

Rosalyn Charles

From: Haines Jane [janehaines@redshift.com]
Sent: Thursday, June 12, 2014 7:58 AM
To: FORA Board
Cc: Michael Houlemard; Medina Rick
Subject: FORA June 13 agenda item 8d - consistency determination re Seaside Zoning Code amendments
Attachments: SeasideConsistency.pdf

Dear FORA Board members:

I request you to consider the attached letter before your decision pertaining to agenda item no. 8d at the June 13, 2014 FORA Board meeting.

Sincerely,
Jane Haines

Jane Haines

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL 831 375-5913

janehaines@redshift.com

June 12, 2014
Fort Ord Reuse Authority (FORA)
920 Second Avenue
Marina, CA 93933
c/o board@fora.org

Re: June 13 Agenda Item 8d - Consistency Determination of Seaside Zoning Code
with Base Reuse Plan

Dear FORA Board:

This letter will *quote* the Base Reuse Plan and the Scoping Report that is included in the 2012 Fort Ord Plan Reassessment¹ to show why the FORA Board cannot reasonably certify that the Seaside Zoning Code text amendments related to the 2013 Zoning Code Update are consistent with the Fort Ord Reuse Plan.

1. **The Seaside Zoning Code text amendments fail to prohibit card rooms or casinos for gambling as acceptable land uses on the former Fort Ord.** Seaside Commercial Land Use Program B-2.1 at BRP page 256 states that Seaside “*shall not include nor allow card rooms or casinos for gambling as acceptable land uses on the former Fort Ord.*” Referring to Program B-2.1, the 2012 Scoping Report states on page 4-27 that Program B-2.1 is incomplete because “*Seaside regulates bingo games (Municipal Code Chapter 5.16), but does not prohibit bingo or other gambling within Fort Ord.*” The Zoning Code text amendments fail to correct this omission. Neither they nor Seaside Municipal Code Chapter 5.16, prohibit bingo and other gambling within Fort Ord. Thus, the 2013-14

¹ The Scoping Report can be accessed at http://www.fora.org/Reports/FinalScoping/FINAL_SCOPING_REPORT4.pdf. The quoted sections of the Base Reuse Plan (BRP) can be accessed at http://www.fora.org/Reports/BRP/BRP_v2_ReusePlanElements_1997.pdf. The Seaside Zoning Code with text amendments can be accessed at <http://www.ci.seaside.ca.us/Modules/ShowDocument.aspx?documentid=9462>. These may take a few minutes to download because the Scoping Report has 284 pages, the cited BRP volume has 248 pages, and the Seaside Zoning Code is also lengthy.

Seaside Zoning Code text amendments cannot be found consistent with BRP Program B-2.1 because they do not prohibit card rooms and casinos for gambling within Fort Ord.

2. **The Seaside Zoning Code text amendments fail to establish specific textual regulations for development within residential neighborhoods located within the Community Commercial Zone District.** Seaside Commercial Land Use Program D-1.2 at BRP page 257 states that Seaside “*shall designate convenience/specialty retail land use on its zoning map and provide textual (and not graphic) standards for development within residential neighborhoods.*” Referring to Program D-1.2, the 2012 Scoping Report states on page 4-30 that Program D-1.2 is incomplete because the “*City of Seaside includes a Community Commercial Zone district, but does not have specific regulations for inclusion within residential neighborhoods.*” Since the 2013-14 Seaside Zoning Code and the text amendments do not include specific textual standards for development within residential neighborhoods, the 2013-14 Seaside Zoning Code text amendments cannot be found consistent with BRP program D-1.2.

3. **The Seaside Zoning Code text amendments fail to add a park plan and protective criteria applicable to Polygon 25.** Seaside Recreation/Open Space Land Use Program C-3.1 states at BRP page 269 that the “*City of Seaside shall include protection criteria in its plan for the community park in the Seaside Residential Planning Area (Polygon 24) for the neighboring habitat protection area in Polygon 25. Creation of this park will also require consideration of existing high-power electric lines and alignment of the proposed Highway 68 connector to General Jim Moore Boulevard.*” Referring to this Program C-3.1, the 2012 Scoping Report states on page 4-44 that “*neither the park plan nor the protective criteria have been prepared to date.*” Since the park plan and protective criteria have been omitted, the Zoning Code text amendments are inconsistent with BRP Seaside Recreation/Open Space Land Use Program C-3.1.

