



Fort Ord Reuse Authority

920 2nd Avenue, Suite A, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

SPECIAL ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, January 30, 2013
920 2nd Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

AGENDA

1. CALL TO ORDER AT 8:15 AM

2. PLEDGE OF ALLEGIANCE

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

4. PUBLIC COMMENT PERIOD:

Members of the audience wishing to address the Fort Ord Reuse Authority (FORA) Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Committee consideration.

5. APPROVAL OF MEETING MINUTES

a. January 16, 2013 Administrative Committee Minutes

ACTION

6. OLD BUSINESS

a. Capital Improvement Program Review – Phase II Study

ACTION

- i. Consider Recommending Revisions to Additional Language Adopted with Resolution 13-2 and Amendment #1 To the Implementation Agreement
- ii. Review Authority Counsel Legal Opinion

8. ITEMS FROM MEMBERS

9. ADJOURNMENT

NEXT SCHEDULED MEETING: FEBRUARY 6, 2012

*Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Deputy Clerk at: 831-883-3672 * 920 2nd Avenue, Suite A, Marina, CA 93933 by 5:00 p.m. one business day prior to the meeting. Agendas can also be found on the FORA website: www.fora.org.*



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ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, January 16, 2013

920 2nd Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

MINUTES

1. CALL TO ORDER

Co-Chair Houlemard called the meeting to order at 8:17 a.m. The following were present, as indicated by signatures on the roll sheet:

Doug Yount, City of Marina*
Elizabeth Caraker, City of Monterey*
John Dunn, City of Seaside*
Carl Holm, County of Monterey*
Diana Ingersoll, City of Seaside
Heidi Burch, City of Carmel-by-the-Sea
Rob Robinson, BRAC
Bob Schaffer
Anya Spear, CSUMB
Graham Bice, UC MBEST
Vicki Nakamura, MPC

Todd Muck, TAMC
Sid Williams, UVC
Patrick Breen, MCWD
Jane Haines
Tim O'Halloran, City of Seaside
Kathleen Lee, Sup. Potter's Office
Chuck Lande, Marina Heights
Scott Hilk, MCP
Sid Williams, UVC
Crisand Giles, BIA

FORA Staff:
Michael Houlemard
Steve Endsley
Jonathan Garcia
Darren McBain
Jim Arnold
Crissy Maras
Lena Spilman

* Voting Members

2. PLEDGE OF ALLEGIANCE

Anya Spear led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Co-Chair Houlemard noted that Jane Haines had requested several items be distributed to the Committee, copies of which were available to the public.

a. Resolution Acknowledging Rob Robinson

MOTION: Carl Holm moved, seconded by Elizabeth Caraker, to adopt Administrative Committee Resolution A13-01 acknowledging the service of Rob Robinson.

MOTION PASSED: unanimous.

4. PUBLIC COMMENT PERIOD

The Committee received comments from members of the public.

5. APPROVAL OF JANUARY 2, 2012 MEETING MINUTES

Jane Haines asked that her comments under of item 7b of the January 2, 2013 minutes be amended to replace "since several of the principles contradicted state law" with "since principles 2c, 2d, 3b, and 3d conflict with the Base Reuse Plan." The Committee agreed.

MOTION: Doug Yount moved, seconded by Graham Bice, to approve the January 2, 2013 Administrative Committee meeting minutes as amended.

MOTION PASSED: Ayes: Doug Yount, Elizabeth Caraker, John Dunn. Abstained: Carl Holm

6. JANUARY 11, 2013 FORA BOARD MEETING FOLLOW UP

Mr. Houlemard provided an overview of the January 11, 2013 Board meeting.

MOTION: Doug Yount moved, seconded by John Dunn, to; 1) schedule a special Administrative Committee meeting on January 30, 2013 to develop alternative language to section 2.1.2 of Resolution 13-02 and Amendment #1 to the Implementation Agreement for Board consideration, 2) recommend the FORA Board consider adopting the Administrative Committee's recommended alternative language at the next FORA Board meeting.

