FORT ORD REUSE AUTHORITY

BOARD OF DIRECTORS SPECIAL MEETING MINUTES

Friday, May 30, 2014 at 1:00 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 1:00 p.m.

2. **PLEDGE OF ALLEGIANCE**
   Mayor Pro-Tem O'Connell led the Pledge of Allegiance.

3. **CLOSED SESSION**
   The Board adjourned into closed session at 1:01 p.m.

   a. **Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – 1 Case**
      i.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 1:32 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)
Supervisor Calcagno (County of Monterey)	Mayor Pendergrass (City of Sand City)
Mayor Gunter (City of Salinas)	Supervisor Potter (County of Monterey)
Councilmember Lucius (City of Pacific Grove)	Mayor Rubio (City of Seaside)
Councilmember Morton (City of Marina)	Mayor Della Sala (City of Monterey)*

Absent: Supervisor Parker (County of Monterey)

Ex-officio (Non-Voting) Board Members Present: Nicole Charles* (17th State Senate District), Taina Vargas-Edmonds* *AR*, (29th State Assembly District), Graham Bice* (University of California, Santa Cruz), Eduardo Ochoa (California State University, Monterey Bay), Walter Tribley *AR* (Monterey Peninsula College), Hunter Harvath (Monterey-Salinas Transit), and Director Moore (Marina Coast Water District).

6. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
   Executive Officer Michael Houlemard stated that representatives of the Department of General Services (DGS), the City of Seaside, and FORA met that week to discuss the Veterans Cemetery Project schedule. DGS intended to advertise the project for bids by June 18th and receive bids by the end of July. DGS was scheduled to host a Pre-bid Conference at the FORA Office on June 19th.

7. **BUSINESS ITEMS**

   a. **Adopt Resolution 14-XX to Retain Preston Park Property in Accordance with Government Code Section 67678(b)(4)**
      Chair Edelen noted that the Board was being asked to make two specific findings: 1) whether retention of Preston Park is necessary or convenient to carrying out FORA's responsibilities

pursuant to law, and 2) whether retention of Preston Park will cause significant financial hardship to the City of Marina. He emphasized that the ongoing litigation would be adjudicated by the courts and that Board discussion and public comments should be limited to the two findings before the Board.

Authority Counsel Jon Giffen provided a brief introduction/background of the item and outlined the staff recommended actions. The Board received comments from members of the public. Three representatives from the City of Marina read excerpts from Marina Mayor Delgado's May 29, 2014 letter to the Board and requested its attachment to the minutes (Attachment A).

MOTION: Mayor Rubio moved, seconded by Supervisor Potter, to adopt Resolution 14-XX to retain Preston Park Property in Accordance with Government Code Section 67678(b)(4).

MOTION RECEIVED MAJORITY APPROVAL (2nd VOTE REQUIRED): *Ayes*: Beach, Calcagno, Edelen, Gunter, Lucius, Oglesby, Pendergrass, Potter, Rubio, Selfridge. *Noes*: Morton, O'Connell. *Absent:* Parker.

Mayor Pro-Tem Beach left at 2:07pm

b. Marina Coast Water District (MCWD) FY 2014-15 Ord Community Budget

i. Presentation by FORA Staff

Assistant Executive Officer Steve Endsley provided an overview of FORA's MCWD Ord Community Budget review process, noting the item had been reviewed at six separate meetings of the Administrative and the Water and Wastewater Oversight Committees. Mr. Endlsey also provided a history of FORA Board actions on the item.

ii. Presentation by MCWD Staff

Interim General Manager Brian Lee discussed the FY 2014/15 compensation plan, past MCWD accounting practices, and current MCWD budget strategy. A representative of Carollo Engineers discussed the Rate and Financial Study they performed for MCWD, including methodology and explanation of capacity vs. variable rates.

MCWD representatives responded to questions from the Board and members of the public.

Supervisor Calcagno left at 3:21 p.m.

iii. Consider Resolutions 14-XX and 14-XX Adopting a Compensation Plan for Base-wide Water and Sewer Services on the Former Fort Ord

MOTION: Supervisor Potter moved, seconded by Mayor Gunter, to 1) refer the item back to the Administrative Committee, directing the Committee to provide a recommendation for placement on the July Board agenda, and 2) request that MCWD provide additional information regarding possible creation of a Ord Community Ratepayer Advisory Committee.

