
Notice to preserve records and evidence -- Plant Reserve 1 North, CNPS-FORA-Del Rey Oaks contract, South Boundary Road project, North-South Road/Highway 218 project, General Jim Moore/Eucalyptus Road Improvement project

1 message

Molly Erickson <erickson@stamplaw.us>

Thu, May 28, 2020 at 9:34 AM

Reply-To: Molly Erickson <erickson@stamplaw.us>

To: FORA Board <board@fora.org>, Alison Kerr <akerr@delreyoaks.org>

Cc: Kate X5016 McKenna <mckennak@monterey.lafco.ca.gov>, "Leslie J. X5365 Girard" <girardlj@co.monterey.ca.us>,

Dino Pick <dpick@delreyoaks.org>, Josh Metz <josh@fora.org>, Harry Tregenza <harry@fora.org>, Karen Minami

<kminami@delreyoaks.org>

Dear FORA and Del Rey Oaks,

Please see attached.

Molly Erickson
STAMP | ERICKSON
tel: 831-373-1214

 **20.05.28.CNPS.ltr.preserve.records.to.FORA.DRO.pdf**
40K

STAMP | ERICKSON
Attorneys at Law

Monterey, California
T: (831) 373-1214

May 28, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Alison Kerr, Mayor
City Council
Del Rey Oaks, CA

Subject: Notice to preserve records and evidence – Plant Reserve 1 North, the contract between CNPS, FORA and Del Rey Oaks, the South Boundary Road widening and realignment project, and CEQA mitigations for the North-South Road/Highway 218 Improvements Project, and the General Jim Moore/Eucalyptus Road Improvement project

Dear Chair Parker and members of the FORA Board of Directors, Mayor Kerr and members of the Del Rey Oaks city council:

I represent the California Native Plant Society (CNPS) in this matter. This letter requests your immediate action to preserve all records and electronically stored information that may contain evidence important to the 1998 contract between CNPS, FORA and Del Rey Oaks as amended in 1999, Plant Reserve 1 North, the South Boundary Road widening and realignment project, and the mitigations for the North-South Road/Highway 218 Improvements Project, and the General Jim Moore/Eucalyptus Road Improvements Project, including the environmental review and environmental documentation since the respective project approvals by FORA. Your agencies are directly involved in these issues and would be potential respondents, defendants and/or real parties in interest.

It is necessary for you to preserve all potentially relevant evidence in order to assist any mediator or other facilitator in resolution of the disputes, and in the event of further dispute and litigation between the parties. All of the records regarding the FORA-CNPS-DRO contract and the road projects, including the mitigations, mitigation monitoring, mitigation reporting and mitigation compliance, are public records regarding land use and should not be destroyed. The contract requires preservation of the land in perpetuity, and the CEQA mitigations have not yet been implemented. These are active and controversial matters and all records should be preserved.

Failure to take the necessary steps to preserve the information addressed in this letter or other pertinent information in your possession or control may result in serious sanctions or penalties, and include accountability under the California Public record Act and the laws against spoliation. Current law and rules of civil procedure clearly apply to the discovery of electronically stored information just as they apply to other evidence, and confirm the duty to preserve such information for discovery.

Please immediately suspend any automatic or planned document destruction or data deletion practices, and stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the transfer, sale, gift or destruction of hardware.

All records and evidence should be preserved (i.e. paper, electronic data of all types, electronic devices to be maintained, audio, video, photographs). Electronically stored information is easily corrupted, altered, and deleted in normal daily operations. Follow careful procedures to preserve electronic information created after this notice.

Please circulate this notice to all potential evidence custodians, all individuals and affiliated organizations and agencies of the need and duty to take the necessary affirmative steps to comply with the duty to preserve evidence. You and your officials, officers, employees, agents, and affiliated organizations must take all reasonable steps to preserve this information until these legal matters are finally resolved. This includes the County of Monterey which is proposed to take over FORA's records after FORA sunsets, and LAFCO of Monterey County which is required to provide for the orderly dissolution of FORA including ensuring that all contracts and agreements are honored and properly administered and that all assets of FORA are appropriately transferred..

The importance of immediate action cannot be overstated. FORA is taking steps to wind down its operations.

Feel free to contact me with any questions about the request;

Please send me confirmation of receipt and acknowledgment of understanding of this notice. Thank you.