4. **The Seaside Zoning Code text amendments fail to add a 50-acre community park to the Seaside Zoning Map.** Seaside Recreation/Open Space Land Use Programs C-3.2 and C-3.3 state at BRP page 269 that “*The 50-acre community park in the University Planning Area (Polygon 18) should be sited, planned and managed in coordination with neighboring jurisdictions (CSUMB and County of Monterey)*” and “*The City of Seaside shall attempt to work out a cooperative park and recreation facilities agreement with MPUSD and CSUMB.*” Referring to these programs, the 2012 Scoping Report states on page 4-45 that these programs are incomplete and that “*Polygon 18 is now designated as High-Density Residential. Seaside has provided other parkland within Polygon 20g (Soper Park, 4 acres) and open space walking trails in Polygon 20a (Seaside Highlands) and expanded the park in Polygon 24, for an equal amount of total parkland. Consistency determinations with Seaside General Plan 12/10/04.*” Programs C-3.2 and C-3.3 require a 50-acre community park managed in coordination with neighboring jurisdictions. Such a park is not included in the Zoning Map in the 2013-14 Seaside Zoning Code. Thus, the Zoning Map in the Seaside Zoning Code is inconsistent with BRP Programs C-3.2 and C-3.3.

5. **The Seaside Zoning Code text amendments fail to designate requisite areas as Special Design Districts.** Seaside Recreation/Open Space Land Use Program D-1.3 at BRP pg. 269 states that the “*City of Seaside shall designate the retail and open space areas along the Main Gate area (Polygon 15), the South Village mixed-use area (Polygon 20e), and a strip 500 feet wide (from the Caltrans Row) along State Highway 1 (Polygons 20a and 20b) as Special Design Districts to convey the commitment to high-quality development to residents and visitors.*” Referring to this program, the 2012 Scoping Report states on page 4-46 that this requirement is incomplete, explaining that “[t]hese areas have not been designated as *Special Design Districts.*” Thus, the 2013-14 Seaside Zoning Code and text amendments are inconsistent with BRP Program D-1.3.

6. **The Seaside Zoning Code text amendments fail to establish an oak tree protection program.** Seaside Recreation Policy C-1 at BRP pg. 326 states that the “*City of Seaside shall establish an oak tree protection program to ensure conservation of existing coastal live oak wood lands in large corridors within a comprehensive open space system. Locate local and regional trails within this system.*” Referring to this policy, the 2012 Scoping Report states on pg. 4-73 that this program has not been established. Until the Seaside Zoning Code is amended to comply, the 2013-14 Seaside Zoning Code is inconsistent with the Base Reuse Plan because it is not in substantial conformance with Policy C-1. See also following paragraph 9 pertaining to the BRP requirement for Seaside to adopt an ordinance specifically addressing the preservation of oak trees.²

7. **The Seaside Zoning Code text amendments fail to add requisite provisions to Seaside’s water conservation ordinances.** Seaside Hydrology and Water Quality Program B-1.5 states at BRP pg. 350/347 that the City of Seaside “*shall promote the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use.*” Referring to Program B-15, the 2012 Scoping Report states on pg. 4-91 that this program is incomplete, explaining that “*Seaside’s water conservation ordinances do not include these measures.*” The measures must be added to Seaside’s water conservation ordinances in order for them to be consistent with Program B-1.5.

8. **The Seaside Zoning Code text amendments fail to designate an oak woodland conservation area.** Seaside Biological Resource Policy B-2 at BRP pg. 373 requires that “*as site-specific development plans for a portion of the Reconfigured POM Annex Community (Polygon 20c) and the Community Park in the University Planning Area (Polygon 18) are formulated, the City shall coordinate with Monterey County, California State University, FORA and other interested entities in the designation of an oak woodland conservation area connecting the open space lands of the habitat management areas on the south to the landfill polygon (8a) in the north.*” The Seaside Zoning Map does not show an oak woodland conservation

² The City of Los Angeles has adopted an oak tree protection ordinance that Seaside may want to study. The L.A. ordinance can be accessed at http://clkrep.lacity.org/onlinedocs/2009/03-1459-s1_ord_177404.pdf.

area.³ Such an area must be designated and appropriately configured on the Seaside Zoning Map before the map can be certified as consistent with the BRP. Since there is no oak woodland conservation area on the Seaside Zoning Map, the map is inconsistent with Policy B-2. Moreover, the 2012 Scoping Report states that Seaside Biological Resource Program B-2.2 at BRP pg. 373 is incomplete. Program B-2.2 requires annual monitoring reports by Seaside to the Fort Ord Coordinated Resource Management and Planning (CRMP) program with respect to the oak woodland conservation area; however, there can be no monitoring reports because the Seaside Zoning Code text amendments do not designate the required oak woodland conservation area.

9. **The Seaside Zoning Code text amendments lack an ordinance specifically addressing the preservation of oak trees.** Seaside Biological Resource Policy C-2.1 at BRP pg. 374 states that the City of Seaside “*shall adopt an ordinance specifically addressing the preservation of oak trees. At a minimum, this ordinance shall include restrictions for the removal of oaks of a certain size, requirements for obtaining permits for removing oaks of the size defined, and specifications for relocation or replacement of oaks removed.*” The 2012 Scoping Report at pg. 4-120 states that the City of Seaside’s tree ordinance, Chapter 8.54 of the municipal code, “*does not specifically address oak trees or oak woodland.*” Thus, the City of Seaside must adopt the BRP-required ordinance before its municipal code is consistent with the BRP. For an example of an ordinance specifically addressing the preservation of oak trees, see the link to the Los Angeles oak tree preservation ordinances cited in footnote 2. Adoption of such an ordinance would specifically address the requirements stated in BRP Policy C-2.1.

