



FORT ORD REUSE AUTHORITY

BOARD OF DIRECTORS REGULAR MEETING MINUTES

Friday, June 13, 2014 at 2:00 p.m.

910 2nd Avenue, Suite A, Marina, CA 93933 (Carpenters Union Hall)

1. **CALL TO ORDER**

Chair Edelen called the meeting to order at 2:00 p.m.

2. **PLEDGE OF ALLEGIANCE**

Councilmember Selfridge led the Pledge of Allegiance.

3. **CLOSED SESSION**

The Board received comments from the members of the public, one of whom read a portion of the June 12, 2014 Goldfarb & Lipman LLP letter to the Board into the record and requested it be attached to the meeting minutes (Attachment A). The Board adjourned into closed session at 2:04 p.m.

a. **Public Employee Performance Evaluation – Executive Officer (Gov Code 54957)**

b. **Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – 2 Cases**

i. **Keep Fort Ord Wild v. Fort Ord Reuse Authority (FORA), Case Number: M114961**

ii. **The City of Marina v. Fort Ord Reuse Authority, Case Number: M11856**

4. **ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION**

The Board reconvened into open session at 3:01 p.m. Authority Counsel Jon Giffen announced no reportable action was taken.

5. **ROLL CALL**

Voting Members Present: (**alternates*)(*AR: entered after roll call*)

Chair/Mayor Edelen (City of Del Rey Oaks)	Mayor ProTem O'Connell (City of Marina)
Mayor Pro-Tem Beach (City of Carmel-by-the-Sea)	Mayor Pro-Tem Oglesby (City of Seaside)
Mayor Gunter (City of Salinas)	Mayor Pendergrass (City of Sand City)
Councilmember Lucius (City of Pacific Grove)	Mayor Rubio (City of Seaside)
Councilmember Morton (City of Marina)	Councilmember Selfridge (City of Monterey)

Absent: Supervisor Calcagno (County of Monterey), Supervisor Parker (County of Monterey), Supervisor Potter (County of Monterey)

Ex-officio (Non-Voting) Board Members Present: Taina Vargas-Edmonds* (29th State Assembly District), Donna Blitzer (University of California, Santa Cruz), Andre Lewis* (California State University, Monterey Bay), Walter Tribley (Monterey Peninsula College), Debbie Hale (Transportation Agency for Monterey County), Col. Fellingner (United States Army), Lyle Shurtleff (Fort Ord BRAC Office), and Director Moore (Marina Coast Water District).

6. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

Donna Blitzer announced the University of California (UC) Regents had recently taken several actions recommended in the FORA/UC jointly sponsored 2012 UC MBEST Center visioning exercise. One of the recommendations was to approve removal of the west campus from the MBEST Center, allowing it to be sold. The first step in selling the west campus properties was auction of the former Army flight simulator building, which began that week. UC hoped the sale would result in occupancy of the building and an increase in local jobs.

Executive Officer Houlemard reported on the recent Association of Defense Communities National Summit in Washington DC, also attended by Assistant Executive Officer Steve Endsley and Chair Edelen. He stated that he and Rochelle Dornatt had prepared and participated in a panel designed to assist local reuse authorities in developing and implementing successful legislative programs. Mr. Houlemard relayed informational updates from the US Army and congressional leaders regarding budget forecasts and anticipated impacts to military missions nationwide.

Mr. Houlemard noted that the Initial Environmental Study and Assessment for Phase I of the California Central Coast Veterans Cemetery Project was available for public review. Links to the documents were posted on the FORA website and the documents had also been placed in the Seaside and Marina libraries. The deadline for comments to be received was July 11, 2014.

Mr. Houlemard requested a postponement of agenda items 8c and 8e to the July Board meeting in order to make some adjustments/modifications. Chair Edelen stated that unless there were any Board objections, the items would be considered postponed to the July Board meeting. No objections were received. Chair Edelen also noted that agenda items 7a and 7b would be postponed to July to allow time to address Board member questions.

