

## Rosalyn Charles

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**From:** Colin Bockman <cbockman@csumb.edu>  
**Sent:** Sunday, November 08, 2015 11:29 PM  
**To:** Rosalyn Charles; FORA Board; Jen Simon  
**Subject:** Fort Ord Dunes State Beach - trail

Hello,

I'm a student at CSUMB and was hoping I could get some information on the walking/biking path at Fort Ord Dunes State Beach. From what I've read on the sign at the beach, there are plans to extend the path into Santa Cruz county.

I look forward to hearing back from you!

Thanks,  
Colin Bockman  
831/254-6130

## Rosalyn Charles

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**From:** Todd Muck <todd@tamcmonterey.org>  
**Sent:** Monday, November 09, 2015 8:45 AM  
**To:** Colin Bockman  
**Cc:** Rosalyn Charles  
**Subject:** RE: Fort Ord Dunes State Beach - trail

Hi Colin,

The Transportation Agency for Monterey County has a master plan to develop bicycle and pedestrian projects that are components of the Monterey Bay Sanctuary Scenic Trail between Monterey and the Santa Cruz county line. Our plan is available at: [http://www.tamcmonterey.org/programs/bikeped/pdf/TAMC\\_MBSSTMP\\_FinalReport.pdf](http://www.tamcmonterey.org/programs/bikeped/pdf/TAMC_MBSSTMP_FinalReport.pdf). Santa Cruz County Regional Transportation Commission has a comparable master plan that continues the Monterey Bay Sanctuary Scenic Trail through Santa Cruz County.

Regards,

Todd Muck, AICP  
Deputy Executive Director

Transportation Agency for Monterey County  
Office: (831) 775-4407  
55b Plaza Circle  
Salinas, CA 93901

**From:** Colin Bockman [mailto:cbockman@csumb.edu]  
**Sent:** Sunday, November 08, 2015 11:29 PM  
**To:** info@fora.org; board@fora.org; webmaster@fora.org  
**Subject:** Fort Ord Dunes State Beach - trail

Hello,

I'm a student at CSUMB and was hoping I could get some information on the walking/biking path at Fort Ord Dunes State Beach. From what I've read on the sign at the beach, there are plans to extend the path into Santa Cruz county.

I look forward to hearing back from you!

Thanks,  
Colin Bockman  
831/254-6130

## Rosalyn Charles

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**From:** Flores, Bryan x7755 <FloresB1@co.monterey.ca.us>  
**Sent:** Monday, November 09, 2015 10:47 AM  
**To:** 'Colin Bockman'; Rosalyn Charles; FORA Board; Jen Simon  
**Cc:** Kathleen Lee; Mohammadi, Jayne F. x7708  
**Subject:** RE: Fort Ord Dunes State Beach - trail

Hello Colin,

Yes, there are plans for the Monterey Bay Sanctuary Scenic Trail to connect Santa Cruz with the Monterey Peninsula. The final master plan was released in 2008 and can be found on both the Transportation Agency for Monterey County (TAMC) and the Santa Cruz County Regional Transportation Commission's (SCCRTC) websites.

<http://www.tamcmonterey.org/programs/bikeped/index.html>

[http://www.tamcmonterey.org/programs/bikeped/pdf/Bike Ped 01 Bike and Ped with MBSST.pdf](http://www.tamcmonterey.org/programs/bikeped/pdf/Bike_Ped_01_Bike_and_Ped_with_MBSST.pdf)

[http://www.tamcmonterey.org/programs/bikeped/pdf/TAMC MBSSTMP FinalReport.pdf](http://www.tamcmonterey.org/programs/bikeped/pdf/TAMC_MBSSTMP_FinalReport.pdf)

<http://sccrtc.org/projects/multi-modal/monterey-bay-sanctuary-scenic-trail/mbsst-master-plan/>

For information regarding the Monterey County section please contact Ariana Green at 775-4403 or email at [ariana@tamcmonterey.org](mailto:ariana@tamcmonterey.org), and for information regarding the Santa Cruz County portion contact Cory Caletti at 460-3200 or email at [info@sccrtc.org](mailto:info@sccrtc.org).

