

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Prevailing Wage Status Report	
Meeting Date:	November 17, 2017	INFORMATION/ACTION
Agenda Number:	7g	

RECOMMENDATION(S):

Receive Prevailing Wage Status Report

DISCUSSION:

From July 1, 2017 – September 30, 2017, multiple construction workers were employed on Fort Ord projects. From reported information (California State University (CSU)/County of Monterey (County)/Seahaven-Layia/Villosa/Shops at Dunes), approximately 154,261 worker hours were utilized and approximately 2,278 workers employed. An average of 61% of those workers were from the tri-County area. (Santa Cruz, Monterey and San Benito Counties). In addition, the County and Marina Coast Water District (MCWD) had two public projects on Fort Ord lands. The County has not yet begun work on its upgrade project to its new health services building, but is expected to begin during the next reporting period. MCWD also began work on its pipeline project and approximately 1,700-1,800 worker hours were expended. The work was performed by Monterey Peninsula Engineering (MPE) and MCWD estimates that 85-95% of MPE's workforce is located within the tri-County area. These numbers do not include Dunes on Monterey Bay (Dunes) housing project worker hours nor do they include the Seahaven project worker hours.

On or about August 25, 2017, the Department of Industrial Relations (DIR) issued a Civil Wage and Penalty Assessment against prime contractor Covenant Construction, Inc. on the Springhill Suites – Dunes in the amount of \$769,590 (penalties and wages). The current status of this assessment is unknown. The date for a formal hearing was October 24, 2017. In addition, tile mechanic workers have filed separate wage claims for unpaid wages and waiting time penalties in a cumulative amount of approximately \$175,000. The Fort Ord Reuse Authority (FORA) was also copied on correspondence from attorneys Weinberg, Roger and Rosenfeld on behalf of the Monterey/Santa Cruz Building and Construction Trades Council (BTC) to Scott Negri, SKN Properties, asserting that SKN Properties is out of compliance and requesting documents showing compliance with the terms of the Settlement Agreement between the BTC and Marina Community Partners, LLC, et al. in Case M81343, Monterey Superior Court.

At the July 2017 Board meeting, a FORA Prevailing Wage Legislative Update was provided to the Board outlining the new changes in state law related to public works laws. In September, the Department of Industrial Relations provided a workshop which addressed some Fort Ord specific issues. Approximately 20-30 contractors, City/County staff and others attended the workshop. While there was some very good information provided, handouts have not been provided by DIR as promised. The presenters were unable or unauthorized to provide specific information relative to Fort Ord military base reuse, even though such information was requested in advance. The City attorneys have requested that additional

information was requested in advance. The City attorneys have requested that additional meetings be set up with DIR to further explore interpretations of the new rules and how they apply on Fort Ord projects. It was relayed that DIR is still working on how it will implement the new laws which took effect in June, 2017. DIR presenters did indicate that the PWC-100 forms which are used to report new public works projects now require the identification of underlying land use jurisdictions.

At the October 2017 FORA Board meeting in the Legislative Agenda Board report, it was reported that AB1701 was sent to the Governor's office for signature. AB1701 would, for all contracts entered into on or after January 1, 2018, require a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. Additionally, the bill would provide additional enforcement authority to DIR to enforce **private contractual arrangements** and provide for third party enforcement directly against the contractor. This could have far reaching impacts in private construction contracts and make a property owner who acts as a "general" to become responsible for wage claims by a "sub-contractor's" employees. Additionally, this may have some impact on Fort Ord projects for those developers/contractors who have "private contractual" agreements (settlement agreements or otherwise) regarding payment of prevailing wages or otherwise for contracts entered into after January 1, 2018. **The Governor signed this bill into law October 14, 2017.**

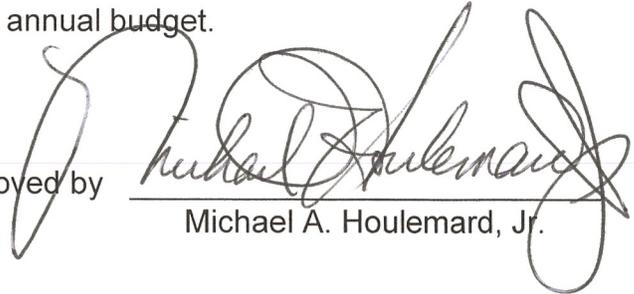
Finally, at the last prevailing wage quarterly report, it was requested that FORA staff put together some best practices to address the new prevailing wage laws. As a first step, **Attachment A** provides some suggested best practices to utilize when not only new prevailing laws come into effect but also on an ongoing basis to assure a City's or County's compliance with the ever changing public works laws. Consultation with a jurisdiction's legal counsel on technical contract language amendments and these practices is encouraged.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved annual budget.

