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

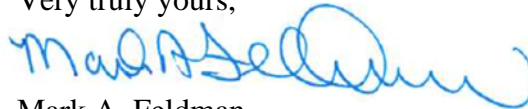
Peter Said, Mario Rebholz, Frank Lopez, and others unknown to REI at this time.

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.