Sincerely,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

cc: Kate McKenna, Executive Officer, LAFCO of Monterey County
Les Girard, County Counsel, County of Monterey

LAFCO letter to FORA transmitting REI's claim and LAFCO's demand for urgent attention

1 message

Brinkmann, Jonathan x5121 <BrinkmannJ@monterey.lafco.ca.gov>

Thu, May 28, 2020 at 9:52 AM

To: FORA Board <board@fora.org>

Cc: Josh Metz <josh@fora.org>, Harry Tregenza <harry@fora.org>

Dear FORA Board members,

On behalf LAFCO Executive Officer Kate McKenna, I request that this letter be immediately transmitted to the FORA Board of Directors. LAFCO also requests that these issues be placed on the FORA Board's June 4 meeting agenda.

Thank you,

Jonathan

Jonathan Brinkmann

Senior Analyst

LAFCO of Monterey County

831-755-5121



LAFCO letter to FORA transmitting REI claim 05-28-20.pdf

263K

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

2020

May 28, 2020

Commissioners

Chair

Ian Oglesby
City Member

Vice Chair

Christopher Lopez
County Member

Luis Alejo
County Member

Joe Gunter
City Member

Mary Ann Leffel
Special District Member

Matt Gourley
Public Member

Warren Poitras
Special District Member

Maria Orozco
City Member, Alternate

Jane Parker
County Member, Alternate

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Counsel

Kelly L. Donlon
General Counsel

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

FORA Chair/Supervisor Jane Parker
FORA Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: Transmittal of Resource Environmental Inc.'s Claim and LAFCO's Demand for Urgent Action

Dear FORA Chair/Supervisor Jane Parker and FORA Board,

On behalf of the Local Agency Formation Commission (LAFCO) of Monterey County, and pursuant to the terms of an indemnification agreement, I am tendering a claim dated May 27, 2020 from FORA's building removal contractor Resource Environmental Inc. (REI) of \$2,287,596.09, plus interest, penalties, and attorney's fees, and misdirected to LAFCO, and request your urgent attention to resolve the claim or assign full liability for it to a successor prior to June 30, 2020.

LAFCO has previously requested that FORA resolve its 2019 contract dispute with REI or to transfer this and all other known legal disputes to successors, to no avail. FORA and REI have scheduled mediation on June 12, but the two parties appear to be far from settlement, leading REI to now misdirect its claim to LAFCO. LAFCO is not a party to FORA's building removal contract with REI, and is not involved in this dispute or in any other legal actions or inactions of FORA.

It is imperative that FORA take all necessary steps to resolve the REI claim, under the terms of a December 18, 2019 LAFCO-FORA indemnification agreement pertaining to legal actions against LAFCO related to effectuating FORA's dissolution. Toward this purpose, FORA should apply all financial resources as necessary, including a portion of its pending tax allocation bond funds for building removal. Also, FORA should direct \$1.5 million to LAFCO, in our dissolution oversight capacity, for any necessary legal actions relating to FORA's unresolved legal issues, as it appears increasingly unlikely that FORA will resolve its known issues prior to its dissolution on June 30. Please reference LAFCO letters to FORA dated May 5, May 6 and May 14, 2020 for details.

Thank you for your expeditious attention to these matters.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachment: Letter from Feldman & Associates, Inc. Attorneys at Law to LAFCO, dated May 27, 2020

FELDMAN & ASSOCIATES, INC.

ATTORNEYS AT LAW

11030 SANTA MONICA BOULEVARD
SUITE 109

LOS ANGELES, CALIFORNIA 90025

(310) 312-5401

FACSIMILE (310) 312-5409

May 27, 2020

VIA E-MAIL AND MAIL

Board Secretary or Clerk
Monterey County Local Agency Formation Commission
132 W. Gabilan Street, Suite 102
Salinas, CA 93901

RE: Resource Environmental, Inc./ Fort Ord Reuse Authority ("FORA")
Our Client: Resource Environmental, Inc.
Project: Hazardous Material and Building Removal at Surplus II
Project No.: S201

Dear Board Secretary or Clerk:

This office represents Resource Environmental, Inc., ("REI") a contractor who performed work on the above referenced project. REI is seeking to collect certain sums of money from the Ford Ord Reuse Authority ("FORA") and the Monterey County Local Agency Formation Commission ("LAFCO") that are owed to REI.

This government code claim is being directed to LAFCO because FORA has an obligation to pay its debts and honor its contracts pursuant to Government Code section 67700. FORA is set to dissolve on June 30, 2020. Pursuant to Government Code §67700(b)(1), it is our understanding that LAFCO is to provide for the orderly dissolution of FORA including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered.

Since LAFCO is charged by law with making sure that FORA pays its debts, it would be best if LAFCO made sure that REI was paid in full prior to June 30, 2020. Otherwise LAFCO could be responsible for paying the debts for failing to follow the law.

