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June 18, 2009

Mr. Keith Lichten  
State Regional Water Quality Control Board  
San Francisco Bay Region  
11515 Clay Street, Suite 1400  
Oakland, CA 94612

RE: Administrative Civil Liability Complaint No. R2-2009-0017  
Issued to OG Property Owner, LLC, Wilder Project, Orinda, California

Dear Mr. Lichten,

The City is submitting the following comments regarding the May 19, 2009 Administrative Civil Liability Complaint (May 19, 2009 ACL) referenced above..

The first comment is to identify a typographical error in Item 4.p of the complaint. The date of the City's correspondence should be changed from October 4, 2008 to October 4, 2007.

The second comment is a request that a portion of the May 19, 2009 ACL include a supplemental environmental project (SEP) located within the jurisdiction of the City of Orinda. The August 2007 Standard Criteria and Reporting Requirement for SEPs issued by the San Francisco Bay Region of the Regional Water Quality Control Board (RWQCB or Water Board) states that the SEP in lieu of a portion of the ACL imposed on Dischargers in the Bay Area may either be one that is on the list of possible projects that the Water Board maintains or it may be a project that the Discharger, local government or public interest groups propose.

The current SEP list maintained by the Water Board includes two SEPs located in Orinda. In addition to these two potential projects, the City is interested in proposing other possible SEPs for the Water Board's consideration and City staff has left messages with you to discuss the merits of these projects. The additional projects for consideration are slide repair/creek bank restoration projects, creek restoration, and storm drain improvement projects along San Pablo Creek and Moraga Creek, or tributaries thereof. The current SEPs and additional potential projects are as follows:

**General Information**  
(925) 253-4200 (ph)  
(925) 254-9158 (fax)

**Administration**  
(925) 253-4220 (ph)  
(925) 254-2068 (fax)

**Planning**  
(925) 253-4210 (ph)  
(925) 253-7719 (fax)

**Parks & Recreation**  
(925) 254-2445 (ph)  
(925) 253-7716 (fax)

**Police**  
(925) 254-6820 (ph)  
(925) 254-9158 (fax)

**Public Works**  
(925) 253-4231 (ph)  
(925) 253-7699 (fax)

- San Pablo Creek Restoration through Orinda Village. This project is already on the SEP list. A preliminary plan was developed with an estimated project cost of \$1.6M in 2002. This project would provide water quality benefits to San Pablo Creek.
- Installation of a sewer line and restroom at Wagner Ranch Nature Area. This project is already on the SEP list. The status of plans is not known. The estimated project cost was \$47,000 in 2005. It does not appear to provide any water quality benefits to San Pablo Creek.
- Restoration of Moraga Creek at Del Rey and Miramonte schools and of San Pablo Creek in downtown. These projects, developed by the Friends of Orinda Creeks, are not on the SEP list. The projects include removal of non-native plants and debris and replanting with native species (live oaks, willows, sedges and others). Some of the replanting has been and will continue to be done by students and other volunteers as part of the on-going Friends of Orinda Creeks/Restoration Trust projects. The project costs are estimated at \$30,000. These projects provide water quality benefits to Moraga and San Pablo Creeks and benefit Rainbow Trout.
- Fish Passage for San Pablo Creek. This project is not currently on the SEP list. The Friends of Orinda Creeks is working with EBMUD to design and build a fish passage across the debris dam just upstream of the Bear Creek Road crossing and downstream of Wagner Ranch. The passage mechanism is still under development but will most likely consist of a standard, small stream fish ladder bypass. The FOC's cost for completion of this work is estimated to be \$350,000.
- San Pablo Creek Channel Repair/Restoration near 42 Valley Drive. This project is not currently on the SEP list. The restoration plans that were developed by engineers for the private property owners are in the final development phase and the resource agencies have given their verbal support to the project. The City co-sponsored an Urban Streams Restoration grant application for this project earlier this year. The estimated project cost is \$534,000; the grant amount requested was \$382,900. The grant funding process has been delayed due to the State's budget crisis. Initial project reviews by the State are being conducted and will be completed late August. This project would provide water quality benefits to San Pablo Creek.
- Miner Road/Camino Lenada Slide Repair along Lauterwasser Creek (a tributary of San Pablo Creek). This Capital Improvement Project (CIP) is not currently on the SEP list. The project cost has been estimated at \$55,000 by the City. Plans have not been developed. This project would provide water quality benefits to San Pablo Creek.

- Glorietta Storm Drain project along San Pablo Creek. This CIP project is not currently on the SEP list. Requests for proposal are currently out for the design and hydrological studies. The City estimates project costs ranging from \$500,000 to \$1.5 million. While this project is partially within the confines of existing culverts beneath or adjacent to streets in a developed residential neighborhood along San Pablo Creek, it would have water quality as well as flood control benefits.
- North Lane Storm Water Mitigation project along San Pablo Creek tributary. This CIP project is not currently on the SEP list. This project addresses an existing storm drain system in Orinda that has less than a 2-year storm capacity and has resulted in large quantities of debris being discharged to San Pablo Creek when overwhelmed. Hydrological studies have been completed and plans have been prepared by consultants retained by the City and the East Bay Municipal Utility District. Estimated project costs are \$1.64 million. While this project is partially within the confines of existing culverts beneath or adjacent to streets in a developed residential neighborhood along a San Pablo Creek tributary, it would have water quality as well as flood control benefits.
- Canon Slide Repair along San Pablo Creek tributary. This CIP project is not currently on the SEP list. Plans have been finalized and the project has gone out to bid. The City estimates project costs at \$230,000. This project would provide water quality benefits to San Pablo Creek.

As indicated in the May 19, 2009 ACL, the City of Orinda expended significant staff time in an effort to ensure that construction activities at the subject property did not adversely affect San Pablo Creek. Despite the City's and RWQCB's efforts, San Pablo Creek has been adversely impacted. As such, the City is requesting that the May 19, 2009 ACL include an SEP that directly benefits the same waterway that was adversely impacted. We understand that OG Property Owner, LLC is willing to include an SEP located in Orinda in satisfaction of a portion of the May 19, 2009 ACL.

We look forward to having further discussions with you regarding this matter. If you have any questions on this matter, please contact Janice Carey, City Engineer, at 925-253-4260.

Best Regards,



Janet Keeter  
City Manager

cc: Brian Veit, Brooks Street  
James Baron, Receiver  
Tamsen Plume, Holland & Knight LLP

