

CITY ATTORNEY



December 7, 2009

Mr. Eddie Orton
Orton Development, Inc.
3049 Research Drive
Richmond, CA 94806

Re: Ford Building/Craneway and Related Use Violations – Second Demand Letter

Dear Mr. Orton:

On February 25, 2009, I sent you a letter demanding that Orton Development, Inc. ("Orton") take immediate action to remedy violations of its obligations under the Disposition and Development Agreement ("DDA") between the Richmond Redevelopment Agency ("Agency") and Orton dated November 18, 2003, the Conditional Use Permit ("CUP") for the use and rehabilitation of the Historic Ford Assembly Plant ("Ford Building") dated August 5, 2004, and related permits and leases. More specifically, I explained that the City of Richmond ("City") has significant concerns about Orton's failures to (1) comply with its contractual obligations to provide space, free of rent, to the National Park Service ("NPS") for a Visitor's Center, (2) provide a public easement for the Bay Trail along the Craneway wharf, (3) obtain required authorization from the City prior to berthing vessels along the Craneway wharf, and (4) complete conditions of approval articulated in the December 1, 2006 San Francisco Bay Conservation and Development Commission ("BCDC") permit for use of the shoreline along the Ford Building.

While we appreciate that some progress has been made over the last nine months with respect to some of the matters discussed in the February 25 letter, the City is disappointed with the lack of overall progress that Orton has made to comply with its contractual obligations. In particular, the City is concerned with the lack of progress regarding the express requirement that Orton provide free space to NPS for a Visitor's Center and its failure to comply with BCDC orders and requirements.

The City has complied with all the requirements imposed on it under the above-referenced agreements, which has permitted Orton to realize the financial benefits of those agreements for years. It is well past time for Orton to comply with those agreements.

Rosie the Riveter WW II Home Front National Historical Park

As I noted in my last letter, Article 7.10 of the DDA requires the Rosie the Riveter National Historical Park Visitor Center be located in the Ford Building. The DDA requires Orton to “promptly enter into a lease with the NPS under which the NPS shall operate an approximately 10,000 square foot visitor’s center in the Building for the Rosie the Riveter World War II/Home Front National Historical Park” and further requires Orton to provide “shell space rent free (excluding normal NNN expenses and tenant improvements)] for a minimum of 10,000 square feet of space, a significant portion of which must be located in the Craneway or immediately adjacent to the Craneway subject to approval of the NPS.” (DDA, Art. 7.10, Visitor Center Lease) This obligation requires that the space be provided in “cold shell” condition in accordance with customary real estate standards.

In addition, the CUP requires the “Development to be in substantial accord with the Marcy Wong and Donn Logan Architects plans date stamped 6/23/04 submitted to the Planning Department.” (“Plans”) (August 5, 2004, Staff Report, Condition of Approval No. 7) The Plans locate the NPS Visitor’s Center in the Craneway. Rather than comply with these explicit and unequivocal requirements, Orton chose to rent all of the available space in the Ford Building and has not made the Craneway available to the NPS. Orton is responsible for dealing with the consequences of that choice, and remains obligated under the DDA to provide the required space to the NPS.

The City is aware that you have been discussing with NPS the idea of locating the Visitor’s Center in the Oil House near the Craneway. Indeed, the City has expended time and resources to assist exploring this alternative by working with both Orton and NPS to develop a term sheet to move the lease negotiations forward. Unfortunately, there has been insufficient progress in pursuing your proposed alternative. If tangible and significant progress is not made by the end of the year to reach agreement with NPS, the City will be compelled to take action to ensure contractual compliance.

Bay Trail/Related Violations

As discussed in my February 25 letter, Article 7.9 of the DDA in relevant part requires operation of the “... Craneway in accordance with ... the San Francisco Bay Trail and public access easements recorded against the Property.” (DDA, Art. 7.9, SLC Approved Uses for the Craneway) The CUP requires development in substantial accord with the Plans, which identify a Bay Trail public access right-of-way along the Craneway wharf. (August 5, 2004, Staff Report, Condition of Approval No. 7; *see* also attached Plan) Specifically, the CUP provides that an “easement or public right-of-way reservation or dedication for pedestrian and bicycle access across the southern portion of the property shall be provided on the future grant Deed or Title in a legal form approved by the City Attorney.” (*Ibid*, Condition of Approval No. 12)

While the Bay Trail is now open, Orton has installed iron gates across the Bay Trail on both the east and west ends of the Craneway that is locked at night, preventing public access. In response, BCDC has initiated an enforcement action. As you are aware, any violation of BCDC requirements also constitutes violations of the respective December 9, 2004 Ground

Leases between Ford Point, LLC and the City and Agency for the Craneway and submerged lands ("Ground Leases"). It is critical that this matter be resolved without delay.

We look forward to receiving your response. Please respond no later than December 14, 2009.

Sincerely,



Randy Riddle
Richmond City Attorney

cc: William A. Lindsay, City Manager
Steve Duran, Executive Director, Comm. and Economic Development
Will Travis, Executive Director, BCDC