

Rosalyn Charles

From: JaneHaines80@gmail.com
Sent: Thursday, December 10, 2015 4:53 PM
To: FORA Board
Cc: Michael Houlemard; Robert Norris
Subject: FORA 12/11/15 Agenda item 8d
Attachments: FORANov12_2.pdf; ATT00001.htm; AMCAL.pdf; ATT00002.htm

Dear FORA Board,

I request that tomorrow you decline to adopt the term “First Generation Construction” in the proposed resolution on page 57 of 72, and instead substitute the term “public works projects.” My attached November 12 letter explains why.

I also request that you read the highlighted portion of the attached October 23 letter from the Promontory contractor, AMCAL, to Mayor Delgado. I will explain why during public comment tomorrow prior to your going into closed session.

Sincerely,

Jane Haines

Jane Haines

601 OCEAN VIEW BOULEVARD, APT. 1 PACIFIC GROVE CA 93950

janchaines80@gmail.com

Tel 831 375 5913

November 12, 2015

FORA Board of Directors
920 Second Avenue
Marina, CA 93933

Re: Today's Agenda item 8c (revised)

Dear FORA Board of Directors:

It will be a bad mistake if the FORA Board fails to make one change in staff's recommended resolution to make all Fort Ord contractors register with the California Department of Industrial Relations. The remaining recommendations are a good idea, but "First Generation Construction" is not the same as "public works contracts," so the amendments shown below should be made:

- (a) All contractors performing ~~"First Generation Construction"~~ public work contracts must be registered and in good standing with the California Department of Industrial Relations (DIR) as defined in California Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771(a).]

State law requires all contractors performing public works contracts to be monitored for compliance with prevailing wage requirements. However, not all "First Generation Contracts" are public works contracts. Treating them as interchangeable is a major cause of the lack of jobs at Fort Ord, as will be explained below.

DIR's misunderstanding

Assistant Labor Commissioner Eric Rood misunderstood Michael to mean that all First Generation Projects have public funds. Michael didn't say "all," because some First Generation Projects don't have public funds. However, because Mr. Rood thought that Michael meant the terms are interchangeable, he stated that "as such," Labor Code sections 1720-1861 place a statutory obligation to treat those projects as public works. His understanding is quoted on page 2 of the staff report:

"In our previous telephonic discussion, you have confirmed that First Generation Projects have public funds and are construction projects over \$1,000. As such, there would be a statutory obligation to treat these projects as a public works and

ensure all contractors performing this work were subject to the public works statutes (Labor Code sections 1720-1861), which would include contractor registration.”

Labor Code sections 1720-1861 apply to “First Generation Projects” when those projects are “public works projects.” However, they do not apply to “First Generation Projects” that are not public works projects. The distinction is important.

For example, footnote 1 in the staff report refers to *Monterey/Santa Cruz County Bldg. and Const. Trades Council v. Cypress Marina Heights LP* (2011) 191 Cal.App.4th 1500. The *Marina Heights* court held that the Marina Heights developer must pay prevailing wages **solely because FORA’s Master Resolution requires prevailing wages to be paid**, which became a covenant running with the land. The *Marina Heights* court held: “The Master Resolution is the originating source of any prevailing wage requirement that applies to [the Marina Heights] project.” (*Marina Heights* at pg. 1512).

Why FORA should care about the distinction

The reason FORA Board members should care about this is because unnecessarily forcing non-public works contracts to be treated like actual public works contracts significantly increases construction costs, thereby driving up home prices. Ethically, FORA should definitely insist that construction workers be paid living wages, but living wages are only about half of prevailing wages. For example, DIR webpage 34 at <https://www.dir.ca.gov/OPRL/PWD/Determinations/Northern/Northern.pdf> shows that in Monterey County, the prevailing wages for carpenters are \$63-\$70 per hour, whereas the Living Wage webpage at <http://livingwage.mit.edu/counties/06053> shows that in Monterey County, the living wage for a worker supporting two adults and three children is half that — \$30.10 per hour.

