

**From:** [Molly Erickson](#)  
**To:** [FORA Board](#)  
**Subject:** Letter to FORA Board for agenda item 8a  
**Date:** Friday, August 10, 2018 1:02:11 PM  
**Attachments:** [18.08.10.SE.Itr.to FORA.re.SBR.and.GJM.Itr.pdf](#)

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Please see attached. Thank you.

Molly Erickson  
**STAMP | ERICKSON**  
479 Pacific Street, Suite One  
Monterey, CA 93940  
tel: 831-373-1214, x14

August 10, 2018

Via email  
FORA Board of Directors

Re: Item 8a – authorizing duplication of work and payments; paying for physically impossible tasks; and violating adopted CEQA mitigations

Chair Rubio and members of the FORA Board:

This Board appears to be on the brink of authorizing double payment to a consultant for duplication of work, authorizing a physically impossible task, and violating required CEQA mitigations.

Paying for Duplication of Work

There are two FORA contracts that address the same issue: a new roundabout at the intersection of General Jim Moore and South Boundary Road.

1. The **2017 FORA-Whitson contract for South Boundary Road** (Nov. 2017 Board item 8c, approved by Board) states as follows:

*SWO-W2 Task 1.*

*Task 1: Roundabout Concept Feasibility: Perform conceptual level hand calculations to determine if it is possible to put a roundabout at the intersection of South Boundary Road realignment and General Jim Moore Boulevard, given the CEQA project definitions, the existing traffic warrants, and the existing improvements and grade at General Jim Moore Boulevard.*

*1.0 SWO-W2 Task 1.*

*1.1 Hand calculations for conceptual feasibility of roundabout at the intersection of South Boundary Road realignment and General Jim Moore Boulevard including traffic feasibility and environmental considerations.*

*1.2 Technical Memorandum summarizing findings.*

FORA contracted to pay Whitson \$12,200 for this work, to be done within 60 days of the contract that was executed December 12, 2017. The time has come and gone for performance of that task and FORA has nothing to show for it. The calculations were the basis for moving forward with a roundabout at General Jim Moore and South Boundary Road. The calculations are not available. FORA has denied access to the calculations and memorandum; FORA claims they are not public records.

2. The proposed General Jim Moore contract would pay Whitson for the same work as in the 2017 contract.

AMENDMENT 2 to AGREEMENT NO. FC-20171117 – "EXHIBIT D"

GENERAL JIM MOORE BOULEVARD INTERSECTION AT SOUTH BOUNDARY ROAD

SERVICE WORK ORDER - W5 (SWO-W5)

The specific intent of SWO-W5 is for the development of plans, specifications, and estimates used for prospective construction of an intersection at General Jim Moore Boulevard (GJMB) and South Boundary Road (SBR). The intersection is to stay within the Fort Ord Reuse Authority (FORA) Board approved Environmental Assessment/Initial Study for The GJMB and Eucalyptus Road Improvement Project (GJMB EA/IS) and Mitigated Negative Declaration (MND) project description filed with the State Clearinghouse March 18, 2005 No. 2005031096 and certified by the FORA Board on September 9, 2005.

- GJMB - The proposed roadway will include the construction of **new intersections at South Boundary Road; Del Rey Oaks Resort; Broadway Avenue, with an extension of Broadway Avenue to the realigned roadway; Eucalyptus Road/Coe Avenue; Hilby Avenue; and San Pablo Avenue..** – GJMB EA/IS and MND

SWO-W5: SCOPE OF SERVICES

3.0 SWO-W5 Task 4. Preliminary Engineering.<sup>1</sup>

3.1 Prepare a schematic Roundabout Feasibility Study for the subject intersection, with the appropriate traffic warrants. Prepare a Cost Benefit/Analysis for each, and a Comparative Analysis. Prepare the presentation material for a preliminary design review (PDR).