7. CONSENT AGENDA

- ~~a. Approve May 16, 2014 Board Meeting Minutes postponed to July Board meeting~~
- ~~b. Approve May 30, 2014 Board Meeting Minutes postponed to July Board meeting~~

8. BUSINESS ITEMS

a. Fort Ord Reuse Authority FY 2014-15 Annual Budget

i. Consider New Staff Position

Mr. Houlemard presented the FY 2014-15 annual budget. He reviewed the draft Economic Development Specialist job description and discussed the intended benefits to FORA's mission and to the jurisdictions.

ii. Consider Employee Cost-of-Living Adjustment (COLA)

ACTION

Mr. Houlemard discussed the staff-requested 2% cost-of-living increase.

iii. Approve FY 2014-15 Annual Budget

ACTION

The Board discussed the item, seeking input from the educational institutions present. The Board received comments and Mr. Houlemard responded to questions from the Board and public.

MOTION: Mayor Rubio moved, seconded by Councilmember Lucius, to approve the new Economic Development Specialist staff position.

Incorporated into the Motion with the Consent of the Maker: with the following amendments to the job description: 1) emphasize the importance of intellectual clusters, 2) include requirement that the candidate have a proven track record in attracting employers and linking education to economic opportunities, 3) include Board review after one year.

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Beach, Edelen, Gunter, Lucius, Morton, Oglesby, Pendergrass, Rubio. Noes: O'Connell, Selfridge

MOTION: Mayor Rubio moved, seconded by Mayor Gunter, to approve a 2% Cost-of-living Adjustment for FORA staff.

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Beach, Edelen, Gunter, Lucius, Oglesby, Pendergrass, Rubio. Noes: O'Connell, Morton, Selfridge

MOTION: Mayor Gunter moved, seconded by Mayor Rubio, to approve the FY 2014/15 FORA Annual Budget.

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Beach, Edelen, Gunter, Lucius, Morton, Oglesby, Pendergrass, Rubio, Selfridge. Noes: O'Connell

b. Approve Fort Ord Reuse Authority FY 2014-15 Capital Improvement Program

Mr. Endsley discussed the components of the Capital Improvement Program (CIP) and introduced David Zehnder, Economic and Planning Systems, who provided an explanation of the annual formulaic approach update and the recommendations coming out of the analysis/update. The Board received comments and FORA/EPS staff responded to questions from the Board and public.

MOTION: Councilmember Lucius moved, seconded by Mayor Rubio, to approve the FY 2014/15 FORA Capital Improvement Program.

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Beach, Edelen, Gunter, Lucius, Oglesby, Pendergrass, Rubio. Noes: Morton, O'Connell, Selfridge

MOTION: Councilmember Lucius moved, seconded by Mayor Gunter, to approve Resolution 14-xx, implementing a Community Facilities District Special Tax and Base-wide Development Fee Adjustment (17% reduction).

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Beach, Edelen, Gunter, Lucius, Oglesby, Pendergrass, Rubio, Selfridge. Noes: Morton, O'Connell

~~c. Approve Preston Park FY 2014-15 Annual Budget~~ *postponed to July Board meeting*

d. Consistency Determination: Consider Certification, in whole or in part, of the City of Seaside Zoning Code amendments related to the 2013 Zoning Code update as Consistent with the 1997 Fort Ord Reuse Plan

Associate Planner Josh Metz presented background information regarding the item and discussed the options for Board action. Rick Medina, City of Seaside, summarized the process used to develop the zoning code text amendments and reviewed the changes.

i. Noticed Public Hearing

Chair Edelen opened the public hearing at 5:14 pm. The Board received comments from members of the public and Chair Edelen closed the public hearing at 5:22 pm.

ii. Board Determination of Consistency

The Board discussed the item, requesting clarifications from FORA and Seaside staff based on public and Board comments.

MOTION: Mayor Pro-Tem Beach moved, seconded by Councilmember Morton, to extend the meeting an additional 15 minutes.

MOTION PASSED UNANIMOUSLY

MOTION: Mayor Rubio moved, seconded by Mayor Gunter, to certify the City of Seaside Zoning Code amendments related to the 2013 Zoning Code update as Consistent with the 1997 Fort Ord Reuse Plan.

MOTION RECEIVED MAJORITY APPROVAL (2nd Vote Required): Ayes: Edelen, Gunter, Lucius, O'Connell, Oglesby, Pendergrass, Rubio. Noes: Beach, Morton, Selfridge

MOTION: Councilmember Lucius moved, seconded by Councilmember Morton, to postpone the remaining agenda items to a special Board meeting the following week, at a time to be determined by the Clerk after polling Board member availability.

