

December 29, 2011

San Francisco Bay Regional Water Board
Attn. Mrs. Laurie Taul
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Legally Significant Objections to Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order; Order – City of Napa, Trancas Crossing Park Project

Issue #1 - Necessary Adjustment of Minimum Liability Amount Pursuant to CWC section 13385(e)

The City of Napa (“City”) unfairly derived an immense economic benefit when it illegally commenced construction of its Trancas Crossing Park project forty-five (45) days before obtaining permit coverage under the Construction Storm Water Permit. When liability is imposed under California Water Code section 13385, as in this case, the Water Board is statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

By commencing construction before obtaining permit coverage on November 5, 2010, the City avoided incurring severe economic penalties including contractor claims from Elite Landscaping, Inc. totaling up to \$1,548,475.40, the loss of over \$1.7 million in unexpended grant funds from the California Natural Resources Agency, and liability for the immediate repayment of \$569,480 in grant funds already dispersed plus accrued interest. Moreover, there is clear and ample evidence to establish the City’s economic benefit, including grant agreements with the State, a contract with Elite Landscaping, Inc., and several declarations signed by the City under penalty of perjury during the relevant time period.

The stipulated liability (\$20,000) does not take into account these significant avoidance costs, which constitute an enormous economic benefit to the City. Therefore, I am respectfully requesting that the California Regional Water Quality Control Board (“Regional Board”) adjust the minimum liability amount to recover all economic benefit to the City-violator in accordance with California Water Code section 13385(e).

Facts

Timing was a critical factor in the construction of Trancas Crossing Park. There were several timing constraints and deadlines that the City was legally required to observe: environmental timing constraints, contractual timing constraints with Elite Landscaping, Inc., and grant funding deadlines.

The California Department of Fish and Game confined the City’s work within the riparian corridor to the period of June 15th to October 15th; in-water work was confined to the period of August 1st to October 15th. Further, the City was legally required to implement Mitigation Measure BIO-6 (BIO-3), which mandated that construction take place during the dry season (April 30th to October 15th). This mitigation measure was circulated to the public by both the City and the State, adopted pursuant to CEQA, made a

condition of project approval, and included in the Mitigation and Monitoring Plan submitted to the Board.

Aside from these timing constraints, the City was legally obligated to complete the project by April 2011 in order to receive and maintain \$2,330,811 in grant funds for the project. The first grant was made pursuant to Proposition 50 for the amount of \$1,830,811, and the second grant was made pursuant to Proposition 40 for the amount of \$500,000. For purposes of grant funding, the project performance periods ended on May 1, 2011 and April 2011, respectively. Both grant agreements contain the following provisions:

Grant Funds in this award have a limited period in which they must be expended. Grantee expenditures funded by the State must occur within the time frame of the Project Performance Period as indicated in this Agreement.

Grantee shall complete the Project in accordance with the Project Performance Period set forth on the signature page...

If the Grantee fails to complete the Project in accordance with this Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to the State of all amounts dispersed by the State under this Agreement, plus accrued interest and any further costs related to the project.

Any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment will be paid by Grantee and is not reimbursable under this Agreement.

In July 2010, the City entered into a written and enforceable contract with Elite Landscaping, Inc. to construct the Trancas Crossing Park project in exchange for \$1,548,475.40. According to this contract, the project was to be completed in two phases. Phase 1 included all work except for the plant establishment period. This phase was required to be completed before the expiration of fifty-five (55) working days. Once completed, Elite Landscaping, Inc. had a one hundred twenty (120) working day period to complete plant establishment in Phase 2. The contract time was to begin five (5) working days after the date of the Notice to Proceed or the first day of work by Elite Landscaping, Inc., whichever occurred first.

The City issued the Notice to Proceed on September 8, 2010, and the Regional Board issued a Conditional Federal Water Pollution Control Act section 401 Water Quality Certification ("Certification") for the project on September 16, 2010. On September 21, 2010, the City officially commenced construction of Trancas Crossing Park; the Regional Board, however, alleges the City commenced construction on September 23, 2010. The City obtained coverage under the Construction Storm Water Permit on November 5, 2010.

Analysis

After spending nearly \$1 million in grant money and City park funds to plan this project over the course of more than four (4) years, the City had ample time to get its act together and successfully complete construction while abiding by all laws and regulations. Ignorance of the law is no excuse, and in this case, neither is the City's gross negligence and intentional flouting of the law.

Due to the City's poor project management skills and the incompetence of its consultant, there was an extremely limited time frame (August 1, 2010 to October 15, 2010) in which the City had to legally construct its project, maintain \$1,761,331 in unexpended grant funds, avoid liability for the immediate repayment of \$569,480 in grant funds already dispersed and accrued interest, and avoid the payment of substantial construction claims, totaling up to \$1,548,475.40.