3.0 SWO-W5 Task 3 Deliverable<sup>2</sup>

3.1 Roundabout Concept Feasibility Cost/Benefit Analysis

SWO-W5 Task 3 \$72,058

Compare the yellow-highlighted tasks on this page with the yellow-highlighted tasks on the first page of this letter. FORA would pay Whitson twice for the same work. And the Board and the public are not allowed to see the work because FORA says it is secret.

No CEQA Review of New Roundabout – Instead, Rushing Headlong into Design

A roundabout is not part of the approved General Jim Moore project. A roundabout was not contemplated in the 2005 EA/IS.

Apparently a secret decision would be made to proceed with the roundabout, without any Board or public review.

The proposed contract fails to include any CEQA review or public review of impacts of constructing a roundabout instead of regular intersection. Aerials, site visits and plans clearly show that roundabout would impact a much larger area, would require more grading, and would impact the CNPS plant preserves. On top of the failure to include adequate CEQA review checks and balances, the contract fails to require consultation with CNPS, as mandated by adopted mitigations. FORA is responsible for protecting the two plant preserves. CNPS has enforceable contracts with FORA and Del Rey Oaks.

Violates Required CEQA Mitigations.

The 2005 General Jim Moore EA/IS included Comment D3 by Monterey Peninsula Regional Park District:

The District request[s] that all impacts and mitigation measures be fully delineated and identified, prior to project approval and that the District and the Native Plant Society be actively involved in formulating the specific mitigation measures.

The EA/IS Response to Comment D3 (at p. 13) was this:

Mitigation measures presented in the EA/ IS . . . . were presented at a conceptual level **in anticipation of further collaboration with MPRPD and CNPS to identify specific locations on the ground, and to formulate specific habitat restoration procedures acceptable to these organizations** (refer to the responses to Letter F).

In response to Comment F1, a mitigation was strengthened as follows:

**A minimum of 2.0 acres of maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road**, along with an adequate buffer to assure that golf course drainage will

not impinge on the habitat, **shall be preserved in perpetuity as a CNPS native plant area. Markers shall be established by the City of Del Rey Oaks to assure that there is no misunderstanding about the location or condition of the reserved area. . . . .**

2018 Status: FORA has not fulfilled its promises to FORA made in its responses D3 and F1. FORA has not consulted with authorized California Native Plant Society officials about the project. There is no evidence that the City of Del Rey Oaks has established markers at the site northeast of the existing intersection, which is an additional plant preserve located north of the Plant Preserve #1. That is a violation of CEQA mitigations. FORA is plowing ahead with designs before FORA knows limitations on designs due to impacts and mitigations.

#### Wrong CEQA Standard

At the July 2018 FORA board meeting, FORA project planner Jonathan Brinkmann referred to the consultant looking into whether a roundabout would be consistent with the “metes and bounds” of the approved project. That is not the test. The test is stated in CEQA. A fundamental issue is whether a roundabout would have greater impacts than those analyzed. There is no question that the answer is yes. The contract proposes no disclosure to this Board and no discretionary review by this Board as to potential impacts, and no public input.

#### Impossible Tasks

The proposed project requires Whitson to survey two protected species – sand gilia and seaside’s birds beak – within 60 days of signing the contract. Those two species require springtime surveys. It is now August. The surveys cannot be performed for at least six months, and possibly longer. The consultant cannot meet timeline proposed. FORA is asking for failure or for legally inadequate surveys.

#### Del Rey Oaks Resort Intersection

How many phases of General Jim Moore Boulevard are there? FORA has trumpeted completion of Phase V in the past. Last month you were told there are more parts to Phase V, and this intersection is the last. *Not so.*

The approved General Jim Moore project includes an new intersection at the Del Rey Oaks Resort. It has not been built. Has the Del Rey Oaks Resort intersection been abandoned? Is FORA hiding a plan to construct it in the future? This issue has implications for costs, environmental mitigations, planning, FORA sunset/transition, piecemealing of CEQA review, and more. This Board and the public have a right to

know how much more of Phase V is actually left before acting on the South Boundary intersection. Demand this information from your staff and from Del Rey Oaks.