MOTION PASSED UNANIMOUSLY

Mayor Pro-Tem Beach and Councilmember Lucius left at 5:50 pm.

- e. ~~Approve Memorandum of Agreement between the County of Monterey, UCP East Garrison, LLC, and FORA Regarding Parker Flats Habitat Management~~ *postponed to July Board meeting*
- f. 2nd Vote: Adopt Resolution 14-XX to Retain Preston Park Property in Accordance with Government Code Section 67678(b)(4) *postponed to a special Board meeting*
- g. Marina-Salinas Multimodal Corridor Plan *postponed to a special Board meeting*
 - i. TAMC Presentation
 - ii. Consider Supporting Recommended Corridor Alignment
- h. Regional Trails Planning Update *postponed to a special Board meeting*

9. PUBLIC COMMENT PERIOD

The Board received comments from members of the public.

10. EXECUTIVE OFFICER'S REPORT

Mr. Houlemard stated the items were informational and did not require discussion.

- a. Outstanding Receivables
- b. Habitat Conservation Plan Update
- c. Administrative Committee
- d. Veterans Issues Advisory Committee
- e. Water/Wastewater Oversight Committee
- f. Regional Urban Design Guidelines Task Force
- g. Post Reassessment Advisory Committee
- h. Travel Report
- i. Public Correspondence to the Board

11. ITEMS FROM MEMBERS

None.

12. ADJOURNMENT

Chair Edelen adjourned the meeting at 5:57 p.m.

goldfarb
lipman
attorneys

1300 Clay Street, Eleventh Floor
Oakland, California 94612
510 836-6336

Attachment A
6/13/14 Board Meeting Minutes

M David Kroot
June 12, 2014

John T. Nagle

Lynn Hutchins

via messenger

Karen M. Tiedemann

Mayor Edelen (Chair)

Thomas H. Webber

Mayor Pro-Tem Beach

Dianne Jackson McLean

Supervisor Calcagno

Michelle D. Brewer

Mayor Gunter

Jennifer K. Bell

Councilmember Lucius

Robert C. Mills

Councilmember Morton

Isabel L. Brown

Mayor Pro-Tem O'Connell

James T. Diamond, Jr.

Mayor Pro-Tem Oglesby

Margaret F. Jung

Mayor Pendergrass

Heather J. Gould

Supervisor Potter

Juliet E. Cox

Mayor Rubio

William F. DiCamillo

Councilmember Selfridge

Amy DeVaudreuil

Executive Officer Houlemard

Barbara E. Kautz

Fort Ord Reuse Authority

Erica Williams Orcharton

920 2nd Avenue, Suite A

Luis A. Rodriguez

Marina, CA 93933

Xochitl Carrion

Re: **Brown Act Violations by FORA**
Cease and Desist Letter and Request for Relief

Rafael Yaquian

Dear Directors and Executive Officer Houlemard:

Vincent L. Brown

On behalf of the City of Marina we are writing you regarding the Fort Ord Reuse Authority's ("FORA") (1) past violations of the Ralph M. Brown Act ("Brown Act," Gov. Code § 54950, *et seq.*) related to Resolution 14-xx on Retention of Preston Park ("Preston Park Resolution"), and (2) anticipated future violations of the Brown Act during the June 13, 2014 Regular Meeting.

Caroline M. Nasella

Elizabeth Klueck

1. FORA violated the Brown Act on or before May 30, 2014 when considering the Preston Park Resolution.

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

As described below, the Board engaged in secret deliberations of, and potentially took action regarding, the Preston Park Resolution outside of the public meeting on May 30, 2014. We provide a description of the violations and proposed remedies pursuant to Government Code Section 54960.2, and request that the FORA Board of Directors ("the Board") cure the violations described below before attempting further action on the Preston Park Resolution.¹

Goldfarb & Lipman LLP

¹ All section references are to the Government Code unless otherwise indicated.

No public deliberations on the Preston Park Resolution by the Board occurred. After receiving public comment from representatives of the City as well as four members of the public, Director Rubio (Mayor of the City of Seaside) discounted the validity of public concerns in less than two minutes. Director Rubio recited an interpretation of state law, as well as an interpretation of the alleged contractual obligations of the City and FORA, to argue that the Preston Park Resolution will not set a "precedent," in which FORA will unilaterally retain the lands of other localities in the future. Furthermore, Director Rubio explicitly referenced the existing litigation between the City and FORA, cited the legal purpose of FORA, and claimed the legal thresholds to implement the Preston Park Resolution had been met.² No other Board member offered comment or public deliberation.