It was clear that the City's house of cards was on the verge of collapse by early September 2010. Feeling the heat, the City issued the Notice to Proceed for the Trancas Crossing Park project on September 8, 2010, thereby triggering the start of the fifty-five (55) working-day period with Elite Landscaping, Inc. Notably, the City gave Elite Landscaping, Inc. the contractual green light to begin construction before it had obtained all the necessary permits; at the time of issuance, the City did not have a Certification or coverage under the Construction Storm Water Permit.

It is indisputable that the City was legally obligated to obtain permit coverage under the Construction Storm Water Permit before starting construction. The City violated the law, and did not obtain coverage until November 5, 2010, forty-five (45) days after it had officially commenced construction of the Trancas Crossing Park project.

Instead of acting in a reasonably prudent manner and delaying project construction until it ensured that it had obtained the required permit coverage under the Construction Storm Water Permit, complied with all conditions in the Certification, and ensured implementation of Mitigation Measure BIO-6 (BIO-3), the City rolled the dice and disregarded the law, acting in its best economic interest.

In applying California Water Code section 13385(a)(2) and (c), the Regional Board determined the City's maximum statutory liability is \$430,000 – 10,000 per day for forty-three (43) days of violation. However, I submit to the Regional Board that the maximum liability should be adjusted to \$450,000 because public records show the City officially began construction of the project on September 21, 2010, forty-five (45) days before obtaining coverage.

Water Code section 13385(e) requires that, at a minimum, the liability shall be assessed at a level that recovers the economic benefits derived from the acts that constitute the violation. The Water Board's Enforcement Policy defines economic benefit as any savings or monetary gain derived from the act or omission that constitutes the violation.

If the City had not constructed its project before November 5, 2010 (the date permit coverage was obtained), then it would not have been in violation of the applicable provision of the Construction Storm Water Permit that required the City to obtain permit coverage before starting construction. The City derived an immense economic benefit in the form of cost savings by constructing its project during its forty-five (45) days of violation.

Most significantly, it was able to complete work in the Salvador Channel by the regulatory deadline of October 15th. If the City had started construction when it obtained permit coverage on November 5, 2010, it would have missed this crucial deadline and could not have legally worked in the Salvador Channel until August 1, 2011. Furthermore, implementation of Mitigation Measure BIO-6 (BIO-3) required construction take place during the dry season, which ended on October 15th. Consequently, the project would have been "dead in the water" as the City could not have possibly completed the project by the April 2011 grant deadline. Unexpended grant funds in the amount of \$1,761,331 would have been lost, and the city would have become liable for the immediate repayment of \$569,840 in

grant funds already dispersed plus accrued interest. Additionally, there would have been construction claims from Elite Landscaping, Inc. totaling up to \$1,548,475.40.

The City was acutely aware of this scenario when it so eloquently described the economic ramifications of project delay in its declaration, signed under penalty of perjury on September 16, 2010. The following excerpts are from the enclosed declaration and show how the City benefitted economically from its forty-five (45) days of violation, which was indisputably a critical time period for the City.

The Trancas Crossing Park is funded by two grants from the State of California and City of Napa funds. One grant is funded by Proposition 40 and is in the amount of \$1,830,811 [sic]. The second grant is funded by Proposition 50 and is in the amount of \$500,000 [sic]. The City funded portion is \$609,435. As part of the City's agreement with the State on both grants the City must complete the construction, file a notice of completion, make final payments and take the grants [sic] administrators on site inspections of the project site. The State requirements under each grant mandate that the Trancas Crossing Park be complete by April 2011 and May 2011. Therefore, in order to meet the April and May 2011, [sic] deadlines the City must complete and close out the project prior to April of 2011. True and correct copies of the Proposition 40 grant and Proposition 50 grant are attached hereto as **Exhibits B and C** respectively.

The biggest challenge in meeting the deadline for the project is completing the in-water work adjacent to the Salvador Creek. The in-water work window only allows work in the creek/river to be done between August 1 to October 15 in any calendar year as dictated by the Department of Fish and Game. This is the time period when the least amount of disturbance is done to any protected species that may usually inhabit the area. If the City is not able to complete this work by October 15, 2010, the City cannot return in the spring but would have to wait until the August 2011 work window to open [sic]. Thus, any injunction that is issued will likely cause the City to not complete the park on time, lose the grant funding, and pay a construction claim.

Delays in starting construction will push the project into the winter which may limit the ability of the contractor to complete the work depending on weather. Delays may also result in additional costs due to claims and changes in conditions.