The Board discussed the implications of a continuation and MCWD-FORA contractual obligations related to budget approval.

MOTION RECEIVED MAJORITY APPROVAL: *Ayes*: Edelen, Gunter, Morton, O'Connell, Oglesby, Pendergrass, Potter, Rubio, Selfridge. *No*: Lucius. *Absent:* Beach, Calcagno, Parker.

8. PUBLIC COMMENT PERIOD

The Board received comments from members of the public.

9. ITEMS FROM MEMBERS

None.

10. ADJOURNMENT

Chair Edelen adjourned the meeting at 3:59 p.m.

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at Sp. Board Mtg

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Attachment A
5/30/14 Board Meeting Minutes

May 29, 2014

HAND DELIVERED

Board of Directors
Fort Ord Reuse Authority
920 Second Avenue
Marina, CA 93933

Re: Adoption of Resolution to Retain Preston Park

Dear FORA Board Members:

The City of Marina objects to the proposed adoption of the Resolution of the Fort Ord Reuse Authority that purports to retain the Preston Park property for purposes of liquidating the property as well as FORA's characterization of the facts leading FORA to take this action.

The action before the FORA Board is a resolution ostensibly being considered pursuant to Government Code Section 67678(b)(4). However, the very language of the resolution defeats the requirements of Government Code Section 67678(b)(4). Section 67678(b)(4) is a provision of the Fort Ord Reuse Authority Act dealing with the disposition of property at the former Fort Ord. Section 67678 generally calls for the rapid disposition of property at the former Fort Ord. Subsection (b)(4) is a limited exception within Section 67678, that allows FORA to retain property only if it is necessary or convenient to carrying out the Authority's responsibilities under the Act. The proposed resolution appears to equate "retain" with "sale" or "liquidation." The American Heritage Dictionary defines retain to mean "to keep or hold in one's possession." It is impossible to fathom how FORA can both retain the property and liquidate the property; the Monterey Superior Court has already prohibited FORA from selling the property until a trial on the City of Marina's case can be held.

Moreover, the staff report accompanying the proposed resolution, as well as the resolution itself, inaccurately state that "Marina and FORA shared the understanding that Marina would be required to 'buy-out' FORA's interest in Preston Park, if Marina wanted to hold title to the property." Over the course of the parties' dealings on Preston Park, there have been a variety of discussions regarding the ultimate disposition of Preston Park. A review of the correspondence between the parties does not demonstrate any shared understanding and indeed, FORA's own understanding appears to have evolved over the course of time. A review of various FORA reports and studies demonstrate that FORA at least initially had the intention of conveying Preston Park to the City of Marina, at no cost, once FORA obtained title to the property from the Army, just as all other base property located within City-limits was conveyed to the City of

Marina. At some later point in time FORA took the position that it would only convey Preston Park to Marina if Marina paid the development fees that FORA had determined were owed on the property, although FORA has been unable to point to any provision in its development fee legislation that would indicate that development fees are owed on the mere transfer of property and the Implementation Agreement provides that developer fees for leasing at Preston Park are $0. FORA's claim that Marina had to "buy-out" its interest in the property only came to light after FORA used the Preston Park property as security for a $19 million loan that FORA had no means of repaying except through the sale of the property. It was this loan and the fact that FORA could not identify a repayment source other than the sale of the property that caused Marina to object to FORA's actions.

FORA also points to the Abrams B housing project as evidence that Marina agreed that it was obligated to buy-out FORA's interest in Preston Park. The transaction with regard to Abrams B, however, is distinguishable from the current situation at Preston Park. Marina has never disputed that if any property at Fort Ord is sold to a third party, the City is obligated to share any sales proceeds with FORA. The Abrams B property was transferred to the City by FORA at no cost. The City then transferred the property to a nonprofit corporation controlled by the City in order to allow both the City and FORA to obtain upfront funds based on the long term lease revenues from the property through the sale of lease revenue bonds. The transfer of Abrams B to the nonprofit corporation triggered the requirement to buy-out FORA's interest by sharing with FORA 50% of the sales proceeds. The City has always acknowledged that if it were to dispose of Preston Park in a similar manner it would be obligated to comply with the Implementation Agreement and share with FORA 50% of any sales proceeds.

