

**ACTION MINUTES
OF THE
FORT ORD REUSE AUTHORITY
SPECIAL BOARD OF DIRECTORS' MEETING
February 23, 2007**

1. CALL TO ORDER AND ROLL CALL FOR VOTING MEMBERS

Chair Joe Russell called the meeting to order at 3:05 pm. The following voting members were present:

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| Chair/Mayor Russell (City of Del Rey Oaks) | 1 st Vice Chair/Mayor Rubio (City of Seaside) |
| Mayor McCloud (City of Carmel-by-the-Sea) | Councilmember Morrison (City of Marina) |
| Mayor Della Sala (City of Monterey) | Councilmember Barnes (City of Salinas) |
| Mayor Mettee-McCutchon (City of Marina) | Mayor Pendergrass (City of Sand City) |
| Councilmember Mancini (City of Seaside) | |

Absent were Supervisors Calcagno, Potter, and Smith (County of Monterey) and Councilmember Davis (City of Pacific Grove).

Chair Russell immediately adjourned the meeting to Closed Session.

2. CLOSED SESSION

There was one item under "Conference with Legal Counsel – Existing Litigation": (1) Name of Case: Monterey/Santa Cruz Building and Trades Council v. Marina Community Partners, et al (Fort Ord Reuse Authority).

**3. CALL TO ORDER AND ROLL CALL OF ALL MEMBERS
(REPORT OUT OF CLOSED SESSION)**

Chair Russell reconvened the meeting at 3:25 pm and asked Authority Counsel to report out of Closed Session. Mr. Bowden said that he had explained the nature of the litigation and answered questions from the Board.

Chair Russell requested a full roll call. All the voting members present at the first roll call were still present. The following ex-officio members were also present:

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| Niraj Dangoria (CSUMB) | Vicki Nakamura (Monterey Peninsula College) |
| Graham Bice (UC Santa Cruz) | Kenneth K. Nishi (Marina Coast Water District) |
| Karen Fisbeck (BRAC) | |

There were no representatives from the 17th Congressional District, the 15th State Senate District, the 27th State Assembly District, Monterey Peninsula Unified School District, Monterey-Salinas Transit, Transportation Agency for Monterey County, or the U.S. Army.

4. PLEDGE OF ALLEGIANCE

Chair Russell asked all to join him in reciting the Pledge of Allegiance.

5. ACKNOWLEDGEMENTS - None

6. **PUBLIC COMMENT PERIOD:** Ron Chesshire, a citizen of Monterey County, thanked staff for fixing the Imjin Parkway/Reservation Road intersection, which had been a problem.

7. **PREVAILING WAGE POLICY**

Item 7a – Review FORA Engagement of Prevailing Wage Issues

Item 7b – State Law Implications for Prevailing Wage: (1) California Labor Code Sections and (2) Health and Safety Code (Redevelopment Law)

Item 7c – Amendment to FORA Master Resolution (as considered by the FORA Executive Committee)

Executive Officer Houlemard provided an overview, which included the background and recent developments related to the prevailing wage policy, before discussing recent specific changes made by staff in the new draft of the amendment addressing this policy in FORA’s Master Resolution. He noted that Authority Counsel Bowden is firm that taking any action that is prospective in the form of a resolution doesn’t have an impact to FORA with respect to the litigation and said that members of that litigation have specifically stated that they will not hold FORA responsible for taking prospective action. Mr. Houlemard emphasized that today’s discussion relates only to properties on the former Fort Ord. He said that §33492.70 of the Health & Safety Code is a part of the Authority Act and contains no specific reference to prevailing wages. Authority Counsel Bowden made general comments about the prevailing wage provisions in the Labor Code.

Chair Russell opened the discussion to the board members. A number of clarifying questions were asked, including how the additions of (iv)–(vi) in Marina Counsel’s “Suggested Further Revisions” handout would affect the resolution brought to the Board; clarification of the term “first generation construction”; the affect of additional improvements after the original certificate of occupancy is granted; whether (v) regarding an exemption of “affordable housing” is superfluous, since it is covered in state law and whether that would imply retrospective applicability in a legal situation; and how projects already in the pipeline would be impacted by the amendment. Mayor McCloud requested further clarification of the categories in (vi) and also more specific language in the last “WHEREAS” regarding the effective date of the resolution.