A Temporary Restraining Order and the inability to complete the project would result in claims from the contractor that could be up to the total amount of the construction contract of one million, five-hundred, forty-eight thousand, four-hundred and seventy-five dollars and forty cents (\$1,548,475.40). A true and correct copy of the construction contract with Elite Landscaping, Inc. is attached hereto as **Exhibit D**.

As the Regional Board can see, the City-violator was quite eager to point out the dire economic consequences of project delay when it appeared to be in the City's best interests to do so.

Conclusion

The City derived substantial cost savings, as discussed above, from violating the law and constructing its project forty-five (45) days before obtaining permit coverage under the Construction Storm Water Permit on November 5, 2010. Its avoidance costs constitute a huge economic benefit. All economic

benefit derived from the City's violation must be recovered in order to comply with California Water Code section 13385(e), and it is requested the Regional Board amend the minimum liability amount accordingly.

Issue #2 – Objection to Proposed Stipulation in Paragraph 11 and Request that the Regional Board Impose Administrative Civil Liability Pursuant to CWC Section 13385(a)(2) and (c) for Each Violation by the City to the Maximum Extent of the Law

The Regional Board has determined that the City violated the Construction Storm Water Permit and its Certification by failing to do the following:

[Construction Storm Water Permit]

- a. Obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project;
- b. Amend and certify the SWPPP and each amendment throughout the various stages of the Park Project
- c. Adequately maintain and document maintenance of BMPs;
- d. Perform all required qualifying rain event inspections; and
- e. Perform all required qualifying rain event sampling and analysis.

[Certification]

- f. Document implementation and maintenance of adequate BMPs;
- g. Obtain an approved dewatering plan prior to the start of construction;
- h. Submit the Short Form within 14 days of issuance of the Certification;
- i. Establish and document upstream and downstream photo-documentation points; and
- j. Submit the annual monitoring report.

The Regional Board's determination that the City violated applicable sections of the Construction Storm Water Permit, its Certification, and MS4 General Permit is entirely true and correct. As the Regional Board is aware, these are violations for which the Regional Board may impose administrative civil liability pursuant to California Water Code section 13385(a)(2) and (c), on a daily basis, not to exceed \$10,000 for each violation for each day in which the violation occurs.

I am requesting the Regional Board impose administrative civil liability to the maximum extent of the law for each of the City's above-mentioned violations. There should be legal consequences for each violation of law, not just for one. To do otherwise would reward the violator and send the wrong message to whistle-blowing citizens who do the right thing and notify the Regional Board of violations.

Furthermore, the language used in Paragraph 11 is drastically skewed in the City-violator's favor, and in the interest of fairness, I am requesting the Regional Board replace it with a new clause that reflects a more proportional and just result, i.e. a binding resolution for only the claim(s) for which liability is being imposed. Please eliminate the following language from Paragraph 11:

Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in Exhibit A or which could have been asserted based on the specific facts alleged in Exhibit A against the City.

Often times, whistle-blowing citizens do not have the economic resources or time to pursue justice through the court system. That is why it is so critical that the Regional Board hold the City of Napa, a municipal bully and chronic law violator, accountable for its illegal actions in a meaningful way that does not absolve it of all legal liability for a mere \$20,000, which in this case, is the equivalent to a tap-on-the-pinky-finger.

Throughout this project, the City prioritized its observance of grant deadlines over the law. It committed multiple violations of law, as correctly determined by the Regional Board. If \$20,000 is the cost of multiple violations, then it definitely paid for the City to violate the law. The Regional Board has the legal authority and ability to impose administrative civil liability on the City for each of its violations. Please exercise this legal option and show the City that compliance with the law is more important than money and that it is never permissible to operate above the law under any circumstance.

Issue #3 – Objection to City's Denial of Liability in Paragraph 12 of the Proposed Settlement Agreement and Stipulated Order and Request for Hearing and Formal Adjudication

Many, if not all, of the City's violations can be easily proven. For example, the City was required to obtain coverage under the Construction Storm Water Permit prior to construction. It clearly started construction without the requisite coverage, which it obtained 45 days later. Another example is when the City violated Condition No. 6 of the Certification which required the City to use the Riparian Repair and Maintenance Wetland Tracker short form to provide project information within fourteen (14) days from September 16, 2010. The City clearly did not comply with this condition; it is indisputable.

Proposition 50 and 40 grant funds were awarded on the condition that the grantee would comply with all laws throughout the planning and construction process. The City-grantee clearly violated the law as well as its grant agreements. There were other applicants who competed for these same grant funds and who certified to the State that they would comply with all laws in planning and constructing their projects. The Trancas Crossing Park is built, but the City is subject to an audit for three (3) years after the final payment of grant funds.