If I can be of any other assistance, please do not hesitate to contact our office. Thank you and have a great day.

Bryan Flores  
Assistant to Supervisor Dave Potter  
Fifth District, County of Monterey  
831.647.7755  
**From:** Colin Bockman [mailto:[cbockman@csumb.edu](mailto:cbockman@csumb.edu)]  
**Sent:** Sunday, November 08, 2015 11:29 PM  
**To:** [info@fora.org](mailto:info@fora.org); [board@fora.org](mailto:board@fora.org); [webmaster@fora.org](mailto:webmaster@fora.org)  
**Subject:** Fort Ord Dunes State Beach - trail

Hello,

I'm a student at CSUMB and was hoping I could get some information on the walking/biking path at Fort Ord Dunes State Beach. From what I've read on the sign at the beach, there are plans to extend the path into Santa Cruz county.

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Thanks,  
Colin Bockman  
831/254-6130

## Rosalyn Charles

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**From:** Ron Chesshire <ron@mscbctc.com>  
**Sent:** Thursday, November 12, 2015 9:10 AM  
**To:** Michael Houlemard; FORA Board  
**Cc:** Jolene E. Kramer; Sharon Seidenstein  
**Subject:** Agenda Item 8c Nov. 13th meeting  
**Attachments:** Letter to FORA Board for 11-13-15 Meeting.pdf

Attached is a letter expressing our position as to Item 8c on the agenda for Friday's (Nov. 13th 2015) meeting. Thank you, Ron Chesshire M/SC BCTC

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SOKOL  
BLYTHE MICKELSON  
BARRY E. HINKLE  
JAMES J. WESSER  
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EZEKIEL D. CORDER \*\*\*\*\*  
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ALEJANDRO F. DELGADO  
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CAROLINE N. COHEN  
KOGHITL A. LOPEZ

VINCENT A. HARRINGTON, Of Counsel  
PATRICIA M. GATES, Of Counsel  
ROBERTA D. PERKINS, Of Counsel  
NINA FENDEL, Of Counsel  
TRACY L. MAINGUY, Of Counsel  
ANA GALLEGOS, Of Counsel  
CHRISTIAN L. RAISNER, Of Counsel  
SANDRA RAE BENSON, Of Counsel  
THEODORE FRANKLIN, Of Counsel

• Admitted in Hawaii  
\*\* Also admitted in Nevada  
\*\*\* Also admitted in Illinois  
\*\*\*\* Also admitted in New York and Alaska  
\*\*\*\*\* Also admitted in New York and Michigan

November 11, 2015

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

**Re: Prevailing Wage Compliance Monitoring and Enforcement**

Distinguished Members of the Fort Ord Reuse Authority Board:

This office represents the Monterey and Santa Cruz Counties Building and Construction Trades Council (“Council”). The Council writes to request that the Board exercise its authority to correct and prevent prevailing wage violations on construction projects at former Fort Ord by creating stronger monitoring and enforcement procedures.

As this Board is aware, the Monterey County Superior Court and the Sixth Appellate District of California held that prevailing wages must be paid on all first generation construction at FORA and that work must be done in compliance with Labor Code Sections 1720 *et seq.* and 1776, which establish prevailing wages and require certified payroll records (“CPRs”) to be kept and provided upon request.

Per Section 3.03.090(a) of the Master Resolution, “Not less than the general prevailing rate of wages for work of a similar character in Monterey County... will be paid to all workers employed on the First Generation Construction performed on parcels subject to the Fort Ord Base Reuse Plan. This subsection applies to work performed under Development Entitlements as defined in § 1.01.050 of this Master Resolution and by contract with a FORA member or a FORA member agency including their transferees, agents, successors-in-interest, developers or building contractors.”

Per Section 3.03.090(b) of the Master Resolution, “Member agencies shall include language in all of their contracts and deeds for the conveyance, disposition and/or development of former Fort Ord property to give notice of *and assure compliance with* the policy set forth above in subsection 3.03.090(a).” (Emphasis added.)