MOTION PASSED: unanimous.

7. OLD BUSINESS

a. Post Reassessment Policy Options Consideration – Workshop/Retreat

i. Workshop Scheduling and Format

The Committee discussed alternatives for scheduling and format of the upcoming Board workshops and Associate Planner Darren McBain distributed a draft Request for Qualifications for a workshop facilitator. Co-Chair Houlemard requested that Committee members submit their comments to staff by Thursday, January 11, 2013.

ii. Regional Urban Design Guidelines

Co-Chair Houlemard presented the item. Jane Haines distributed materials to the Committee on behalf of the Sierra Club Ventana Chapter.

b. Capital Improvement Program

i. Phase II Study Update

Senior Planner Jonathan Garcia provided an update and discussed an upcoming meeting between FORA staff and the California Department of Finance.

ii. Confirm Jurisdictions' Development Forecasts

Mr. Garcia reviewed the development forecasts submitted by the jurisdictions and received input from members of the Committee and the development community.

8. ITEMS FROM MEMBERS

Co-Chair Houlemard asked that any members interested in serving as 2013 Committee Chair should inform staff prior to the next regular Committee meeting in February.

9. ADJOURNMENT

Co-Chair Houlemard adjourned the meeting at 10:31 a.m.

*Minutes Prepared by:
Lena Spilman, Deputy Clerk*

Approved by:

Michael A. Houlemard, Jr., Executive Officer

**FORT ORD REUSE AUTHORITY ADMINISTRATIVE
COMMITTEE REPORT
OLD BUSINESS**

Subject: Capital Improvement Program Review – Phase II Study

Meeting Date: January 30, 2013

Agenda Number: 6a

ACTION

RECOMMENDATION(S):

- i. Consider recommending revisions to additional language adopted with Resolution 13-2 and Amendment #1 to the Implementation Agreement (**Attachment A**).
- ii. Review Authority Counsel’s legal opinion (**Attachment B**).

BACKGROUND:

On January 11, 2013, the Board voted unanimously to adopt resolution 13-2 and Amendment #1 to the Implementation, which included additional language to sections 1.2.1 and 2.1.2 proposed by Supervisor Jane Parker. At the January 16, 2013 Administrative Committee meeting, the Committee passed a motion recommending that the FORA Board consider adopting alternative language to section 2.1.2 at the next FORA Board meeting. The Administrative Committee also scheduled a special meeting on January 30, 2013 to determine what the recommended alternative language would be.

DISCUSSION:

Authority Counsel originally proposed alternative language to Supervisor Jane Parker prior to FORA Board consideration on January 11, 2013. This alternative language was not accepted by the Supervisor, and is included in **Attachment A**. Authority Counsel also drafted an opinion concerning the additional language adopted on January 11, 2013 (**Attachment B**). FORA received correspondence from South County Housing and the Building Industry Association Bay Area concerning the consequences of the uncertainty created by the additional language in Resolution 13-02 and Amendment #1 to the Implementation Agreement (**Attachment C**).

FISCAL IMPACT:

Reviewed by FORA Controller _____

Staff time for this item is included in the approved annual budget.

COORDINATION:

Authority Counsel

Resolution 13-__

Resolution of the Fort Ord Reuse)
 Authority (FORA) Board establishing a)
 formula to determine FORA’s annual)
 basewide development fee schedule and)
 Community Facilities District (CFD))
 Special Tax rates)