The State grant agreements expressly state the following:

Grantee certifies that the Project does and will continue to comply with all current laws and regulations which apply to the Project, including, but not limited to, legal requirements for construction contracts, building codes, environmental laws, health and safety codes, and disabled access laws. Grantee shall certify to the State prior to commencement of construction that all applicable permits have been obtained.

Grantee shall at all times ensure that Project complies with the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, commencing with section 2100, et. seq., Cal Code Regs tit. 14, section 15000 et. seq.) and all other environmental laws, including but not limited to obtaining all necessary permits.

If the Grantee fails to complete the Project in accordance with this Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to the State of all amounts dispersed by the State under this Agreement, plus accrued interest and any further costs related to the project.

If it is established that the City violated the law (which it clearly did) through an admission or adjudication of legal liability, then there is a viable legal cause of action to compel reimbursement of Proposition 50 and 40 grant funds back to the State so that they may be awarded to a law-abiding municipality or non-profit group who entered the highly competitive grant award selection process in 2005.

Paragraph 12 of the proposed Settlement Agreement and Stipulated Order unfairly penalizes the justice-seeking taxpayers of California (M. Brown et al.) and the City's grant competitors who are relying on the Regional Board to obtain an admission or adjudication of legal liability for the City's blatant violations of law in order to legally compel recovery of Proposition 50 and 40 grant funds. This legally significant paragraph lets the City "off the hook" for its multiple violations of law that are enforceable by the Board, thereby making it extremely difficult, if not impossible, for taxpaying citizens and the City's grant competitors to legally compel repayment of grant funds to the State based on the City's "unproven" violations of law. Therefore, it would give the City-violator an unfair competitive advantage over the law-abiding municipalities who applied for the same grant funds and would be inconsistent with the Water Board's Enforcement Policy, which provides that "any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should fully eliminate any unfair competitive advantage obtained from noncompliance."

From a pure policy perspective, to allow the City to dispose of hundreds of thousands in legal liabilities it obtained through flagrant violations of the law, for a mere \$20,000, without any admission or adjudication of legal wrongdoing, would be patently unfair and would encourage and embolden the City-violator and other similarly situated persons in the regulated community to violate the law in the future when it is economically beneficial to do so. Again, this would be inconsistent with the Water Board's Enforcement Policy to deter the same or similar violations in future.

Therefore, the Regional Board should require an admission from the City or seek an adjudication of liability. The citizens of California deserve better than having their hard-earned tax dollars being spent on a project that was constructed in violation of several laws, rules, and regulations by a municipality that holds its own citizens to a much higher standard than it holds for itself.

Issue #4 – Request for Amendment of Exhibit A, Paragraph 5 and Request for Imposition of Administrative Civil Liability for City's Failure to Implement Mitigation Measure BIO-6 (BIO-3) in Violation of Condition No. 8 of the Certification and for Knowingly Submitting False Information to the Regional Board in Response to the Order for Technical Report

The Certification for the City's project was conditioned on the City's performance of Condition No. 8, which provides the following:

The Mitigation and Monitoring Plan, as proposed in Attachment 4 of the Application, Mitigation and Monitoring Plan for Trancas Crossing Park Bank Stabilization and Restoration Plan, dated February 16, 2010, as amended May 10, 2010, shall be successfully completed. Any proposed changes to the Mitigation and Monitoring Plan must be approved in writing by the Water Board Executive Officer;

This legally significant condition was not included in the Certification conditions set forth in Exhibit A, Paragraph 5, and therefore, I am requesting the Regional Board amend this paragraph to include it.

When the City applied to the Regional Board for Certification in February 2010, it submitted the Mitigation and Monitoring Plan (MMP) for its Trancas Crossing Park project. The MMP included Mitigation Measure BIO-6, which was adopted pursuant to CEQA and made a condition of project approval. Mitigation Measure BIO-6 states, in relevant part, the following:

“During construction, the following measures shall be implemented to reduce indirect effects on riparian and wetland communities downstream and adjacent to the construction site.”

“Construction will take place during the dry season.”

The City submitted a “refined” version of the mitigation measures to the Regional Board in May 2010. Mitigation Measure BIO-6 was re-designated “Mitigation Measure BIO-3.” Notably, Mitigation Measure BIO-3 contains the same relevant language as Mitigation Measure BIO-6:

“During construction, the following measures shall be implemented to reduce indirect effects on riparian and wetland communities downstream and adjacent to the construction site.”

“Construction will take place during the dry season.”

The mandatory language used in this mitigation measure is plain and clear, and as conceded by the City in public records, the dry season is April 30th to October 15th of any given year. Equally clear, the City was legally obligated to implement this measure because it was adopted pursuant to CEQA, made a condition of project approval, and included in the MMP submitted to the Board. Condition No. 8 of the Certification required successful completion of the MMP. Further, any proposed change in the City’s MMP required the written approval of the Water Board Executive Officer.