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Approved by 
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BEST PRACTICES FOR 2017

CALIFORNIA PREVAILING WAGE LAW

California Prevailing Wage Law requires workers on publicly-funded construction projects—called "public works"—to be paid prevailing wages, as determined by the State. However, in recent years, the definition of public works has greatly expanded. Many projects that were previously considered private are now "public works" subject to prevailing wage requirements. The rules governing which projects are covered are complex, rapidly changing, and largely unwritten.

PROACTIVE PLANNING

The best way to resolve prevailing wage disputes is to prevent them from occurring. Identifying prevailing wage issues at an early stage and structuring projects to minimize prevailing wage liability at the outset is an integral part of proactive planning.

In 2013 the California Labor Commissioner brought more than 400 enforcement actions against developers and contractors, and collected a record-breaking \$17.7 million in retroactive prevailing wage payments. Even on Fort Ord alone, enforcement actions to date have been in the millions.

Even when the State determines that a project is not subject to prevailing wage, individual workers and labor groups can bring prevailing wage lawsuits up to four years after work on the project is complete. The State has been known to change its opinion if different or additional information is later presented. Sometimes the best way to avoid a prevailing wage dispute is to negotiate an agreement in advance with the unions, known as a Project Labor Agreement. Other times, close contact and discussion with the Departments' staff can minimize the nature and extent of non-compliance issues. One factor that is considered by the Department when addressing compliance is whether or not a Contractor or Awarding Body is following the advice of their Labor Compliance professionals.

1. CHECK YOUR FUNDING SOURCE
 - Prop 84 and Federal funding trigger additional PW/LCP requirements

2. REVIEW SPECIFICATIONS AND CONTRACTS TO ENSURE NEW AND UPDATED PREVAILING WAGE LANGUAGE IS INCLUDED (THIS INCLUDES **PURCHASE ORDERS**)
 - Annual review of PW contract language
 - Must include registration requirements Labor Code 1725.5, unless exempted from this requirement (LC 1771.1(a));
 - This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations;

- Worker's Compensation requirement (LC 1860)
 - The contractor shall post applicable prevailing wage rate on the project site. (LC 1771.4)
 - Service, Maintenance as well as capital improvement construction work are now included
 - **Covered work:** Landscape maintenance, servicing of fire alarm, exit lights, and fire suppression systems; cleaning HVAC units/vents; servicing a generator; warranty work; emergency work; modular furniture systems; installing or removing any furniture attached to the wall, ceiling, or floor; lighting replacement; surveying work; onsite testing
 - **Non-Covered work:** Security guards; routine janitorial services; moving services (no affixed furniture); pest control spraying; sewer camera placemen and viewing; and supervisorial/clerical work where no "covered work" is performed
3. REVIEW PROTOCOLS FOR FILING PWC-100 FORMS WITHIN **30 DAYS** OF AWARD BUT NOT LATER THAN FIRST DAY WORK IS PERFORMED
- Who will file.
 - Cross Check and verification
 - Only on-line
4. IS THE AGENCY REQUIRING PREVAILING WAGE ON ALL MAINTENANCE WORK WHICH CONSTITUTES A "PUBLIC WORK"?
5. IS THE AGENCY CHECKING THE CONTRACTOR'S PUBLIC WORKS REGISTRATION PRIOR TO AWARD CONFIRMATION?
- If no registration, then may declare a bidder unresponsive; or give the bidder 24 hours to "cure" (register) the unregistered contractors (Cost is \$2400 - \$400 registration + \$2,000 penalty)
 - Is subcontractor registration being confirmed when they are added to the project?
6. REVIEW AGENCY'S PROTOCOL FOR PREVAILING WAGE ENFORCEMENT.
- Are certified payrolls collected?
 - What level of review and/or auditing occurs?
 - How are complaints or investigations handled (internally or handed over to the DIR)?
 - Are funds withheld pending conclusion of investigation?
 - Third party Labor Compliance Professional and Software roles
 - Develop, maintain and review contact lists with the Department of Industrial Relations
7. ARE NOTICES OF COMPLETION FILED?