Resolution 07-4, which amended the prevailing wage section of the Master Agreement, states that “Consistency Determination submittals must provide evidence of contractual agreements that comply with the FORA Prevailing Wage Policy and *how it will be enforced by the submitting local jurisdiction.*” (Emphasis added.)

November 11, 2015

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The Implementation Agreements between FORA and the member jurisdictions require the jurisdictions to transfer all property in compliance with the Master Resolution and the deed and conveyance restrictions attached to the Implementation Agreements, which also require compliance with the Master Resolution.

Section 321 of the Disposition and Development Agreement between the County of Monterey and East Garrison Partners I LLC, and Section 7.6 of the Disposition and Development Agreement between the City of Marina and AMCAL Monterey Bay LLC, state that the developers shall cause the contractors on the project to pay prevailing wages and comply with Labor Code Sections 1720 *et seq.* and 1776, including the retention of records as necessary to determine whether prevailing wages have been paid. However, the DDAs do not absolve the County and City of their own obligations to the FORA Board, including their contractual obligation to assure compliance with the prevailing wage policy in the Master Agreement.

Per Section 1.02.010 of the Master Resolution, in the absence of delegation otherwise, FORA's Executive Officer is primarily responsible for enforcing the provisions of the Master Resolution. The Monterey County Sheriff and local police departments, and "all peace officers" employed thereby, are empowered to enforce the Master Resolution or any other ordinance of FORA and to arrest for violations within their jurisdictions. If a violation of the Master Resolution is brought to the attention of the Executive Officer, the Executive Officer must commence penal and/or disciplinary action as appropriate. Per Section 1.02.030(d), "The Executive Officer has the authority to cite violations for infractions or civil violations in the enforcement of the provisions of this Master Resolution within the Executive Officer's regulatory responsibilities."

These provisions require FORA's Executive Officer to notify law enforcement of violations of the Master Resolution, including the prevailing wage requirement, when the member jurisdictions and developers have not satisfied their obligations (or take other appropriate action as allowed). The Executive Officer must also penalize jurisdictions that fail to enforce the Master Resolution, up to and including criminal misdemeanor charges for perpetuating wage theft, if warranted.

Unfortunately, since the outset of construction at FORA, prevailing wage problems have gone unchecked. The Council's affiliates are investigating at least six different contractors for violations of bricklayer, tile installer, soft floor layer, cement mason and carpenter rates on the Promontory and East Garrison projects. Complaints have been filed with the State and the assigned labor compliance managers. The Council and its affiliates have also struggled to obtain CPRs on FORA projects. They have been advised to request CPRs from many different sources, including the Marina City Manager, the Marina Community Development Department, the Marina City Attorney, the project Developer, the assigned third party labor compliance monitor, and the FORA Board itself. It took one affiliate more than eight (8) months to obtain CPRs at the Promontory, and it has taken months for others to obtain CPRs as well.

**For these reasons, the Council asks the Board to adopt clear and uniform procedures for compliance monitoring and enforcement.** The Council has reviewed the Business Item distributed on November 10, 2015, and supports Staff's recommendation that FORA monitor and enforce the prevailing wage policy itself and require contractors to register with the Department of Industrial Relations. The Council is heartened by this development, and urges the Board to adopt additional

procedures that will ensure fair and accurate compliance monitoring. For example, FORA's compliance monitor or consultant should make regular jobsite visits, make contact with workers, conduct on-site checking of worker pay stubs and other documentation, record worker classifications, require contractors to provide documentation on a regular basis, require sign-in and sign-out sheets, and review all certified payroll records for the correct rate of pay, correct classification and correct payment of overtime, travel time, subsistence, meal breaks, rest breaks and other components of the prevailing wage.

Although the Council is supportive of Staff's recommendation, it is concerned that the proposed language of the amendment does not specify or implement monitoring procedures or enforcement mechanisms. Although the "whereas" clauses state that the Board will be taking responsibility for monitoring and enforcement, that is not actually stated in the amendment language. Indeed, with the exception of the contractor registration requirement, the amendment language is substantially similar to the current language, in that it only addresses the obligations of FORA and the member jurisdictions at the time of consistency determinations and disposition and development agreements. This is the same language that has fostered confusion and ambiguity until now.