There is no question the City understood that it was legally required to construct its project during the dry season. Public records clearly show this, especially the City Manager’s memo to the Napa City Council, dated October 8, 2010, which acknowledges that construction had to cease by October 15th and would then start back up in spring 2011. However, when the City Manager quickly discovered that it would be impossible to finish the project within the grant funding deadline if it waited to construct the project during the dry season in spring 2011, it suddenly became okay to disregard the law.

In typical City fashion, the City ignored the pleas of its law-abiding citizens to implement Mitigation Measure BIO-6 (BIO-3) because its first priority was ensuring that it completed the project within the grant deadlines so that it could maintain unexpended grant funds and avoid liability for grant funds already dispersed. The fact is the City constructed its project throughout the entire rainy season, and it was so flagrant in its failure to implement this mandatory measure that it engaged in construction

activities with heavy equipment during rain events and in wet conditions. Riparian and wetland communities downstream and adjacent to the construction site were harmed as a result of the City's failure to implement the required mitigation measure. Such disregard for the law is disgusting, especially by a municipality.

As mentioned previously, project approval and Certification were conditioned on implementation of Mitigation Measure BIO-6 (BIO-3), which the City did not successfully implement. The City did not have the legal authority to pick and choose which parts of Mitigation Measure BIO-6 (BIO-3) that it wanted to comply with and which parts it wanted to ignore. Moreover, the City did not obtain the written approval of the Water Board Executive Officer to change the MMP and eliminate the mandatory requirement that construction take place during the dry season; that was also a condition of the Certification.

The City provided false information to the Regional Board in its technical report when it stated that "construction of Trancas Crossing Park was completed in accordance with the project plans and the project's Mitigation and Monitoring Plan" and that the "refined construction avoidance mitigation measures listed in the Mitigation and Monitoring Plan were followed during the construction." Those assertions are simply not true.

When the City constructed its project during the rainy season, which was not in accordance with the MMP or "refined construction avoidance mitigation measures," it removed approximately 370 feet of petroleum-based asphalt in the rain. There is photo documentation of this. The removal of asphalt was not part of the approved project, and this action was not in the project plans or considered pursuant to CEQA. Also, the project property was flooded during the time the City was constructing sections of its 10-foot wide asphalt trail.

Aside from failing to implement Mitigation Measure BIO-6 (BIO-3), the City did unpermitted vegetation removal and grading along the Napa River bank during the rainy season in an area that was not included in the project plans it submitted to the Board as part of its application for Certification. I sent pictures of that particular area to the Regional Board as part of my original complaint. Also, the California Department of Fish and Game was notified of this violation, and the Department required the City install mitigation plantings in the disturbed area. Providing false information should never be acceptable to the Regional Board, and such acts should not go unpunished. Therefore, I am requesting the Regional Board prosecute the City for providing false information to Regional Board in response to the Order for Technical Report.

Conclusion

There is a disturbing pattern emerging in the way the City conducts its municipal affairs. It values money over anything else (including the environment), it often flouts the law, it never admits liability even when it is clearly in the wrong, and it resents citizens who demand that the City play by the same rules as everyone else. While it is proficient at feigning the appearance of compliance, in reality, it operates according to its own agenda, irrespective of the law. In fact, the City and its outside counsel have spent countless hours engaged in legal acrobatics, trying to maneuver around the law, twisting and contorting plain and clear language into new and novel meanings that defy all logic while still contradicting the City's own public records.

The Regional Board correctly determined that the City violated the law. Notably, the State grant agreements required the City to comply with the law at all times. Failure by the City to complete its project in compliance with the law is a breach of the State grant agreements, making the City immediately liable for reimbursement of \$2,330,811 in Proposition 50 and 40 grant funds.

The proposed Settlement Agreement and Stipulated Order absolve the City of all legal liability for all violations without including any admission that the City violated the law. Thus, it would be a major impediment for citizens who are seeking to legally compel reimbursement of grant funds back to the State based on the City's multiple violations of law. Further, it would give the City-violator an unfair competitive advantage over the law-abiding municipalities who competed for the same grant funds; this would be inconsistent with the Water Board's Enforcement policy to fully eliminate any competitive and economic advantage obtained through violating the law. Moreover, the practical effect of the proposed Order would be to allow the City to benefit economically from its violations of law, which goes against the intent and purpose of California Water Code section 13385(e).

Like DNA evidence incriminating a criminal defendant, there is clear and ample evidence of the City's civil offenses. The citizens of Napa and the taxpayers of California are the victims in this case. By adopting this Order, the victims would not be receiving the justice they deserve.