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

- A. FORA has adopted a Basewide Community Facilities District (“CFD” or “CFD Special Tax”) to fund, together with other revenues, the FORA CIP. Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures (“FORA CIP”) are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes; and
- B. FORA and its member Jurisdictions have twelve years of experience with the Basewide Development Fee Policy (“Policy”) and CFD Special Tax; and
- C. FORA and the Army have executed an Environmental Services Cooperation Agreement (“ESCA”) providing for FORA to manage base-wide environmental remediation (including ordnance removal) funded by the Army; and
- D. The Policy and CFD Special Tax provide resources to fund CEQA Mitigation Measures (FORA CIP) identified in the 1997 FORA Base Reuse Plan and CEQA Documents; and
- E. FORA and its member Jurisdictions agree that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP as identified in Section 1.1; and
- F. FORA recognizes the importance of calibrating the Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and Board-determined basewide obligations in FORA’s CIP identified in Section 1.1; and
- G. FORA and its member Jurisdictions acknowledge the Policy and CFD Special Tax must be fair and equitable; and
- H. FORA has 1) achieved cost savings; 2) secured grants and other contributions to the base-wide mitigation measures from federal and state sources; and 3) loaned

monies to fund required projects that have reduced or deferred the demand for the original Policy and CFD Special Taxes; and

- I. The Base Reuse Plan emphasized the importance of job-creation and build-out of a balanced mix of community uses including commercial, residential and public facilities to achieve a desired jobs-housing balance; and
- J. FORA and its member Jurisdictions seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax; and
- K. Stakeholders recognize, given inherent uncertainties prevalent in Base Reuse Projects, that appropriate and reasonable cost contingencies are necessary and fiscally responsible; and
- L. FORA and its member Jurisdictions acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax rates. These revenue sources will fund, or partially fund, the CIP Program. That formula must account for all potential revenue sources and costs; and
- M. FORA and its member Jurisdictions agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA's fee program.

NOW THEREFORE the Board hereby resolves as follows:

1. Adjustment to the Policy and CFD special taxes.

1.1 The list of authorized CIP improvements (subject to escalation of costs through the San Francisco Construction Cost Index reported in the Engineering News Record, unless otherwise noted) to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP:

1.1.1 Transportation/Transit improvements, including regional improvements, off-site improvements, on-site improvements, and transit capital improvements identified in the Transportation Agency of Monterey County ("TAMC") FORA Fee Reallocation Study, dated April 8, 2005, or as subsequently updated by TAMC consistent with the FORA Fee Reallocation Study, in an amount not to exceed \$112,698,595 (as escalated) unless the obligation is otherwise reduced by TAMC and FORA.

1.1.2 Water Augmentation, which includes FORA's CEQA obligation for the approved water augmentation project and FORA's voluntary contribution to help offset water capacity charge increases. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not.

1.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program.

1.1.4 Fire Fighting equipment (“Rolling Stock”) lease-purchase of four fire engines and one water tender.

1.1.5 Other Costs and Contingencies shall be evaluated on a periodic basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing.

Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities.

Other Costs for PLL insurance costs.

CFD Administration Expenses (including staff and consultant costs).

1.2 FORA will periodically adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

1.2.1 The Policy and CFD Special Tax were originally designed to fund specific CIP improvements serving the overall base and local jurisdictions based upon mitigation measures required by the California Environmental Quality Act (CEQA). These mitigation measures are described in the Base Reuse Plan Environmental Impact Report (EIR) as well as the 1998 Settlement Agreement with the Ventana Chapter of the Sierra Club. This Resolution does not limit FORA’s right or duty, or that of its member jurisdictions to raise sufficient funds to construct those CEQA Mitigation Measures.

Furthermore, the Base Reuse Plan Reassessment Process may result in changes to FORA’s CIP. This Resolution does not limit FORA’s right to fund such changes through the Policy and CFD Special Taxes.

1.2.2 The FORA Board will consider adjustments to the Policy and CFD Special Tax after a comprehensive review of all potential costs and revenues. The process to consider such adjustments will be defined, predictable and transparent to all stakeholders. Adjustments to the Policy and CFD Special Tax will be approved only if they are demonstrated to be fiscally prudent and do not expose FORA or its member jurisdictions to unreasonable risk.