The following list represents the reasons why REI is owed money by FORA and LAFCO on the above mentioned project:

A. Unpaid Change Order

REI is owed approximately \$126,477 in unpaid contract funds for Change Order 2.

The brief explanation for Change Order 2 is that FORA initiated Change Order No. 2 since FORA did not provide plans showing the location of certain underground utilities. The purpose of Change Order No. 2 was to locate utilities not shown on the plans, for safety reasons, and to mark the location of the utilities by putting paint marks on the ground. Harris and Associates, the project manager for FORA, reviewed the price quotations for Change Order No. 2, found them acceptable for the scope of work found in the quotations, had the Change Order signed, and then the work was performed. This amount was already billed in payment application 10, but not paid. There is no reason this approved Change Order, which was completed, was not paid.

B. Unpaid Retention

REI is owed approximately \$150,094.96 in unpaid retention.

FORA withheld a five percent (5%) retention from nine approved (9) payment applications. The retention is still being withheld by FORA for no known reason. Therefore, REI demands it be paid the full amount of the retention. This amount was already billed in payment application 11, but not paid.

C. Unpaid RFCs (excluding number 16)

REI is owed approximately \$890,769.68 for Requests for Change (“RFCs”) 5, 6, 7, and 11-14. These RFCs are for extra work performed by REI.

However, as a result of the contractually required meet and confer process the parties were able to reach an agreement to resolve these seven outstanding RFCs. The agreement reached between the parties resolved RFCs 5 through 14 for \$640,000.00. The parties could not reach an agreement as to RFC 16 mentioned below. If FORA wants to deny that the meet and confer process resulted in the resolution of these RFCs then REI is owed \$890,769.68. However if FORA chooses to honor the agreement that was reached as a result of the contractual meet and confer process, then REI is owed the amount of \$640,000.00 to resolve RFCs 5 through 14.

D. Unpaid RFC 16

REI is owed \$1,120,254.45 for RFC 16.

RFC 16 is a claim for the extra work and costs associated with the high-density concrete that REI encountered throughout the Project. This high strength concrete was not disclosed to REI in the plans or specifications.

Based on many prior experiences at the project site (approximately 40-60 other building demolitions), and decades of experience in demolition/construction, it was proper for REI to assume that the concrete poured was required to be 2,500 psi concrete, in-line with all the other buildings that our client demolished. If it was high strength concrete, which this turned out to be, FORA was required to disclose this to all bidders pursuant to Public Contract Code section 1104.

E. Interest, Penalties, and Attorneys' Fees

REI seeks interest for the unpaid Change Order and RFCs, penalties for the unpaid retention, and attorneys' fees as allowed by the contract and the law.

This correspondence is REI's formal presentation of claims for additional compensation under Government Code section 910, et seq. The total of REI's claims exceeds \$2,287,596.09 plus interest, penalties and attorneys' fees.

Pursuant to California Government Code Section 910, REI is also providing you with the following information:

1. The name and post office address of the claimant:

Resource Environmental, Inc.
6634 Schilling Avenue
Long Beach, CA 90805

2. The address to which REI desires notices be sent:

Mark A. Feldman, Esq.
Tait Viskovich, Esq.
Feldman & Associates, Inc.
11030 Santa Monica Boulevard, Suite 109
Los Angeles, CA 90025

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claims asserted:

The damages, interest and attorneys' fees for which REI seeks reimbursement relates to work performed through approximately June of 2019. The place and other circumstances which gave rise to the claim are more fully described above.

4. A general description of the indebtedness:

The indebtedness is more fully described above but exceeds \$2,287,596.09 plus interest, penalties, and attorneys' fees.

May 27, 2020
LAFCO
Page | 4

5. The name(s) of the public employee(s) causing the damages:

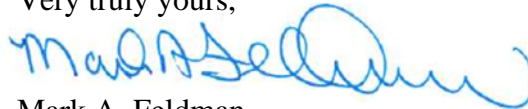
Peter Said, Mario Rebholz, Frank Lopez, and others unknown to REI at this time.

6. If the dollar amount of the claim exceeds \$10,000.00, the claim shall indicate jurisdiction of this matter:

Monterey County Superior Court

We expect that you will promptly resolve this matter and provide REI with a cashier's check for the full amount of the claim, including interest and penalties.

Very truly yours,



Mark A. Feldman
for FELDMAN & ASSOCIATES, INC.

cc: Tait J. Viskovich, Esq.;
Resource Environmental, Inc.