Most significantly, the proposed Settlement Agreement and Stipulated Order must not be adopted because the stipulated liability of \$20,000 does not recover all economic benefit derived from the City's violation as required by California Water Code section 13385(e) and discussed at length in this comment letter. There are several public records that establish the City's avoidance costs, including its construction contract with Elite Landscaping, Inc., State grant agreements, and the City's own declarations signed under penalty of perjury during the relevant time period. Even Judge Francisca P. Tisher ruled that project delay would "harm" the City. This is a legally significant fact that warrants a hearing before the Water Board.

Please respond to each of the issues set forth in this comment letter, and please inform me how the Regional Board will proceed in response to the legally significant facts brought to its attention in this letter. I can be contacted at [REDACTED]

Thank you for your consideration of these comments.

Respectfully,

Monique Brown

After reviewing the redline and draft version of the proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order and the City's comments thereon, I am appalled that the City would continue to make false statements to the Regional Board and that the Regional Board would rely on these false statements in drafting the final version of the proposed Settlement Agreement and Stipulated Order.

In the draft, the Regional Board's prosecution team correctly alleged that "the City failed to obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project, and failed to comply with the conditions of the Construction Storm Water Permit and the Certification, including inadequate implementation of effective erosion and sediment control measures necessary to minimize the discharge of pollutants to waters of the State and United States in violation of the Certification Storm Water Permit. The Prosecution Team's allegations are described in Exhibit A, attached hereto and incorporated herein by this reference. The City admits that ..."

Why was the language, underlined above, omitted from the final version? Why would the Regional Board correctly allege that there was inadequate implementation of effective erosion and sediment control measures, and then withdraw it based upon the false, unreliable representation by Mark Tomko, the City's project construction manager responsible for the violation, that adequate and effective erosion controls were implemented "so this can be deleted." The photo documentation that was sent to the Regional Board and the testimony of Suzanne Gilmore of the California Department of Fish and Game clearly demonstrate otherwise. Further, Mark Tomko can be discredited by his false testimony at the first Napa City Council meeting in May 2011.

The City absolutely failed to implement effective and adequate erosion control measures. It removed trees and vegetation along the banks of the Napa River in at least two locations without disclosing it to permitting agencies and without implementing adequate erosion control measures. If the Regional Board reviews the application materials and project vegetation removal plans, it will see that the City failed to disclose that it was going to remove a significant amount of riparian vegetation along the Napa River banks. Furthermore, it scattered tree branches, sediment and debris on the river bank in an area where the City removed all riparian vegetation. Subsequently, this area was washed out by flooding and the bank failed. The City's unpermitted disturbance and de-vegetation of the river bank during the winter caused a large amount of soil and sediment to enter the Napa River, which is identified on the section 303(d) list of impaired water bodies. Please review the photos I sent to the Regional Board in June 2011 showing the washed out river bank and the vegetative debris scattered along the bank.

Aside from the two specific areas approved for vegetation removal along Salvador Creek, the City's contractor aggressively sprayed the extensive berm of non-native blackberry thickets imbedded along the creek banks in between the approved locations designated as the lower and upper bank stabilization sites. Mr. Brown, the adjacent property owner, witnessed this and attests to this. Further, the Regional Board received a copy of an e-mail from the City's biologist to the Department of Fish and Game confirming the City planned to spray the entire riparian corridor, and not just the two (2) approved stabilization areas along the creek.

As a result of the City's failure to implement erosion control measures and adopted CEQA mitigation measures along the creek banks where it sprayed the non-native blackberry thickets and other invasive species, a portion of the creek's eastern bank severely eroded during a storm event and a substantial amount of soil and sediment entered the watercourse, including trees.

Photos of the severely eroded bank along Salvador Creek were received by the Regional Board in June 2011. As the Regional Board can see from those photos, the erosion started from the top of the bank. Blackberries embedded at this location along the bank were aggressively sprayed by the City's contractor. No erosion control measures were used to stabilize this area, and not surprisingly, the bank failed during a storm event. There is a clear casual connection.

Suzanne Gilmore of Fish and Game confirmed that there were several compliance issues with the City's contractor in regard to implementing adequate erosion control measures and re-vegetating the banks as required. The requisite erosion control measures were not implemented after disturbing the banks. Ms. Gilmore verified that the contractor threw a few tarps over some portions of the disturbed banks along Salvador Creek and then failed to re-vegetate in a timely manner as required. Eventually, the proper erosion control measures were put in place, but this occurred after the rainy season began, after storm events had taken place, and after the City was contacted by the California Department of Fish and Game. Hydroseeding of the disturbed banks did not occur until late March 2011, which was after a major flood event inundated the project site. Photos of the flooded project site were sent to the Regional Board in June 2011.