1.2.3 In accordance with the process set forth in part II of this resolution, commencing with Section 2.1, the FORA Board will update anticipated construction

costs and revenues available to fund the facilities identified in section 1.1 above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of FORA and its member Jurisdictions adopting Implementation Agreement Amendment #1, Spring 2014 as the second evaluation period, and thereafter every two years, or when an economic or other event causes a material change to a CIP cost or revenue assumption, in coordination with FORA CIP updates.

1.2.4 Adjustments to the Policy and CFD Special Tax shall be made upon receipt by the FORA Board of satisfactory, factual documentation describing the basis for the adjustment.

1.2.5 To expedite this review procedure, adjustments to the Policy and CFD Special Tax shall maintain the same relationship among land uses as the maximum annual special taxes originally documented in the CFD.

II. PROCESS

2.1 FORA shall review and update the CIP periodically to apply the formula described in this Resolution and proposed Implementation Agreement Amendment #1 and any resulting Policy and CFD Special Tax adjustments. That procedure must ensure that FORA’s revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP identified in Section 1.1 above. The periodic process will include the following steps:

2.1.1 Determine total remaining CIP costs (including required contingencies) consistent with section 1.1 above.

2.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies advanced to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) FORA property tax revenue as calculated below. This process shall preserve FORA’s authority to adopt projects or mitigations to meet its statutory or other legal obligations that are paid from these sources of revenue. FORA retains its discretion to add new projects or obligations to be paid from these sources of revenue. The following assumptions and formula shall be used to calculate the FORA property tax revenues, if available:

Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue

b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the FORA property tax revenue stream for all new assessed value after July 1, 2012.
- b. The term on the FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate equal to the annual average Bond Buyer Revenue Bond Index plus 50 basis points using the prior fiscal year end date (e.g., use 2012 year to date annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.
- d. Allocate the NPV as calculated above to reduce/offset costs of CIP.
- e. Allocate 10% of the actual property tax revenues collected by FORA from all new assessed value after July 1, 2012 and generated from parcels in the Fort Ord area of the member jurisdiction to the City or County for economic development to support the reuse of Fort Ord land within the relevant City or County.

2.1.3 Subtract sources of funds available under Section 2.1.2 from CIP costs to determine net cost to be funded by the Policy and CFD Special Tax.

2.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions used to estimate FORA property tax revenues shown above in Section 2.1.2.

2.1.5 Compare 2.1.4 with 2.1.3 and determine the amount of adjustment, if any, to the Policy and CFD Special Tax rates. In no event shall the adjusted CFD Special Tax rates exceed the Maximum CFD Special Tax rates (as escalated annually per the special tax formula).

DRAFT

DRAFT

DRAFT

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this _____ day of _____, 2013, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Jerry Edelen, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 13-__ adopted _____, 2013.

Michael A. Houlemard, Jr., Secretary



Fort Ord Reuse Authority

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Attachment B to Item 6a

Admin. Committee Meeting, 01/30/13

MEMO

To: MICHAEL HOULEMARD, Executive Officer
From: JERRY BOWDEN, Authority Counsel
Subject: IMPLEMENTATION AGREEMENT #1
Date: January 23, 2013

Question: Will the language added to Resolution # 13-02 at the suggestion of Supervisor Jane Parker change FORA's ability to perform the following programs: Transportation/Transit improvements, Water Augmentation, Habitat Management, Fire Fighting equipment?

Answer: No

Analysis.

The added language in question reads:

1.2.1 Furthermore, possible future FORA Board actions following on the Base Reuse Plan Reassessment Process may result in changes to FORA's CIP. This Agreement does not limit FORA's right to fund such changes through the Policy and CFD Special Taxes.

11.1.2 FORA retains its discretion to add new projects or obligations to be paid from these sources of funds.

The question is whether that language alters FORA's discretion to carry out its obligations under the Implementation Agreement. That is not a legal issue. Lawyers are not endowed with special powers to divine or define the meaning of ordinary English words. Any native speaker of English can read, understand and apply this language as well as I can. I am, however, one of many native English speakers who are asked to understand the significance of the "Parker amendments."

