is necessary and convenient to carrying out FORA's responsibilities pursuant to law. This determination is based on the following:
 - a. If FORA cannot liquidate its interest in Preston Park, FORA will fall approximately \$25 million short of being able to fulfill its CEQA and non-CEQA mandated capital improvements.
 - b. The \$18 million remainder of Rabobank's loan must be repaid by June 15, 2014, or if extended, by December 15, 2014. If that loan is not repaid in a timely fashion, Rabobank will likely foreclose on Preston Park.
 - c. If FORA cannot liquidate its interest in Preston Park, then FORA will not be able to fulfill its CEQA and non-CEQA-mandated capital improvements, nor will FORA be able to pay back the \$18 million Rabobank loan.
2. The Fort Ord Reuse Authority finds and determines its retention of Preston Park will not cause significant financial hardship to the City of Marina for the following reasons:
 - a. To date, Marina has received approximately \$18 million in lease proceeds from Preston Park. FORA has also invested approximately \$4 million in the rehabilitation of Preston Park.
 - b. After FORA retains Preston Park pursuant to Government Code §67678(b)(4), FORA intends to share the proceeds of a Preston Park sale with Marina, which – based on appraised value – is estimated to result in a payment to Marina in excess of \$30 million.
 - c. Through the Preston Park sale, Marina will have the funds to pay FORA its development fee, legal fees related to the dispute, and other incidental expenses.
 - d. The City of Marina government will not be significantly impaired or forced to shut down if FORA sells Preston Park and shares the proceeds with Marina. To the

contrary, FORA's retention and sale of Preston Park will likely result in a large monetary payment to Marina.

- e. In the *Marina v. FORA* lawsuit, Marina has never claimed that it opposes the sale of Preston Park for the sake of its financial well-being. Instead, Marina alleges that it opposed the sale of Preston Park because it wishes to exert control over the Preston Park property.
3. In light of the determinations above, the FORA Board hereby resolves to retain the Preston Park property, pursuant to the authority granted to the Board by Government Code § 67678(b)(4).
4. This Resolution will take effect immediately upon adoption, or as soon thereafter as permitted by the Monterey County Superior Court.

Upon motion by Mayor Rubio, seconded by Supervisor Potter, the foregoing Resolution was passed on this 20 day of June, 2014, by the following vote:

AYES: BEACH, CHIULOS, EDELEN, GUNTER, LUCIUS, OGLESBY,
PENDERGRASS, POTTER, RUBIO
NOES: MORTON, O'CONNELL, PARKER
ABSTENTIONS: NONE
ABSENT: SELFRIDGE



Mayor Jerry Edelen, Chair

ATTEST:



Michael A. Houlemard, Jr., Clerk