Is the Regional Board aware that hydroseeding of all disturbed slopes was required to be completed by October 1st and that growth was to be established by November 1st per the City's adopted Mitigation Measure GEO-3? Why adopt Mitigation Measures pursuant to CEQA and make them a condition of project approval if they mean absolutely nothing and no permitting agency or responsible agency is willing to enforce them? How is that fair? How is that environmental justice?

Further, the Regional Board correctly alleged that the City violated its Certification when it failed to keep equipment out of standing or flowing water. Again, why would the Regional Board withdraw that allegation based upon Mark Tomko's false statement when there were several eyewitness accounts of the City operating heavy equipment in standing storm water throughout the rainy season, when no construction was to take place per Mitigation Measure BIO-3. Also, an e-mail from the City's consulting biologist confirms the eyewitness accounts of the City operating equipment in Salvador Creek when the coffer dam was not functioning and when the water depth between the two coffer dams was as high as the depth of the creek upstream of the upper coffer dam. Jim, the City's biologist, stated in his e-mail that "it appears the coffer system is not working at all" and that "this isn't the normal condition of infiltration associated with a creek construction project." The City was under a tight timeline, and the contractor continued to work in Salvador Creek under those conditions. A substantial amount of sediments was discharged into the Napa River at the start of each construction day for at least 6 days.

In responding to the Regional Board's Order for Technical Report, the City made several false statements to the Regional Board. Just consider Mitigation Measure BIO-1. The City clearly violated its

Certification, and failed to obtain permit coverage under the Construction Storm Water Permit prior to starting to construction. How can the City claim that it had obtained all permits for in-channel construction when it clearly did not have permit coverage under the Construction Storm Water Permit? Is the Regional Board going to accept this?

This project is just one of many where the City has failed to comply with the law; the only difference here is that its violations of law were brought to the direct attention of the Regional Board by vigilant, law-abiding citizens. The City's violations are so obvious that it would be a miscarriage of justice not to hold the City responsible for each and every violation. Initially, the Regional Board was going to require the City to admit legal liability, and I am requesting the Regional Board follow through with this.

Thank you for your consideration of these comments.

JAN 08 2011

ENDORSED

SEP 17 2010

Clerk of the Napa Superior Court

By: J. OLIVER
Deputy

BENJAMIN L. STOCK, (SBN 208774)
E-mail: bstock@bwsllaw.com
ARIELLE O. HARRIS, (SBN 257792)
E-mail: aharris@bwsllaw.com
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501
Tel: 510.273.8780 Fax: 510.839.9104

Attorneys for Defendant
City of Napa

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

Case No. 26-5329

DECLARATION OF MARK TOMKO
IN SUPPORT OF CITY OF NAPA'S
OPPOSITION TO PLAINTIFF'S EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION.

Date: Friday, September 17, 2010
Time: 11:30 a.m.
Courtroom: B

UNO FRATELLI, LLC,

Plaintiff,

v.

CITY OF NAPA, a municipal corporation;
CALIFORNIA NATURAL RESOURCES
AGENCY; and DOES 1-20,

Defendants.

I, Mark Tomko, declare as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about them, I could and would testify competently. This Declaration is made in support of the City of Napa's Opposition to Plaintiff's Ex Parte Motion for Temporary Restraining Order and/or Preliminary Injunction.
2. I am, and at all times since this action was filed, have been the Senior Civil Engineer, in the Construction Division of the City of Napa ("City").
3. As the Senior Civil Engineer, I am responsible for the construction management of the Trancas Crossing Park Project.

OAK 06/06-0402-0391 v3

BURKE, WILLIAMS &
SORENSEN, LLP
ATTORNEYS AT LAW
CALIFORNIA

DECLARATION OF MARK TOMKO ISO CITY'S OPPOSITION TO EX PARTE MOTION FOR TROP/

1 4. The Trancas Crossing Park will construct a new 33-acre riverfront park in the City
2 of Napa. The park will provide riparian restoration and other habitat protection enhancement
3 measures, open space and floodplain protection, access to open space, walking, and bicycling
4 trails, a canoe/kayak put-in, and natural resource information through interpretive features. The
5 project will stabilize eighty (80) linear feet of bank on Salvador Creek and an additional one
6 hundred forty (140) linear feet of bank will be planted with native vegetation. The park will also
7 include a parking lot, handicap access, and a waterless bathroom.

8 ~~5.~~ The Notice to Proceed for the Trancas Crossing Park Project was issued on
9 September 8, 2010. Phase 1 of the work, which includes all of the work except for the plant
10 establishment period, is fifty-five (55) working days. The plant establishment period, Phase 2, is
11 one-hundred-twenty (120) working days. Permits issued by the Department of Fish and Game for
12 the bank stabilization portion of the project require that in water work be confined to the period of
13 August 1 through October 15. A true and correct copy of the Notice to Proceed is attached hereto
14 as Exhibit A.