Too-high-construction-wages result in too-high-home-prices. The 2012 Market Study says too-high-home-prices dissuade employers from opening businesses at Fort Ord because their employees can’t afford to live here. It recommends lower home prices and states that “more than 60 percent of future Peninsula area households will have incomes less than \$75,000 annually.” (2012 Market Study, pg. 3-5 at http://www.fora.org/Reports/FinalScoping/FINAL_SCOPING_REPORT3.pdf)

Separate issues

Separate issues not before you today are whether the Master Resolution should require payment of prevailing wages for non-public works projects, and if not how to prevent developers from pocketing the difference in labor costs. Currently the Master Resolution requires prevailing wages for both non-public and public, which your Board should examine later, but not today.

The issue addressed in this letter is that “First Generation Contracts” should not be treated as interchangeable with “public works contracts.” They’re not. Thus, the following amendment should be made:

- (a) All contractors performing ~~“First Generation Construction”~~ public work contracts must be registered and in good standing with the California Department of Industrial Relations (DIR) as defined in California Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771(a).]

Sincerely,

Jane Haines



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WWW.AMCALHOUSING.COM

Dated: October 23, 2015

Mayor Bruce Delgado
City of Marina
3037 Vaughn Ave.
Marina, CA 93933
Via Email

Dear Mayor Delgado,

AMCAL is aware of several emails that have been circulated in the last few days and also throughout the course of the Promontory Project, indicating that AMCAL and its subcontractors have violated prevailing wage laws. AMCAL takes these accusations very seriously and has done its best to uphold all requirements set forth in the FORA Master Resolution and the Disposition and Development Agreement. From the beginning of the project, AMCAL hired a third party consultant, TPM Labor Compliance Services, to oversee the process and to collect and review all paperwork related to prevailing wage to ensure that our subcontractors were in compliance with all applicable laws. If an issue surfaced during construction where a subcontractor was found in violation of any prevailing wage requirement, we held our subcontractor accountable and had the violation immediately rectified.

Though the project is not a public works project, as recently reaffirmed by the Department of Industrial Relations ("DIR") when they closed several complaints filed by Mr. Narducci, we still required our subcontractors to comply with all prevailing wage related requirements in accordance with state law. In a recent call between AMCAL and the DIR Representative, we were told that the DIR had begun investigating these cases and found that prevailing wages were properly paid. Throughout the project, AMCAL has been transparent, providing certified payrolls and requested documents consistent with the law to those that inquired. We have been tough on our subcontractors and required all certified payrolls, proof of benefits paid, and asked for random samplings of cancelled checks, etc. If any documentation was amiss, TPM took the hard stance of withholding the subcontractor's payments until they could show proof that all prevailing wage requirements were met. This is above and beyond what most agencies that we have worked with have required and we feel proud of our commitment to meet the requirements set forth by FORA. We feel that there has been an enormous amount of misrepresentation by Mr. Narducci and Mr. Chesshire. We would be happy to sit down with you and these gentlemen if further explanation is required, but hope that it is clear that AMCAL would never intentionally jeopardize its relationship with the City, FORA, or the University, nor our own reputation as a builder who has done a vast number of prevailing wage projects in the state of CA. We remain fully

Rosalyn Charles

From: Ron Chesshire <ron@mscbctc.com>
Sent: Friday, December 11, 2015 1:00 PM
To: Michael Houlemard; Robert Norris; FORA Board
Cc: Sharon Seidenstein; Jolene E. Kramer; Andy Hartmann; John Papa; Manuel Pinheiro; Steve MacArthur; Sean Hebard
Subject: Item 8d on Dec. 11th 2015 agenda.
Attachments: Dec 11th letter to FORA.docx

Please see attached letter from the Monterey/Santa Cruz Counties Building and Construction Trades Council to be included in today's meeting. Ron C.

To – Michael Houlemard – FORA
FORA Bd. Members

Re: Agenda Dec. 11th , 2015 Item 8d

We believe this item has taken more time than necessary. We are in support of the staff recommendation because this is movement forward on this issue. We continue to have some concerns.