I see no change brought about by this language. If it changes FORA's contractual authority, that change is too subtle for me to comprehend. FORA had the discretion made explicit in the resolution before the "Parker amendments" were adopted. FORA has exercised that discretion in the past even without the express authority that is seemingly created by the two amendments. It could do so again even without this addition. By the same token, reiterating preexisting authority does no harm.

Critics who argue this amendment alters the way CFD revenues may be spent are mistaken. FORA is limited in the use of CFD Special Tax revenue to funding only the facilities described in Exhibit A to the May 22, 2002 recorded FORA CFD Special Tax lien. Resolution # 13-02 does not alter the list of projects enumerated in that Exhibit.



January 24, 2013

Jerry Edelen, Chairperson and
Board of Directors and
Michael Houlemard, Executive Director
Fort Ord Reuse Authority
920 Second Avenue, Suite A
Marina, CA 939333

Dear Ladies and Gentlemen,

South County Housing (SCH) has been designated by Marina Community Partners (MCP) - master developer of the Dunes on Monterey Bay - as the developer of the Dunes income restricted below-market rate housing components. SCH, with the cooperation of MCP and the City of Marina, has put together a financing plan for the construction of the 108 below-market income restricted apartment units which is scheduled to close in the next few weeks. This \$29.2 million dollar finance package includes State of California Multifamily Housing Program (MHP) funding, Federal Home Loan Bank Affordable Housing Program (AHP) funding, State of Calif. HOME funding and federal Low Income Housing Tax Credit financing in addition to the MCP & SCH contributions.

This will be the first housing project of any kind in the Dunes project and our feasibility analysis included not only the projected level of building costs, City and FORA fees for our project but also included an analysis of the prospects that market rate housing, parks and commercial development could be developed over time in the vicinity of our development to create a mixed use neighborhood of which our project would be a part. Important to that analysis and our decision to move forward with bidding and starting construction was our examination of the First Amendment to Implementation Agreement between FORA and the City of Marina dated as of September 13, 2012 and recorded September 14, 2012, setting forth the process for calculating future FORA fees.

MCP has provided us with a revised First Amendment to Implementation Agreement recently approved by FORA, indicating that the revisions create uncertainty over MCP's ability make the fee assumptions needed to invest in infrastructure and planning for future mixed use and market rate housing. While we hope to proceed with scheduled closing of our first 108 apartments because our financing is in place, this uncertainty if it continues will certainly be a factor in our decisions to proceed with the below-market rate components of the project in the future.

We urge FORA to consider the consequences of allowing uncertainty to exist over the level of future FORA Fees in achieving goals for both below-market and market rate housing at Fort Ord and to do what is necessary and reasonable to mitigate that uncertainty. In addition we request that FORA adopt the updated fee as quickly as possible as outlined in the First Implementation Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Lalor", written in a cursive style.

Dennis Lalor
President and CEO

C: Bruce Delgado, Mayor, City of Marina
Doug Yount, City Manager, City of Marina



January 23, 2013

Chairman Edelen and Members of the Board
Michael Houlemard, Executive Officer
Fort Ord Reuse Authority
920 2d Ave. Suites A
Marina, CA 93933

Dear Chairman and Board Members,

We respectfully request that you reconsider and rescind your Board actions on January 11, 2013 making unilateral revisions to the First Amendment to Implementation Agreements and the related FORA Resolution, as originally adopted by the FORA Board in August 2012 and submitted and approved by the Cities of Seaside, and Del Rey Oaks and approved, signed and recorded by the City of Marina.

The BIA Bay Area submits this request on behalf of the development community and those interested in the successful reuse and redevelopment of the former Fort Ord to achieve an economically feasible, balanced and environmentally sustainable community. The purpose of the original First Amendment was to achieve a workable on-going process for setting FORA Fees and CFD Special Taxes to fund CEQA basewide mitigation measures. By taking into account all sources of available revenue, the Board established a process that was "defined, predictable and transparent to all stakeholders" (sec. 1.2.2). The original First Amendment was essential to encourage the development community to support FORA's recent extension by the state legislature.