10. **The Seaside Zoning Code text amendments fail to amend the Seaside Zoning Map to designate areas with severe seismic hazard risk as open space, nor does it establish the requisite setback requirements.** BRP page 428 states an objective for Seaside to “*protect and ensure public safety by regulating and directing new construction (location, type, and density) of public and private projects, and critical and sensitive facilities away from areas where seismic and geologic hazards are considered likely predicable so as to reduce the hazards and risks from seismic and geologic occurrences.*” In furtherance of this objective, Seaside Seismic and Geological Hazard Policy A-3.1 at BRP pg. 429 requires Seaside to “*amend its zoning maps to designate areas with severe seismic hazard risk as open space if not [sic] other measures are available to mitigate potential impacts.*” The 2012 Scoping Report at pg. 4-143 states this has not been done, which is confirmed by the current Seaside Zoning Map. Additionally, BRP pg. 429 in Seismic and Geological Hazard Program A-1.2 requires Seaside to “*establish setback requirements for new construction, including critical and sensitive facilities, for each seismic hazard zone with a minimum of 200 feet setback to a maximum of one quarter (1/4) mile setback from an active seismic fault. Critical and sensitive buildings include all public or private buildings essential to the health and safety of the general*

³ The Seaside Zoning Map can be accessed at <http://www.ci.seaside.ca.us/Modules/ShowDocument.aspx?documentid=640>.

public, hospitals, fire and police stations, public works centers, high occupancy structures, schools, or sites containing or storing hazardous materials.” Such setback requirements are a zoning matter which must be included in the Seaside Zoning Code text amendments before the Code can be deemed consistent with Policy A-3.1.

11. **The Seaside Zoning Code text amendments fail to conform to the BRP-required noise criteria.** The Noise Element of the BRP beginning on BRP pg. 399 recognizes that the Zoning Codes of Seaside, Monterey County, and Marina have differing definitions and quantitative standards for determining noise compatibility. Thus, the BRP sets an objective of *“ensuring that application of land use compatibility criteria for noise and enforcement of noise regulations are consistent throughout the Fort Ord Planning area.”* (BRP pg. 407.) To achieve this, the BRP establishes the standards in Table 4.5-3 for Exterior Community Noise (BRP pg. 411) and Table 4.5-4 for Non-Transportation Noise Sources (BRP pg. 412). The City of Seaside Zoning Code noise standards are inconsistent with the BRP noise standards. (Scoping Report pg. 4-137.) The 2012 Scoping Report states that Seaside’s *“noise criteria are 5 to 10 dBA higher for three categories of land use (residential, schools, industrial) compared to Fort Ord Reuse Plan Table 4.5-3.”* (Scoping Report pg. 4-134.) It also notes that Seaside has not adopted specific noise performance standards. (Scoping Report pg. 4-135.) It further states that Seaside has not yet *“developed and implemented a program that identifies currently developed areas that are adversely affected by noise impacts and implement measures to reduce these impacts, such as constructing noise barriers and limited the hours of operation of the noise sources,”* as required by BRP Noise Program B-1.1 (Scoping Report pg. 4-136). Thus, Seaside’s 2013-14 Zoning Code, specifically Chapter 17.24 and/or Chapter 17.30.060, must be amended to conform to BRP noise standards for Fort Ord lands before the Zoning Code amendments can be found consistent with the Base Reuse Plan.

Conclusion

FORA spent a half-million dollars in 2012 for the Fort Ord Reuse Plan Reassessment. The Reassessment identified numerous inconsistencies between FORA land use jurisdictions’ legislative acts and the Base Reuse Plan, including inconsistencies applicable to Seaside as quoted herein. The FORA Board is required by State law to disapprove a finding of consistency when a legislative act is inconsistent with the BRP. The above eleven paragraphs show conclusively that the City of Seaside Zoning Code amendments are inconsistent with the Base Reuse Plan *according to statements quoted from the Reassessment Scoping Report.*

Thus, I request the FORA Board to pass a motion which denies finding consistency at this time but which provides that the FORA Board authorizes FORA’s Executive Officer to administratively certify that the 2013-14 Seaside Zoning Code and text amendments are consistent with the Base Reuse Plan *after* Seaside makes the corrections described herein.

That option, which is authorized by Government Code section 67675.5(d), would respect the integrity of the 2012 Reassessment and the Base Reuse Plan yet avoid unnecessary delay by allowing the consistency finding to be made administratively after the Seaside Zoning Code and text amendments are made consistent with the Base Reuse Plan.

Sincerely,

Jane Haines

Rosalyn Charles

From: Rick Medina [RMedina@ci.seaside.ca.us]
Sent: Thursday, June 12, 2014 11:04 AM
To: FORA Board; Jane Haines
Cc: Diana Ingersoll; Lisa Brinton; Michael Houlemard
Subject: Re: FORA June 13 agenda item 8d - consistency determination re Seaside Zoning Code amendments

Ms. Haines,

Link to 2013 Zoning Code Track Changes is listed below. New text is identified with an underline and deleted text is identified with a strikethrough.