Request

You should not proceed with this item until you better understand what you are doing, what FORA has done in the past, and what the contracts authorize. And that you would violate required CEQA mitigations. KFORW urges you to ask questions and continue this item. You should not approve anything on the fly, with last-minute edits from staff. Thank you.

Very truly yours,

STAMP | ERICKSON

*Molly Erickson*

Molly Erickson

Attachment: August 8, 2018 FORA letter stating that the calculations and other deliverables required in the Dec. 2017 FORA-Whitson contract are not public records.

Endnotes:

1. KFORW note: The contract tasks are numbered 1, 2, 4, 5, 6, 8. There is no number 3 and no number 7.
2. KFORW note: Task 3 appears to be same as what is described earlier in contract as Task 4. See Endnote 1.



FORT ORD REUSE AUTHORITY

920 2ND Avenue, Suite A, Marina, CA 93933  
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August 2, 2018

← emailed by FORA on August 8, not August 2

Molly Erickson  
Stamp|Erickson  
479 Pacific Street, Suite One  
Monterey, CA 93940  
VIA EMAIL: [erickson@stamplaw.us](mailto:erickson@stamplaw.us)  
Re: July 26, 2018 Public Records Act Request

Dear Ms. Erickson,  
We acknowledge receipt of and hereby respond to your Public Records request submitted by email on July 26, 2018.

← by KFOW  
**REQUEST**

1. The complete and final executed contract with Whitson identified in Item 8c of the FORA Board agenda of November 17, 2017
2. All record of invoices and payments for that contract up to present day.
3. All records discussing, referring to, or addressing service work order number W2 (SWO-W2) and any aspect, task, billing, cost, invoice, or payment that is part of that work order. This request records in the format in which held by FORA, and includes emails and texts.
4. **The records of services and deliverables for SWO-W2 Task 1.** (The draft contract in the November 2017 board packet states: **“Task 1: Roundabout Concept Feasibility: Perform conceptual level hand calculations to determine if it is possible to put a roundabout at the intersection of South Boundary Road realignment and General Jim Moore Boulevard, given the CEQA project definitions, the existing traffic warrants, and the existing improvements and grade at General Jim Moore Boulevard.”** And **“1.0 SWO-W2 Task 1. 1.1 Hand calculations for conceptual feasibility of roundabout at the intersection of South Boundary Road realignment and General Jim Moore Boulevard including traffic feasibility and environmental considerations. 1.2 Technical Memorandum summarizing findings.”**)
5. All updated schedules or other updates to the time of performance and scheduled progress events.

← by FORA  
**RESPONSE:**

The responsive records to your requests 1-2 and 5 are provided in the link below. There are no responsive records to request 3 in regards to records discussing, referring to, or addressing service work order number W2, with the exception of the complete and final executed contract provided in the responsive records for request 1. **There are no responsive records to request 4 in regards to services and deliverables for SWO-W2 Task 1. Please note that**

all deliverables under this contract are for use in the engineering, evaluating and estimating of a potential construction contract and are therefore exempt from disclosure under the CPRA Section 6254 (h).

Due to the size of the responsive records, the following Dropbox link will be made available for 30 days – please feel free to download the documents for future use:  
[https://www.dropbox.com/sh/i3g2ienq7ukvycr/AADytFt1jHTJrC2x03mh4\\_Cha?dl=0](https://www.dropbox.com/sh/i3g2ienq7ukvycr/AADytFt1jHTJrC2x03mh4_Cha?dl=0)

Thank you for your inquiry. If you have any questions regarding this correspondence, please contact me.

Sincerely,

Dominique L. Jones  
Deputy Clerk

Cc: Sheri L. Damon, Risk Manager  
Jon Giffen, Authority Counsel

FORA claims that all deliverables are secret. KFOW has disputed this claim. FORA has not responded.