In light of the legal conclusions relied on by Director Rubio immediately after the closed session regarding the Preston Park litigation, as well as the lack of public deliberation by other Board members, it appears the Board engaged in secret deliberations regarding the Preston Park Resolution. Likewise, the alleged polling of the Board regarding the Special Meeting, as noted in public comment, further implicates violation of the Brown Act.

Civil Liability

FORA is subject to the Brown Act. Gov. Code § 67663. The Brown Act requires that government actions "be taken openly and that [government] deliberations be conducted openly." Gov. Code § 54950. Courts broadly construe the Brown Act mandate to apply to both deliberations and actions in various settings: Deliberations include, "not only collective discussion but also the collective acquisition and exchange of facts preliminary to the ultimate decision." *Stockton Newspapers v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 102 (internal quotations omitted). Actions include both preliminary and final votes, as well as a collective decision, commitment, or promise of the majority regarding a motion, proposal, resolution, order, or ordinance. Gov. Code §§ 54953(c) & 54952.6. And, the term 'meeting' includes any discussions, deliberations, or actions in which a majority of the legislative body participates, whether simultaneously or in a series of communications. Gov. Code § 54952.2.

Although Section 54956.9 authorizes closed sessions "to confer with, or receive advice from, [] legal counsel regarding pending litigation," this exception is "strictly construed." *Stockton Newspapers, supra*, 171 Cal.App.3d at 104. That is, the purpose of the communication between the attorney and the legislative body cannot be "a legislative commitment, [thereby evading] the central thrust of the public meeting law." *Id.* at 105. "Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure

² See FORA Board of Directors Video of Special Meeting on May 30, 2014, minutes 3:10-5:00. Available at: <http://fora.org/board.html>

the public interest." *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 58. Courts have looked to the California Attorney General for guidance, who in turn emphasized, "the purpose of Section 54956.9 is to permit the body to receive legal advice and make **litigation decisions only**; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions." *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 186 (quoting Cal. Dept. of Justice, Off. of Atty. Gen., *The Brown Act* (2003), p. 40) (emphasis added).

It appears that on or before the public vote regarding the Preston Park Resolution on May 30, 2014, Board members received legal advice and deliberated about the resolution behind closed doors. There was no Board deliberation of the resolution in open sessions, either prior to or after public comment. Only after the public deliberated the impacts of the Preston Park Resolution during the public comment period, did a Board member offer a legal opinion interpreting state law and public contracts, as well as the legal adequacy of findings. Moreover, the Board member's statements were offered with explicit reference to litigation between the City and FORA, immediately after a closed session discussing the same litigation with counsel.

While FORA may obtain legal advice in closed session regarding litigation, discussion of legislative activity, including the Preston Park Resolution, may not be discussed in closed session. See *Trancas Property Owners Assn.*, *supra*, 138 Cal.App.4th at 186; *Stockton Newspapers*, *supra*, 171 Cal.App.3d at 105; *Sacramento Newspaper Guild*, *supra*, 263 Cal.App.2d at 58. Any acquisition or exchange of facts, any discussion, or any preliminary vote by the Board regarding the Preston Park Resolution outside of a public meeting violates Section 54953 of the Brown Act.³

Request for Relief

The Brown Act empowers any interested person to pursue relief from Brown Act violations, including the judicial declaration of a violation and subsequent declaration that actions in violation of the Brown Act are null and void. Gov. Code §§ 54960-54960.1. Furthermore, courts may enjoin the legislative body from future violations, including mandatory audio recording of future closed session to be reviewed *in camera*. Gov. Code § 54960. Finally, agencies that violate the Brown Act may be liable to plaintiffs for attorney's fees.

³ Any Board members who participated in an inappropriate closed session discussion regarding the Preston Park Resolution, or otherwise outside of a public meeting, may be criminally culpable of a misdemeanor, punishable by up to six months in county jail and/or a fine of up to \$1,000.00. Pen. Code § 19.