<http://www.ci.seaside.ca.us/Modules/ShowDocument.aspx?documentid=9598>

Please do not hesitate to contact me at (831) 899-6726 if you have any questions or comments.

Rick Medina
Senior Planner
(831) 899-6726
rmedina@ci.seaside.ca.us

>>> Haines Jane <janehaines@redshift.com> 6/12/2014 7:57 AM >>>

Dear FORA Board members:

I request you to consider the attached letter before your decision pertaining to agenda item no. 8d at the June 13, 2014 FORA Board meeting.

Sincerely,
Jane Haines

Rosalyn Charles

From: Lena Spilman
Sent: Thursday, June 12, 2014 6:09 PM
To: FORA Board
Subject: Fwd: Preston Park Retention Resolution
Attachments: Preston Park Retension Resolution - June 12, 2014.pdf

FORA Board members,

The attached correspondence was received from the City of Marina at 5:42 pm this evening.

Lena Spilman
Deputy Clerk



CITY OF MARINA

211 Hillcrest Avenue
Marina, Ca 93933
831- 884-1278; FAX 831- 384-9148
www.ci.marina.ca.us

June 12, 2014

delivery options

Fort Ord Reuse Authority Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Re: Preston Park Retention Resolution

Dear Board Members:

At the May 30, 2014 special meeting of the Fort Ord Reuse Authority Board of Directors, the Board considered a resolution to retain Preston Park. The resolution failed to receive a unanimous vote of the Board and so, in accordance with FORA rules, must come back for a second vote of the full Board, which is scheduled for the FORA meeting of June 13, 2014. Marina submitted comments on the resolution to the Board prior to the May 30, 2014 meeting. This letter supplements those comments and addresses the basis for the findings that are required under Government Code Section 67678(b)(4) for FORA to retain property.

Retention of Preston Park is "Necessary or Convenient" to carrying out FORA's responsibilities.

FORA stated in its staff report and at the meeting on May 30, 2014 that the retention of Preston Park is "necessary and convenient" to carrying out FORA's responsibilities. The findings included in the resolution rely upon the purported facts that if FORA cannot sell Preston it will be unable to repay the Rabobank loan and that it will be unable to fully fund its capital improvement program. The resolution projects that the CIP will have a \$25 million shortfall if the Preston Park property is not sold. Setting aside the fact that entire CIP is premised on aggressive assumptions about development absorption, any one of which could prove false and thus jeopardize the CIP, the \$25 million shortfall or any other number is merely a factor of the interplay between the CIP and development fees. If FORA adhered to its legal obligations with respect to the transfer of Preston Park to the City of Marina and removed from the CIP projections the Preston Park land sales revenues, the "funding shortfall" would be more than made up for by keeping the development fees at their current level. Table 1-2 of the EPS Phase III CIP Review shows that prior to reduction in the development fees proposed as part of the CIP approval, FORA would have had a \$33 million surplus in the CIP (one can only assume that it is merely a coincidence that this number is similar to what FORA projects to receive from the sale of Preston Park.).

Although Marina has no desire to see FORA default on the Rabobank loan, there are options available that do not require the sale of the Preston Park property to a third party. Marina has made many offers to FORA with regards to the property, all of which have been rejected. FORA's current predicament with regards to the Rabobank loan is of its own making, based on FORA's failure to compromise in any way with regards to the resolution of the current litigation.'

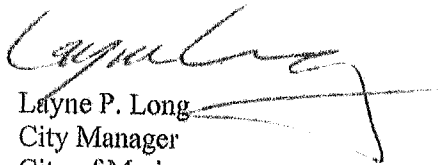
Retention of Preston Park purportedly will not cause significant financial hardship to Marina.

The FORA resolution also finds that the sale of Preston Park will not result in significant financial hardship to the City of Marina. The findings upon which this determination is made are not supported by any evidence. Rather, the determination seems to be based on suppositions about Marina's short- and long-term financial needs and makes unsubstantiated conclusions about Marina's purpose for asserting its legal rights to Preston Park. Marina has carefully considered the implications of the sale of Preston Park. Currently, the approximately \$1.7 million in annual revenue received by Marina from the Preston Park rents constitutes approximately 10% of the City's General Fund budget. These funds are used for essential city services and provide a stable revenue source that does not fluctuate with the ebb and flows of the economy. Over the last several years, like most other cities, Marina has suffered significant budgetary shortfalls that have necessitated reductions in staff and cut backs in City services and programs. Budget reserves have also been significantly depleted during this time, leaving the City in a precarious financial situation. The dissolution of redevelopment agencies further depleted the City's available resources for removing blight and effectively implementing reuse of Fort Ord. Although the City would like to believe that as the economy recovers from the 2008 economic meltdown its budget will improve, the City realizes that economic cycles are a reality. Today's upswing will inevitably be followed by a dip, although most likely not as significant as the recent recession. Although FORA may not continue to exist for the next economic downswing, Marina must plan for the mid-term and the long term, including the inevitable economic downturns. Selling off land assets that are generating a stable revenue stream is contrary to the sustainable economic model the City is creating for its future.