Chair Russell opened the discussion to the public. John Fischer from Pacific Grove expressed several concerns about non-profits: (1) whether non-profits that receive state and/or federal funds would still be able to develop on former Fort Ord if prevailing wages are required; and (2) his remark that “history has shown that big companies often create non-profits” to do things. Ron Chesshire from the Monterey/Santa Cruz Counties Building and Construction Trades Council stated that the original intent in FORA’s seminal documents to include a prevailing wage policy was to give the local workers an opportunity to participate in and purchase homes in the redevelopment projects on the closed military base and to protect the best interests of the local business community. Rocky Miller, attorney representing Marina Community Partners, thanked the staff for considering their firm’s work and recommended that #1 under “Now, Therefore, . . .” section be deleted, because it could be construed as having a retroactive effect. He also expressed concern that Marina counsel’s six “nonapplicable” items on page two might be requiring more than state law requires. Paul More, attorney representing the Building and Trades Council, remarked that the pending litigation is a non-issue in that the proposed language is prospective not retrospective. He noted a difference in amending the policy versus amending the language and commented that the source of funding for affordable housing is a key factor in the Labor Code in determining whether this kind of housing is exempt from prevailing wages. He noted that the only non-profit projects exempted in the Labor Code were construction of homeless shelters. Rudy Rosales, ex-MLD chair of the Ohlone, Costanoan and Esselen Indian Nation, asked that the Board help protect and preserve native Indian cultural resources, which exist on former Fort Ord. Don Jordan made a number of comments concerning jobs, housing, the impact of any legal decision at this point, and about which list of the projects that would be affected by amending the prevailing wage policy. Rob Wellington, Marina city

attorney, stated that the certificate of occupancy should be clarified as the “first” certificate of occupancy. He said it is important that local skilled workers, as well as small businesses, benefit from the redevelopment projects [referenced in (iv)]. He encouraged keeping the provision regarding affordable housing [(v)] “to the extent provided in the Labor Code.” Gary Wilmot remarked that the draft resolution puts FORA in the middle of the labor market and will be detrimental to unions. He stated that the fiscal impact of the prevailing wage policy is unknown at this time and not knowing could hurt redevelopment and added that existing regulations do what is necessary.

Chair Russell brought the discussion back to the Board. Executive Officer Houlemard clarified that there would be no impact on projects already found consistent, as long as they move along as originally planned. He said that the first item following the “Now, Therefore, . . .” section could be eliminated, and he recommended reordering items 2, 3, and 4. Responding to the concerns about Marina’s churches [Section (vi)] having to be built under the prevailing wage policy, he offered the following language: “construction of facilities to be used for eleemosynary purposes, when owned in fee simple by a non-profit organization operating under Section 501(c)(3) of the Internal Revenue Code”. Under Section (iv), he suggested the following language: “tenant improvements, excluding internal improvements on owner-built or occupied commercial structures.” Under Section (v) he offered the following language: “affordable housing when permitted under California Labor Code Section 1720.” Authority Counsel Bowden clarified that when a project is built under current rules but is then abandoned, the new rules will apply when it returns to FORA for a consistency determination.

Councilmember Morrison remarked on the importance of receiving an economic impact report and also other “missing” information before approval of the amendment. He recommended sending the resolution back to staff, so that the numerous questions could be properly answered. Mayor McCloud and Councilmember Barnes agreed with his position. **Councilmember Morrison moved that the resolution be returned to staff and brought back to the Board in one month. There was no second to this motion. Mayor McCloud moved and Mayor Rubio seconded a motion to return the draft resolution to staff to prepare a clean draft of Resolution #07-4. The following additions were made to the motion without objection from the maker and seconder of this motion: (1) Councilmember Mancini suggested that all changes discussed be clarified showing the revised text and the resolution be returned at the March 9th meeting; (2) Mayor McCloud stated that Marina’s suggested changes be italicized in the text; (3) Councilmember Morrison requested that any impacts due to this amendment on the projects in the pipeline be determined and submitted to FORA staff and reported back to the board members; Mayor Rubio clarified that it is only the impact of the prevailing wage factor that needs to be determined and cautioned that different providers could have different figures on the same project; and (4) Mayor Mettee-McCutchon stated that the individual jurisdictions’ redevelopment agencies should provide the impact figures, not FORA staff. She asked that only one resolution containing all the suggested changes be brought to the Board.**

There were two public comments: Ron Chesshire cautioned the Board to be cautious about the source of the impact figures, commenting that they would likely differ depending on where they came from. Don Jordan emphasized the need to protect land use authority.

A call for the question was made. **The motion passed unanimously.**

8. ADJOURNMENT: Chair Russell adjourned the meeting at 5:13 pm.

Minutes prepared by Linda Stiehl, Deputy Clerk

Approved by _____
Michael A. Houlemard, Jr., Executive Officer/Clerk
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