June 12, 2014

Page 4

For the reasons discussed above, we request that FORA immediately cease and desist all further Brown Act violations, including but not limited to the discussion, deliberation, or dissemination of facts, as well as preliminary votes or Board member commitments related to the Preston Park Resolution or any other legislative action. We further request that FORA cure and correct past Brown Act violations by:

- Disclosing any meeting notes and minutes from the May 30, 2014 closed session regarding topics beyond the scope for which the closed session was authorized, including but not limited to the Preston Park Resolution;
- Providing a letter pursuant to Section 54960.2 committing FORA to future compliance with the Brown Act, including a description of steps FORA will take to ensure future compliance;
- Voluntarily initiating audio recordings of all future closed sessions, whether related to the litigation between the City and FORA, or any other statutorily permissible purpose, and;
- Discontinuing any further Board action related to Preston Park Resolution and any successor resolution regarding the retention of Preston Park Property.

At this time the City has not yet filed an action in court or requested review of the Brown Act violation by the district attorney. Rather, this letter is sent in hope that the Board will cure and correct any Brown Act violations as requested above without formal judicial intervention.

2. FORA should hear public comment before or during its consideration of the Preston Park Resolution on June 13, 2014.

Should FORA deny our request to discontinue further Board action regarding the Preston Park Resolution, FORA should publicly deliberate and accept public comment before or during consideration of the resolution at the June 13, 2014 Regular Meeting.

We understand FORA has accepted public comment before some second votes, but disallowed public comment before other second votes. Notably, the Board disallowed public comment before the second vote regarding the Preston Park Management Agreement Extension during its regular meeting on January 10, 2014 (Agenda Item 8(a)). However, during its Regular Meeting on March 14, 2014, public comment was heard and Board members deliberated the second vote regarding a consistency determination between the 2010 Monterey County General Plan and the 1997 Fort Ord Reuse Plan (Agenda Item 8(a)). Likewise on March 14, public comment was allowed before a second vote approving an Executive Officer Contract Extension (Agenda Item 8(b)). Here, public comment must be allowed before a second vote on the Preston Park Resolution.

June 12, 2014

Page 5

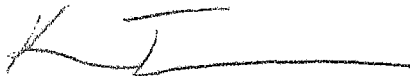
First, the plain text of the Brown Act, Section 54954.3(a) requires, "an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item[.]" Section 54954.3(a) provides for an exception to the public comment before or during the legislative body's consideration, but only when that item "has already been considered by a committee[.]" No committee has previously received public comment regarding the Preston Park Resolution. Thus, public comment must be received before a second vote on the Preston Park Resolution.

Second, as stated by Board Chair Edelen on May 30th, and reflected in the proposed Special Meeting Minutes under Agenda Item 8(a), public comment was improperly limited to two necessary findings within the Preston Park Resolution; the public was not allowed to comment on the merits of the resolution. To cure this violation of the Brown Act, the Board must accept public comment regarding the Preston Park Resolution, including underlying findings **and** the resolution to retain the Preston Park Property.

Finally, disallowing public comment and Board deliberation of the Preston Park Resolution violates the spirit of Government Code Section 67668 and FORA Master Resolution Section 2.02.040(b). Both sections require a second Board vote for resolutions or ordinances that did not receive unanimous approval when heard within 72 hours of introduction. The intent of each provision, like the Brown Act, promotes public discussion and debate among Board members in order to facilitate informed votes, and ensures the integrity of public agency action by allowing the Board and members of the public adequate time to analyze resolutions. Because the previous vote on the Preston Park Resolution was not unanimous, FORA should hear public comment and publicly deliberate the Preston Park Resolution prior to a second vote.

Again, we believe it improper to continue action regarding the Preston Park Resolution in light of the Brown Act violations that took place on or before May 30, 2014. Should FORA proceed with a second vote on the resolution, it must fully comply with the Brown Act, Government Code Section 67668 and FORA Master Resolution Section 2.02.040(b) by accepting public comment and allowing public deliberation regarding both the findings and resolution to retain Preston Park Property.

Sincerely,



KAREN M. TIEDEMANN

KMT:jdb

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In addition, it is crucial to review the records regularly to identify any discrepancies or errors. This proactive approach helps in catching mistakes early and prevents them from escalating into larger issues.

Furthermore, the document highlights the need for secure storage of these records. Whether digital or physical, the information must be protected from unauthorized access and loss. Implementing robust security measures is essential for maintaining the integrity of the data.

Finally, it is recommended to establish a clear policy regarding record retention. Knowing how long records should be kept and under what conditions they can be disposed of is a key component of effective record management.