Marina's financial consultants have examined its options should the Preston Park property be sold with the goal of maintaining the same stable annual level of funding. Marina's investment options are severely limited by State law to what are generally considered conservative investments, which also means low yield investments. Recognizing this limitation, in order to ensure a level payment of \$1.7 million each year, the City would need to receive somewhere between \$65 million and \$100 million in land sales proceeds today, depending upon whether the proceeds could be invested at an interest rate between 1.7% and 2.6%. The interest rates used were based on current 5-year Treasury rates and average 5-year Treasury rates for the past 10 years. Marina would have to receive an annual yield of at least 5% each year on the projected land sales proceeds of \$33,000,000 in order to maintain its current level of revenues. A 5% yield is not supportable in current markets or over the long term given the limitations on investments available to the City. These assumptions do not take into account the fact that with retention of Preston Park, Marina can expect its revenue stream to increase over time as rents increase, thus adjusting for inflation.

As the above demonstrates, FORA has not met the minimum standards to support its determinations that it is "necessary or convenient" for FORA to retain the Preston Park property, and that retention of Preston Park will not cause significant financial hardship to the City of Marina. In fact, it is quite the opposite. FORA's deliberate and calculated actions will cause irreparable harm to Marina's efforts to provide for a solid, stable, diversified economic base to provide the necessary services and quality of life deserved by the citizens of Marina. As was pointed out at the May 30, 2014, meeting, Marina is being singled out by this action for treatment that has not been inflicted on any other land use jurisdiction and in direct violation of the Implementation Agreement between FORA and the City. FORA cannot point to any other land transaction where FORA has attempted to sell property without the land use jurisdiction's consent. Other than the fact that FORA inappropriately obtained a loan without a clearly identified source of repayment, there is no reason for Marina's property interest to be treated differently from any other jurisdiction. For these reasons, the City of Marina urges the FORA board to reject this resolution.

Respectfully,



Layne P. Long
City Manager
City of Marina

Amount of Land Sale Proceeds Required to Generate

\$ 1,700,000 a year at the following interest rates

Scenario	Rate	Required deposit
Current portfolio of 1-5 years	0.60%	\$283,333,333
Current 5-year Treasury	1.70%	\$100,000,000
Average 5-year Treasury past 10 years	2.60%	\$ 65,384,615
Break even	5.00%	\$ 34,000,000



goldfarb
lipman
attorneys

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

M David Krool
John T. Nagle
Lynn Hutchins
June 12, 2014

via messenger

Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Michelle D. Brewer
Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
Juliet E. Cox
William F. DiCamillo
Amy DeVaudrevuil
Barbara E. Kautz
Erica Williams Orcharton
Luis A. Rodriguez
Xochill Carrion
Rafael Yaquian
Vincent L. Brown
Caroline M. Nasella
Elizabeth Klueck

Mayor Edelen (Chair)
Mayor Pro-Tem Beach
Supervisor Calcagno
Mayor Gunter
Councilmember Lucius
Councilmember Morton
Mayor Pro-Tem O'Connell
Mayor Pro-Tem Oglesby
Mayor Pendergrass
Supervisor Potter
Mayor Rubio
Councilmember Selfridge
Executive Officer Houlemard
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

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

Dear Directors and Executive Officer Houlemard:

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.

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

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

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

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

June 12, 2014

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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

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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

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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

Rosalyn Charles

From: Molly Erickson [erickson@stamplaw.us]
Sent: Friday, June 13, 2014 2:03 PM
To: FORA Board
Subject: Letter to FORA Board for hearing today on consistency determination
Attachments: 14.06.13.KFOW.TOMP.letter.to.FORA.re.Seaside.Zoning.Code.consistency.determination.pdf

FORA Board members:

Please consider the attached letter prior to acting today on the Seaside zoning code item. Keep Fort Ord Wild and The Open Monterey Project urge you to vote to deny the consistency determination for the reasons stated in the letter.

Thank you.

Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214
fax: 831-373-0242

Michael W. Stamp
Molly Erickson
Olga Mikheeva
Jennifer McNary

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214
F: (831) 373-0242

June 13, 2014

Jerry Edelen, Chair
and Members of the Board of Directors
Fort Ord Reuse Authority
920 2nd Ave., Suite A
Marina, CA 93933

Subject: June 13, 2014 Board Agenda – Consider Certification of Seaside zoning code

Dear Chair Edelen and Members of the Board of Directors:

This Office represents Keep Fort Ord Wild and The Open Monterey Project. Both organizations object to a determination of consistency for the Seaside zoning code. The Board should vote to deny the consistency determination for the reasons stated above. This letter presents additional information to assist you.