The recent revisions made by the FORA Board in the First Amendment could effectively negate the purpose and intent of the First Amendment with the effect of creating the very uncertainty over future FORA Fees and CFD Special Taxes that the First Amendment was designed to mitigate. These revisions have raised concerns that FORA will add projects or obligations to restore FORA Fees and CFD Special Taxes to their maximum permitted rates. Unless this uncertainty is removed, it will be very difficult, if not impossible, to evaluate future projects for economic feasibility because pro forma projections will have to assume the maximum level of FORA Fees and CFD Special Taxes. FORA Fee/Tax Levels which were unsustainable during the recession will remain so for the foreseeable future, even as the economy slowly recovers.

Specifically we would have you reconsider; (1) the revision made to sec. I.2.1 gives the Board the right, notwithstanding the process agreed to, to fund through the Policy and Special Taxes changes to the FORA CIP made by the Board following the Base Reuse Plan Assessment Project, and (2) the revisions to sec. II.1.2 retain in FORA the discretion to add or expand new projects or obligations to be paid from

Crisand Giles
Executive Director

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the sources otherwise specified in that section as first level of potential available sources of funding CIP programs in calculating the annual level of FORA Fees and CFD Special Taxes.

Whether intended or not, we view the recent revisions as material and substantive, not as merely clarifying, we believe they have the effect of negating or overriding very important provisions of the original 2001 Implementation Agreements and the 2012 First Amendment, among them:

(a) From Sec.7, May/August 2001 Implementation Agreement [underlined for emphasis]:

“A Financing District is reasonably necessary to implement the Basewide Costs and Basewide Mitigation Measures if: (i) FORA’s revenues from all other sources are reasonably expected to be inadequate; and (ii) the special taxes or assessments from such Financing District are limited to the gap between the revenues needed by FORA for such purposes and the revenues otherwise reasonably available to FORA for such purposes.” and

(b) From the First Amendment [underlined for emphasis]:

“.....Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures (“FORA CIP”) are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes” (Recital B)

“FORA and [the Jurisdiction] recognize that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA’s CIP as identified in Section 1.1” (Recital F)

“FORA and [the Jurisdiction] recognizes the importance of calibrating th4e Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and board-determined basewide obligations in FORA’s CIP as identified in Section 1.1” (Recital G)

“FORA and [the Jurisdiction] seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax;” (Recital K)

“FORA [and the Jurisdiction] acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax...The formula must account for all potential revenue sources and costs;” (Recital M)

“FORA and [the Jurisdiction] agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA’s fee program.” (Recital N)

“The list of authorized CIP improvements....to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA’s CIP” (Sec. I.1.1)

The Board action was unexpected, coming so soon after the original terms of the First Amendment to Implementation Agreement that was so thoroughly negotiated. Developer objections to the revisions were voiced strongly at the December and January FORA Administrative meetings and the FORA Administrative committee unanimously agreed that the modified language was not beneficial; unfortunately we falsely understood that our concerns were relayed to the FORA Board. In fact FORA staff continued to tell members of the development community not to worry and at the FORA Board meeting on January 11th a developer representative was told by staff he need not speak to the Board about revision concerns because the revision proposal would not pass. The FORA Board then proceeded to adopt the revisions unanimously; hardly the defined, predictable and transparent process envisioned in the original version of the First Amendment – which has already been approved by the Cities of Seaside, and Del Rey Oaks and approved, signed and recorded by the City of Marina.

We believe the Board likely acted on the revisions without awareness of the consequences outlined above, and we urge the Board to reconsider and rescind its action. By complying with the First Amendments original intent, the Board would send an important signal to the local jurisdictions and development community that FORA intends to honor the terms and spirit of the Amended Implementation Agreement.

Thank you for your time and consideration.

Sincerely,



Crisand Giles
Executive Director, South Bay
925.360.5101 Mobile