If approved, today's action would provide for FORA to require registration of contractors with the State DIR as per SB 854 doing work within FORA's jurisdiction. As per SB 854 Public Work is covered and contractors doing Public Work must register with the DIR. Therefore if you take action to approve the staff recommendation registration will be required of private work also. This is within FORA's ability as per the statement by Eric Rood in his letter to FORA.

“Please note FORA can provide stricter contractual obligations for private work where there are no public funds. This may include requiring contractor registration, filing CPRs, and paying prevailing wages; however, any enforcement would have to go through the courts as a breach of contract”.

Also being proposed is for FORA to assume the enforcement role regarding the payment of prevailing wages as outlined in 3.03.090 of the MR. In 2006 FORA established a policy which provided that a third party monitor be hired by the developers of projects to monitor the payment of prevailing wages. As we have seen this has not worked in most cases and there is great confusion as to what is required and how it is to be implemented.

Lastly, staff is proposing that Option A be selected as to how enforcement would be handled by FORA. This option provides for a FORA staffer to oversee the process and work with a compliance monitor to be chosen for an amount not to exceed \$250,000 per year. We believe Option A is the best option and again we are in support of staff's recommendation.

Concerns – we have asked some questions prior as to some issues we wanted clarified and are satisfied with some of the answers. We are still concerned about;

- 1) If approved we wish to work with FORA in establishing procedures which will provide for true and fair monitoring and compliance.
- 2) Will projects that are ongoing or approved be subject to the new rules if passed? Will FORA assume the monitoring of the projects at East Garrison., Spring Hill Suites, The Dunes, etc?
- 3) FORA has an enforcement provision in the MR (Sec 1.02) to enforce violations of the MR . The MR has been in place since 1997. Why is this not being adhered to? How can FORA implement its own rules? Why has this not been done to date? Is FORA and the jurisdictions in violation of the MR?

Thank you, Ron Chesshire CEO – M/SC BCTC Dec. 11, 2015

Rosalyn Charles

From: Michael Houlemard
Sent: Monday, December 14, 2015 3:22 PM
To: Michael Houlemard
Cc: Robert Norris; Maria Buell; Marcela Fridrich; Mary Israel; Jonathan Brinkmann; Steve Endsley; Stan Cook; Peter Said; Laura Vidaurri; Ted Lopez; Josh Metz; Jen Simon; Rosalyn Charles
Subject: Announcement - Ivana Bednarik

Fort Ord Reuse Authority Board Members,

After overseeing every budget and audit action by the Board since 1995, FORA Controller Ivana Bednarik has decided to retire effective the end of February 2016. Ivana is one of the very first FORA hires – her diligent professional approach has resulted in 20 years of balanced budgets and to sustaining a solid financial base.

Ivana's many years as a member of our senior leadership - providing valuable guidance, advice, and support to the entire FORA team – has contributed significantly to FORA's regional recovery programs. Her professional work excellence is manifest once again with a "clean" FORA 2014-2015 audit coming to the Board in January.

Personally, I will miss 1) Ivana's style and her steadfast adherence to approved financial policies and protocols and willingness to roll her sleeves up to get any task done. Her discipline has also been reflected in her diet and exercise regimen where she walked nearly every day in different sections of historical Fort Ord. Ivana played a key role in insuring accuracy in the successful transfer of the Preston Park Apartments to the City of Marina, the accuracy of the records for the ESCA Program, and made regular contributions to the successful recruitment and personnel needs of FORA staff.

I know that all of you will join me in wishing Ivana well in her future endeavors.

We will be immediately advertising for a replacement – in the hope that we will be able to bring someone on to the position by February to enable some overlap with Ivana.

Michael Houlemard
Executive Officer

Rosalyn Charles

From: Dr. Charles <drkennymd@yahoo.com>
Sent: Saturday, January 02, 2016 3:04 PM
To: FORA Board
Subject: fort ord area civilian housing units

greetings, driving through former fort ord area today and i see lots and lots of what looks like former military housing. any of these for sale or rent? a few look lived in, many empty.

thanks

Dr. Charles F. Kenny