The proposed legislative documents of Seaside are not consistent with the Fort Ord Reuse Plan, and, if approved, the documents would be yet another example of the failure of FORA to enforce the policies and mitigations of the Reuse Plan pursuant to the FORA enabling legislation, FORA's past resolutions, and CEQA requirements.

In addition to the comments below, Keep Fort Ord Wild and The Open Monterey Project join in the objections of others, including the written comments of Jane Haines, with one important exception: the FORA Board should deny the consistency determination, and send the Seaside documents back to Seaside to be rewritten to be consistent with the Reuse Plan.

The FORA Board should not defer future action to the FORA Executive Officer to act in private. Because the consistency issues are important and should be kept in the public eye, the FORA Board should retain control over the review.

Inconsistencies between the Seaside Zoning code and Fort Ord Reuse Plan

The City of Seaside has adopted a new Municipal Code Title 17 - Zoning and is seeking a consistency determination from FORA. There are several inconsistencies in allowable densities in land use categories, as well as permitted uses in the land use categories, and the document fails to properly reference the Base Plan as a regional planning document applicable to the Fort Ord lands.

Allowable Densities:

1. **Residential Zoning.** Seaside allows 1 unit per 2,904 square feet in areas zoned Medium Density Residential and 1 unit per 1,742 square feet in areas zoned as High Density Residential. (See Table 2-3 on p. 2-11 of the proposed zoning code.) This is 15 units per acre for Medium Density Residential and 25 units per acre for High Density Residential. The Reuse Plan allows a maximum of 10 units per acre in medium density residential and a maximum of 20 units per acre in areas designated for high density residential (See Residential Land Use Policy A-1, p. 240 of the Reuse Plan).

The Residential Land Use Policy A-1 specifically states:

Residential land uses shall be categorized according to the following densities: . . .

SFD Medium Density Residential 5-10 Du/AC
MFD High Density Residential 10-20 Du/AC.

2. **Commercial Zoning.** The City of Seaside allows a maximum Floor Area Ratio (FAR) of 3.0 for Hotels, 2.0 in Commercial Mixed Use, 1.0 in Regional Commercial and Automotive Commercial, and 0.5 in Heavy Commercial and Community Commercial. (See Table 2-6 at p. 2-21 of Seaside's proposed Zoning code.) The Reuse Plan specifies a much lower density of 0.25 FAR. (Commercial Land Use Policy A-1, p. 255, Reuse Plan.) While the designations of the different types of commercial zones in the Reuse Plan are different from the designations chosen by Seaside, under any designation the FAR is much higher in Seaside's Zoning code.

The allowable densities of development in the Reuse Plan are so important in the Reuse Plan that they are included in the consistency checklist that FORA staff are required to use when assessing consistency. Section 8.02.010 of FORA's Master Resolution says:

- (a) In the review, evaluation, and determination of consistency regarding legislative land use Decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record that:
 - (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
 - (2) Provides for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory.

In the proposed Seaside zoning code, the Reuse Plan standard for density is not met, and the standard for intensity of land use is not met either, because higher density development can be "more intense" than lower density development. While Seaside may argue that these aspects of the Zoning Code were contained in the 2006 version and that FORA approved that version, the FORA Board is being asked to conduct a fresh, standalone consistency determination on the text. FORA should not compound its previous error by once again approving a document that is clearly inconsistent.

Seaside is obligated to amend its Zoning Code to match the Reuse Plan under Program A-1-1:

Program A-1.1: Amend the City's General Plan and Zoning Code to designate former Fort Ord land at the permissible commercial densities consistent with the Fort Ord Reuse Plan and appropriate to accommodate the commercial activities desired for the community. (See p. 256 of Reuse Plan.)

The proposed zoning code fails to pass the third standard of consistency on the consistency check list:

(3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and section 8. 02.020 of this Master Resolution.

Allowable Uses. The Seaside Zoning Map, which is part of the zoning code, is inconsistent with the Reuse Plan. (See p. 1-9 of zoning code.) For example, Seaside proposes to place High Density Residential zoning on a 50-acre parcel in Parker Flats that is called "Seaside Community Park" in the Reuse Plan and provides important outdoor recreation for nearby Army families and the community of CSUMB. The Seaside Community Park is described in the Reuse Plan as having "gently rolling . . . oak woodland." (See p. 167 of Reuse Plan). However, under Seaside's proposed high density residential zoning, every tree foreseeably could be removed for 25 dwelling units per acre, which is "more intense" than allowed in the Reuse Plan.

Failure to Reference Reuse Plan

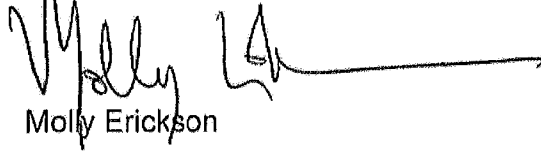
Seaside's proposed zoning code fails to properly reference the Reuse Plan as a regional planning document applicable to the Fort Ord lands. The section on the Main Gate project area explicitly cites applicable planning documents and omits the Reuse Plan: "All land use policies, development standards and design land uses, and infrastructure improvements applicable to proposed land uses and development project within the Projects at Main Gate Specific Plan Area may be found in the adopted Projects at Main Gate Specific Plan, available at the City of Seaside City Hall" (See p. 2-58 of Seaside's proposed Zoning code.)