FORA also states that Marina's representatives consented to and encouraged the Rabobank loan and on this basis FORA proceeded to enter into the Rabobank loan. This grossly misstates the facts surrounding the Rabobank loan. First and foremost, the City of Marina never consented to the Rabobank loan. FORA attempts to characterize the votes of the Marina appointed representatives to the FORA board as the City's consent to actions. FORA board members vote on FORA board issues in their capacity as FORA board members, taking actions that they believe are in the best interest of FORA. These actions cannot be considered to demonstrate consent of the member jurisdictions since only a vote of the Council or governing board of each jurisdiction can be deemed consent of that jurisdiction. Although FORA Board members may have dual loyalties, when acting as a FORA Board member they have a fiduciary obligation to FORA first and foremost. The Marina representatives to the Board acted in that capacity when voting with regard to the Rabobank loan and any other actions taken about Preston Park.

It should also be noted that the Marina representative to the FORA board (only one of Marina's representatives was present at the meeting) voted in favor of the resolution approving the Rabobank loan only after being assured that certain conditions would be

met protecting Marina's interest in the Preston Park Property. However, shortly after the FORA Board approval, Mr. Houlemard executed the Rabobank loan documents which contained none of those protections or assurances. In fact, the loan documents contained language specifically subordinating the Implementation Agreement to the loan and thereby putting the City's interest in the Preston Park property at risk. Although the loan documents had been signed and recorded, Mr. Houlemard continued to exchange emails with City of Marina staff regarding appropriate language to be included in the loan documents to cover the required protections, only providing the City with the executed, unchanged loan documents after the loan funds had been disbursed.

The FORA press release states that Marina's refusal to purchase FORA's 50% interest in Preston Park along with the loss of redevelopment funding has resulted in a significant loss of funding to FORA which is what is necessitating FORA's action. The reality is that FORA continues to receive the same amount of tax increment it received from the local jurisdictions prior to dissolution of redevelopment agencies and in fact projects as part of the Capital Improvement Plan increases in funding each year. The brunt of the financial impact of redevelopment dissolution has fallen on the local jurisdictions that relied upon tax increment revenue to fund their share of the base reuse obligations, while FORA has remained whole. The most recent budget prepared by FORA staff and presented to this Board just two weeks ago actually shows an increase in revenues to FORA from property taxes with a projected total amount of $1.5 million as opposed to $1.3 million in the prior year's budget.

The proposed resolution states that the retention of the property by FORA would not cause significant financial hardship to the City and goes on to state that Marina has never opposed the sale of the property on the basis of its financial well-being. Marina has always considered its own financial wellbeing with regard to the long term status of Preston Park. Although a sale of the property would result in a significant one-time source of funds, Marina has sought to retain the property in order to preserve the long-term revenue stream from Preston Park that currently funds vital City programs and services. Marina has analyzed investing any such one-time money with the goal of preserving the current revenue stream, but with today's investment rates, it would not be possible for Marina to continue to receive the annual revenue stream it currently receives from Preston Park in the long term. Unlike FORA, which only has a remaining life of six years, Marina's financial interests extend well into the future. It is that long term financial interest that the City is attempting to protect. In addition to the need to preserve an ongoing source of revenue, the City also has a financial interest in maintaining the quality of life for its residents. Preston Park represents a significant source of affordable rental housing that the City is invested in keeping affordable for the long term with the goal of providing long term benefits to City residents.

In summary, FORA attempts to point to Marina as the cause of the potential foreclosure on the Preston Park property. However, FORA fails to mention that long before the

litigation was ever filed by Marina, Marina did offer to resolve its disagreement with FORA by putting the Preston Park property on the market with Marina having a right of first refusal to meet any offer made. FORA rejected that offer, apparently because FORA wanted to have a guaranteed purchase price rather than take a chance on what the market would actually pay for the property. Marina then brought the current litigation only after FORA attempted to sell the property without the City's consent.

For all of the above reasons, the City of Marina objects to the proposed FORA Board action, which serves no purpose in terms of resolving the litigation between Marina and FORA or protecting either FORA's or Marina's interest in Preston Park.

Sincerely,

Mayor Bruce Delgado

cc: Marina City Council
Layne Long
James Diamond
Karen Tiedemann
Robert Wellington