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

June 5, 2020

Dear Board Members:

This will probably be my last communication with you as a Board of Directors. Over the years I have spoken or written to you about many issues effecting the local veteran community and the reuse of historic Ft. Ord. Through the years you, as a board, have been very supportive and most of our projects within your venue have gone very well. I thank you for the efforts you and your predecessors have made to ensure the formation of the Veteran Issues Advisory Committee, the opening of the new VA/DOD Health Clinic, opening and now continuing effort for the California Central Coast Veteran Cemetery and many other significant projects. As FORA's responsibilities now transition to many different agencies it will be more cumbersome if not more difficult to get things accomplished. That is why the United Veterans Council of Monterey County has been so active in trying to get your support as a body one last time.

We know how difficult the decisions concerning disbursing any remaining funds are. We also know that many agencies are requesting large numbers of dollars from these potential funds. You must weigh your obligations and your decisions carefully. We have offered several reasons why we feel it is important to continue the Veteran Issues Advisory Committee after your final actions and closure.

We ask that you bear them in mind as you make your decisions. There is a real need to continue efforts with the Federal, State and local jurisdictions concerning the VA/DOD Clinic, the continued development of the cemetery, the potential of the cemetery endowment parcel MOU, the Veterans Transition Center's continued growth, ancillary projects in the vicinity of the cemetery and others. Those issues all require watching for laws, regulations and potentially harmful decisions and subsequent coordination of effort among the jurisdictions and the veteran community.

We have outlined how the veteran community pays its way by bringing in nearly \$100 Million annually and the active military community certainly brings in much more that gets spent in your county and your communities. These numbers will continue to grow if the County Military and Veteran Affairs Office keeps up its efforts to reach more veterans and help each of them obtain the benefits and compensation they have earned.

We have also mentioned the aging of the veteran community to the point where only a few are able to continue working for the betterment of conditions for the rest.

Monterey County has indicated a willingness to help in this effort through the Military and Veterans Affairs Office. What you may not realize is that this office is very small. It is working diligently to reach more and more veterans through expanded venues for appointments even during the Shelter in Place orders. In order for them to continue the effort and expand the benefits for more veterans they cannot afford to pull any staff for a new mission. That brings us to our request for support from you.

The County Military and Veteran Affairs Office has provided a letter outlining what this new person would be responsible for and how much it would cost to fund the position. He indicates that \$350,000 would fund this new mission for 3 years allowing the County time to plan for and fund the position permanently. His letter is enclosed.

We ask that you consider this request as a separate issue from any other request by the County for funding support and that you provide the requested assistance be dedicated to the purpose requested herein.

Your mission for all these years has been to plan for, fund and execute projects occurring on historic Ft. Ord. You now have the opportunity to take one last step to ensure your legacy by ensuring the success of the transition of the Veteran Issues Advisory Committee from FORA to Monterey County.

Thank you again for taking the time to consider these comments and thank you for your service to our communities and our county.

Sincerely,

James Bogan and Sid Williams
President Secretary



County of Monterey – Military & Veterans Affairs Office

Fort Ord Reuse Authority Transfer of Veterans Issues Advisory Committee (VIAC)

COMMITTEE CHARGE

Responsible to the Monterey County Director of Military and Veterans Affairs Office (MVAO) to formulate, coordinate, supervise, and execute VIAC policy and strategy as appropriate. Serves as a liaison or primary point of contact for governmental agencies (Federal, State, Local), their staff, and all relevant committees to advance policies, actions, operations, and requirements of Monterey County while benefiting the Veteran community. The Incumbent will assist in the overall integration of FORA's former programs and efforts with regard to the Monterey County Veteran community, develops engagement strategies for Veteran organizations, and disseminates critical information relating to former FORA/VIAC activities and/or programs benefitting Veterans or Veteran-serving organizations.

The Veterans Issues Advisory Committee (VIAC) will identify, discuss, evaluate, advise and advocate for the Veterans of the County of Monterey regarding the development of former Fort Ord and issues that will have a direct impact to the Veteran community. VIAC provides joint high-level stake holders the ability to meet and confer on all individual and joint matters within the footprint of the former Fort Ord.

Issues that are to be monitored through VIAC include but are not limited to:

- Military & Veteran specific interests / causes / issues on the former Fort Ord for the benefit of all County veterans to include, disabled veterans, homeless veterans, LGBTQ and other minority groups within the Military and Veteran community
- Coordinate with State legislature, CDCR and other stake holders for the reintegration of justice-involved Veterans
- Homeless Veteran Services including affordable housing.
- Completion and expansion of the California Central Coast Veterans Cemetery.
- Completion and expansion of the Department of Defense / VA Clinic to include the addition of a localized pharmacy
- Advocacy for state or federal or local parks or historical sites specific to Fort Ord and veteran's
- Ord Community (Community Center, Gym, Commissary, Post Exchange, Gas Station, Housing) advocacy and support.
- Facilitates joint municipality efforts to accomplish common goals for the benefit of Veterans in Monterey County
- Work to establish a Veterans Memorial Building utilizing California Military & Veterans Code.