Jerry Edelen, Chair, and Members of the Board of Directors
Fort Ord Reuse Authority
June 13, 2014
Page 4

The Board should vote to deny the consistency determination for the reasons stated above. Thank you.

Very truly yours,

STAMP | ERICKSON

A handwritten signature in black ink, appearing to read "Moly Erickson", with a long horizontal line extending to the right from the end of the signature.

Moly Erickson

Jane Haines

601 OCEAN VIEW BLVD., APT. 1 PACIFIC GROVE, CA 93950
TEL 831 375-5913

janehaines@redshft.com

June 19, 2014
Fort Ord Reuse Authority (FORA)
920 Second Avenue
Marina, CA 93933
c/o board@fora.org

Re: June 20 Agenda Item 5d - Approval of Resolution 14-XX (Attachment A to Staff Report for Agenda Item 5d)

Dear FORA Board:

Resolution 14-XX on page 34 of your June 20 staff report states the following finding:

“The Board finds that the Seaside General Plan zoning text amendments related to the 2013 Zoning Code update are consistent with the Fort Ord Base Reuse Plan.”

Under California law, an agency abuses its discretion if it makes a finding that is not supported by the evidence. (Code of Civil Procedure Section 1094.5, paragraph (b).) Thus, the FORA Board will abuse its discretion if it makes that finding because:

1. Your Board has not even seen the Seaside General Plan zoning text amendments so you have no evidentiary basis for finding them consistent with the Reuse Plan.
2. Your staff report contains uncontested evidence showing that the zoning text amendments are not consistent with the Reuse Plan.

Accordingly, I reiterate my June 12 request that your Board pass a motion which denies finding consistency at this time but which provides that the FORA Board authorizes FORA's Executive Officer to administratively certify that the 2013-14 Seaside Zoning Code and text amendments are consistent with the Base Reuse Plan *after* Seaside makes the described corrections. Making the above finding tomorrow will violate California law.

Sincerely,

Jane Haines

Rosalyn Charles

From: Gslindsey@aol.com
Sent: Saturday, June 28, 2014 12:18 PM
To: FORA Board
Subject: The Ft. Ord Veteran's Cemetery.

Good Afternoon:

My Name Is Greg Lindsey. I'm a US Army Cold-War Veteran and I'm writing in support of the Hopefully Soon to be Ft. Ord Veteran's Cemetery. I think it is an absolute shame that this potential resting place for our honored dead has been reviewed and EIR'd to death but is yet to become a reality. I'm all for environmentalism, and want to see our coastline preserved, but not to the point of idiocy. The Ft. Ord Cemetery would take up an insignificant portion of a huge wilderness area, and in all probability would prove to be an asset to the Monterey Peninsula area in the long run. Please tell these environmental sticky-wickets that the time for nit-pickian anti-military BS has passed. It's time to honor many thousands of our local veterans and BUILD THE CEMETERY!!!!!!

Best wishes,

Greg Lindsey
Former Sgt .E-5 and Squad Leader
Co. B, 94th MP Battalion, 15th MP Brigade
Kaiserslautern, FRG 1972-1975

Rosalyn Charles

From: Christian Landau [christianjlandau@gmail.com]
Sent: Tuesday, July 01, 2014 6:28 PM
To: Rosalyn Charles
Attachments: Lessor-Lessee contract for a nursery in Monterey County, May 12, 2014 Final..pdf

I got the name of Fort Ord from Andrea Zeller-Nield of the SBDC. I have been growing fruit trees from seed in California since 2008. I have been growing fruit trees and vegetables from seed all my life.

I came to this area from Yuba City in 2013. My wife is a special education teacher at North Salinas High School.

I am looking for a few acres that has an adequate supply of water to grow these fruit trees.

I presently grow all my fruit trees from seed in horse manure compost only. They include:

Avocado, apple, apricot, chestnut, carob, fig, hazelnut, lemon, loquat, mulberry, nectarine, orange, peach, pecan, pistachio, pomegranate, plum, sweet lime and tangerine.

I will keep expanding the varieties and am working on getting macadamia nut, lychees and jackfruit to grow.

I am also growing grape vines from seed, not cuttings. As all my trees are cross pollinated, they are pretty disease resistant. In any case, i use no hormones, pesticides, fungicides, herbicides or artificial fertilizers to grow my trees.

It would be great to meet you to discuss oppotunities to work together to create a large organic fruit tree business.

So far I have peach, nectarine, mulberry and fig in 55 gallon barrels, bearing fruit after 3 years. Peach, fig and Nectarine have fruit on right now. My first avocado tree flowered this year after 6 years, but it did suffer cold and drought in Yuba City with temperatures falling to 17 F in the winter and 115 F in the summer. Conditions are so much nicer here in The Salinas Valley nearer the sea.