Finally, in the event the Board will be considering Contractor Compliance and Monitoring, Inc. ("CCMI") for any list of preferred compliance monitors, the Council has additional concerns. CCMI is the assigned compliance monitor on the East Garrison project, which, since the outset, has been subject to a binding court order to pay prevailing wages and is a public work. However, the Council has been advised repeatedly of prevailing wage issues at East Garrison, and its affiliates have struggled to obtain CPRs and other information from CCMI. The current meeting packet states that CCMI is a State-approved Labor Compliance program and is working with a mix of eighty (80) public and private projects in the State "with positive reviews by their clients." It does not appear that FORA Staff investigated what actually transpired at East Garrison. Respectfully, the Council asks the Board to conduct this investigation, to determine whether CCMI's performance at FORA has been satisfactory.

The Council urges the Board to accept Staff's recommendation, but take additional action to clarify its expectations for prevailing wage compliance, monitoring and enforcement. Currently, the FORA website identifies twenty-three (23) ongoing or planned construction projects. The Board should take meaningful steps to hold its member jurisdictions, developers and contractors accountable for payment of the prevailing wage, and partner with labor compliance professionals who are committed to that same goal.

Sincerely,



Jolene Kramer

## Rosalyn Charles

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**From:** Tony Lombardo <tony@alombardolaw.com>  
**Sent:** Thursday, November 12, 2015 5:25 PM  
**To:** FORA Board  
**Subject:** FORA - Marina Coast Water District Dispute Resolution (agenda item 8b)

Dear Chair O'Connell and Members of the Board:

I am writing you regarding item 8b on the agenda for Friday, November 13<sup>th</sup>.

The staff report recommends that the FORA Board vote to approve the resolution which has been the subject of correspondence between the FORA Executive Officer and the General Manager for the Marina Coast Water District.

At your last public hearing at which this was discussed, your counsel stated that this matter had to go to closed session for direction to staff because there had actually not been an agreement reached. It is puzzling to me why the staff report seems to indicate something different.

In any event, California American Water Company hopes that you will be able to provide staff direction to proceed in a manner consistent with our prior correspondence and your prior direction to the staff that:

1. Any monies expended by FORA towards a water augmentation project would be spent on reclamation and conservation projects, not a desal project, unless there is a specific authorization at some future date by the FORA Board to do so. This authority does not rest with Marina Coast or the staff of FORA.
2. FORA will not, in any way, participate in, support or initiate any activity related to the dispute between the Marina Coast Water District, the County of Monterey and California American Water Company.
3. If the FORA Board is going to allow Marina Coast to raise the rates of the customers within the FORA boundaries by 9%, those monies, which according to the prior staff report are to be earmarked for capital projects, should be segregated into a capital account which can only be expended if and when the FORA Board approves the expenditure for a capital project. For the benefit of the ratepayers within the former Fort Ord, this money should not be available to the Marina Coat Water District for expenditure on unrelated or unproductive uses which is not directly related to the construction of capital improvements in the former Fort Ord.

This item is also agendized for your closed session tomorrow.

Since the item that has been agendized is to approve the prior action of the Executive Officer, I believe that the FORA Board cannot take any action tomorrow and will have to continue item 8b to a date certain once Marina Coast Water District has either accepted or rejected whatever direction you provide to the Executive Officer in closed session tomorrow.

Respectfully submitted,

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
144 W. Gabilan St.  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331



Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

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**Rosalyn Charles**

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**From:** Jane Haines <janehaines80@gmail.com>  
**Sent:** Friday, November 13, 2015 7:59 AM  
**To:** FORA Board  
**Cc:** Michael Houlemard; Robert Norris  
**Subject:** FORA agenda item 8c (revised)  
**Attachments:** FORANov12\_2.pdf; ATT00001.txt

Dear FORA Board,

I hope you will read and consider the attached letter prior to this afternoon's Board meeting.

Sincerely,  
Jane Haines

# Jane Haines

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

[janchaines30@gmail.com](mailto:janchaines30@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](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