The VIAC is charged with reviewing resources necessary for the successful implementation of projects and will review data or recommendations that may come from its members. Representation from every municipality and appropriate organizations should be actively represented. Working jointly to provide input regarding organizational, policy, financial, and technical elements in processing of any projects or items related to veterans or military issues as mutually agreed. VIAC will continue to better the lives of all Monterey County Veterans; to include, disabled veterans, homeless veterans, Justice Involved, LGBTQ and other minority groups within the Military and Veteran community.

VIAC - VOTING /NON VOTING MEMBER LIST

- Department of the Army – Garrison Commander or appointee
- US Congress Office Representation
- State Senate Representation
- State Assembly Representation
- County of Monterey – Military & Veterans Affairs Officer or appointee

- City of Seaside – Mayor or appointee
- City of Marina – Mayor or appointee
- City of Del Rey Oaks - Mayor or appointee
- United Veterans Council - Chair or appointee
- Military & Veterans Affairs Advisory Committee – Chair or appointee
- Veterans Transition Center – Director or appointee
- California Central Coast Veterans Cemetery Foundation - Chair or appointee
- CCCVC Advisory Committee - Chair or appointee
- Disabled American Veterans (DAV) - Representative

PROPOSED POSITION TYPE TO FUNCTION VIAC

The County of Monterey will need to add 1 FTE at the Management Analyst I level. This position will be added in the Military & Veterans Affairs Office. The position required to facilitate the Veterans Issues Advisory Committee (VIAC) will act in the capacities of Facilitator, Project Manager and Analyst. As a facilitator actions will be taken as a mediator helping the collective group to understand their common objectives and assists them to plan how to achieve these objectives for the overarching benefit of Monterey County Veterans. As a project manager there will be an overall responsibility for communication and efforts of successful initiation, planning, design, execution, monitoring, controlling and closure of mutually agreed on projects that benefit veterans. As an analyst there will be a focus on assessing VIAC goals and projects to determine if they are fishable, effective and efficient. This is accomplished through research, data gathering and similar methods.

TOTAL “ONE-TIME” BUDGET ADD FOR MA I POSTION

The total “one-time” funding requested from the Fort Ord Reuse Authority (FORA) to the County of Monterey is **\$351,053.00**. This funding will be able to sustain the Management Analyst I position for a 3-year period covering F/Y 20/21, 21/22 and 22/23. At the end of the 3-year period the position will be analyzed to determine continued relevance.

Cost Break Down

- \$5,000 Initial Onboarding Computer, IT, Desk Setup etc.
- \$106,052 Year 1 Step 1 (Includes Salary and all County Paid Incidentals)
- \$110,562 Year 2 Step 2 (Includes Salary and all County Paid Incidentals)
- \$115,351 Year 3 Step 3 (Includes Salary and all County Paid Incidentals)
- \$14,088 COLA Estimation
- **\$351,053 Total 3-year FTE County Cost**

DEFINITION OF MANAGEMENT ANALYST I

This is the first level in the Management Analyst I/II/III series. The Management Analyst level is dependent on the scope and complexity of the assignment. Positions assigned to Management Analyst I are performing duties of moderate scope and complexity. This level may also be used as an entry/trainee class for a position that is designated as a Management Analyst II in which case an incumbent may promote to that level once the experience and qualifications are met. Management Analyst I is distinguished from Management Analyst II in that the latter performs moderate to highly complex administrative analytical duties with a broader scope of responsibility and may fully supervise support and technical staff and serve as lead to Management Analysts.

EXAMPLES OF VIAC DUTIES

1. Analyzes, researches, gathers, advocates and interprets information on a wide variety of matters such as budgets, legislation, programs, contracts within the Military & Veteran community (to include; disabled veterans, homeless veterans, LGBTQ and other minority groups within the Military and Veteran community).
2. Work to establish a Veterans Memorial Building – working specifically with the California Military & Veterans Code MVC – Division 6. Veterans Buildings, Memorials, and Cemeteries [1170 - 1480]
3. Makes recommendations regarding policies, procedures, organization, operations, programs and other management-related areas.

EXAMPLES OF VIAC DUTIES – Continued

4. Prepares and presents written and oral reports on recommendations, data, impacts, options, strategies and conclusions that are based on analyses.
5. Develops, prepares, modifies and monitors items/areas such as budgets, grants, research projects, and contracts.