I am attaching a business proposal

Thank you

Chris Landau

t: 530 923 6485

<http://www.buybarrelsanddrums.com>

<http://www.treeswithfruit.com>

The three pages serves as the whole contract between Christian J Landau (Chris Landau-The Lessee) of 1624 Spumante Way, Gonzales CA 93926, and The Lessor _____ for growing fruit trees in planters and acting as a plant nursery on the Lessor's property.

Fruit trees will be grown in horse manure compost in 5, 15 and 55 gallon planters.

The Lessee wishes to establish a fruit tree nursery growing all trees from seed. Trees will not be grafted. This gives resilience to the trees and plants as they are cross pollinated. Trees are therefore unique specimens. It becomes harder for diseases to kill off the plants if they are genetically diverse.

The larger the planter, the quicker and bigger the tree will grow. The purpose here is to sell a tree that is already bearing fruit to get a higher price. This is particular valid for avocado trees where trees may take 5 to 7 years to bear from seed. People will pay a premium if they can see fruit hanging on the tree. To get this to happen, one will need 55 gallon or larger containers. Large 55 gallon avocado trees bearing fruit will sell for \$1000.

The Lessee already has a few hundred trees and plants that he wishes to bring on to the property, mostly avocado, peach, loquat, pecan, mulberry and fig trees of one to seven feet tall. The lessee has some larger avocado, chestnut, mulberry and peach trees in 55 gallon barrels up to 9 feet tall. The Lessee has some peach and nectarine trees of fruit bearing age in 5, 15, 30 and 55 gallon barrels. The Lessee is also growing grape vines from seed.

The trees The Lessee presently grows include:

Apple, Almond, Apricot, Avocado, Cherry, Chestnut, Fig, Lemon, Hazel Nut, Loquat, Lychee, Mulberry, Nectarine, Orange, Peach, Pecan, Pepper Trees (Schinus Molle), Persimon and Plum.

The Lessee will expand the fruit trees to cover as varied a range as possible. Trees the Lessee would like to grow, include Carob, Guava, Jackfruit, Macadamia Nut, Mandarin, Asian Pear, sweet Lime, Tangerine and Granadilla Vine.

The Monterey coastal area offers an ideal climate that is relatively cool compared with the hot interior country of California. As California dries out and soil and water become scarce, people will want the tree they plant not only to provide shade and oxygen, but also to provide them with fruit. That is where The Lessee will succeed, growing fruit trees in a mulch, such as a water conserving medium of horse manure compost.

Requirements for growing trees and plants

- 1) The Lessee will supply the barrels and planters, which remains The Lessee's until sold to a customer.

- 2) The Lessor of the land agrees to provide an area of land with a water supply for growing the fruit trees in.
- 3) The Lessor also agrees to provide water, free of additional charges for watering these trees in their containers or planters.
- 4) If there are deer present, The Lessee will put up an electric tape horse-type fence, of a few strands run on battery power to try and prevent the deer from jumping the fence and eating all the fruit trees.

Costs to be borne by The Lessor for allowing The Lessee to grow trees for the purpose of selling them as a nursery going concern will be for water and electricity.

Costs to be borne by Lessee for the purpose of selling trees on this property

The Lessee will supply the compost, the labor, the barrels, the containers and planters for growing the trees.

Share of Profits

Trees and vines are generally sold at between \$10 and \$20 per foot to the customer in 5 and 15 gallon containers. Trees in 55 gallon barrels will be sold at higher prices because of the barrel cost and the larger size of the tree. Barrels alone cost \$35 to \$50 per barrel empty. The Lessee agrees to pay monthly the amount of 10% in total of the sale price, irrespective of the Lessee's cost input. If a tree is sold for \$30, \$3 will be paid to The Lessor. If The Lessee sells trees to the value of \$200, \$20 will be paid to The Lessor. A record of date of sale, purchaser and amount will be kept with a copy that will be e-mailed to The Lessor once per month.

This serves as the whole contract. Alterations to this contract are to be in writing and signed by both parties. Should the Lessor or the Lessee no longer wish trees to be grown on this property, the trees will be removed within 30 days. The trees and plants in containers, barrels and planters always remain the property of the Lessee, unless sold by the Lessee, whereupon they become the new owner's property.

As business matters evolve both parties agree to amicably work out their differences to come to a conclusion that can be added as an addendum to this written contract. All alterations to the contract are to be in writing.

Lastly as the Lessee would like to make this a successful business for himself and to share this success with The Lessor foresees building the nursery quickly to a few thousand trees. The lessor has been growing trees in horse manure compost since 2007. The Lessee's two business web sites are:

<http://www.treeswithfruit.com>

<http://www.buybarrelsanddrums.com>

Profits or losses from the barrel business are not part of this contract.

An information site on his broader interests as a scientist and geologist, including the links to scientific published papers, can be found at:

<http://www.opednews.com/author/author47248.html>

Signed and Dated for the Lessee, Christian J Landau (Chris Landau)

Signed and Dated for The Lessor