15 ~~6.~~ The Trancas Crossing Park is funded by two grants from the State of California
16 and City of Napa funds. One grant is funded by Proposition 40 and is in the amount of
17 \$1,830,811. The second grant is funded by Proposition 50 and is in the amount of \$500,000. The
18 City funded portion is \$609,435. As part of the City's agreement with the State on both grants
19 the City must complete the construction, file a notice of completion, make final payments and
20 take the grants administrators on site inspections of the project site. ~~The State requirements under~~
21 ~~each grant mandate that the Trancas Crossing Park be complete by April 2011 and May 2011.~~
22 ~~Thereafter, in order to meet the April and May 2011 deadlines the City must complete and close~~
23 ~~out the project prior to April of 2011. True and correct copies of the Proposition 40 grant and~~
24 Proposition 50 grant are attached hereto as Exhibits B and C respectively.

25 ~~7.~~ The biggest challenge in meeting the deadline for the project is completing the in-
26 water work adjacent to the Salvador Creek. The in-water work window only allows work in the
27 creek/river to be done between August 1 to October 15 in any calendar year as dictated by the
28 Department of Fish and Game. This is the time period when the least amount of disturbance is

OAK #4836-9432-0391 v3
DECLARATION OF MARK TOMIKO ISO CITY'S OPPOSITION TO EX PARTE MOTION FOR TROP/

1 done to any protected species that may usually inhabit the area. If the City is not able to complete
2 this work by October 15, 2010, the City cannot return in the spring but would have to wait until
3 the August 2011 work window to open. Thus, any injunction that is issued will likely cause the
4 City to not complete the park on time, lose the grant funding, and pay a construction claim.

5 ~~9.~~ Delays in starting construction will push the project into the winter which may
6 limit the ability of the contractor to complete the work depending on weather. Delays may also
7 result in additional costs due to claims and changes in conditions.

8 ~~9.~~ A Temporary Restraining Order and the inability to complete the project would
9 result in claims from the contractor that could be up to the total amount of the construction
10 contract of one million, five-hundred, forty-eight thousand, four-hundred and seventy-five dollars
11 ~~and fifty cents (\$1,548,475.40).~~ A true and correct copy of the construction contract with Elite
12 Landscaping, Inc. is attached hereto as Exhibit D.

13 10. The paving and addition of curbs to the parking lot, referred to by Plaintiff as the
14 overflow parking area, is scheduled to occur during the second and third weeks in November,
15 2010.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct and that this declaration was executed on the 16th day of September,
18 2010 in Napa, California.

19 
20 _____

Exempt from Filing Fees per Gov. Code § 6103

CALIFORNIA REGIONAL WATER
JAN 03 2012
QUALITY CONTROL BOARD

Benjamin L. Stock, (SBN 208774)
E-mail: bstock@bwslaw.com
Arielle O. Harris, (SBN 257792)
E-mail: aharris@bwslaw.com
BURKE, WILLIAMS & SORENSEN, LLP
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Tel: 510.273.8780 Fax: 510.839.9104

CITY OF NAPA
Michael W. Barrett, City Attorney (SBN 155968)
955 School Street
P. O. Box 660
Napa, CA 94559-0660
Tel: 707.257.9516 Fax: 707.257.9274

Attorneys for Defendant, CITY OF NAPA

OCT 12 2010

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

UNO FRATELLA, LLC,

Plaintiff,

v.

CITY OF NAPA, a municipal corporation;
CALIFORNIA NATURAL RESOURCES
AGENCY; and DOES 1-20,
Defendants.

Case No. 26-53259

Assigned for All Purposes To:
Judge Francisca P. Fisher, Dept. B

Action Filed: June 17, 2010
Trial Date: None Set

DECLARATION OF MARK TOMKO
IN SUPPORT OF CITY OF NAPA'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

Date: October 20, 2010
Time: 8:30 a.m.
Dept: B

I, Mark Tomko, declare as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about them, I could and would testify competently. This Declaration is made in support of the City of Napa's Opposition to Plaintiff's Motion for a Preliminary Injunction.

2. I am, and at all times since this action was filed, have been the Senior Civil Engineer, in the Construction Division of the City of Napa ("City").

OAK #4812-7631-6167 v1

DECLARATION OF MARK TOMKO IN SUPPORT OF CITY OF NAPA'S OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

3. As the Senior Civil Engineer, I am responsible for the construction management of the Trancas Crossing Park Project.

4. The Trancas Crossing Park will construct a new 33-acre riverfront park in the City of Napa. The park will benefit the community by providing riparian restoration and other habitat protection enhancement measures, open space and floodplain protection, access to open space, walking, and bicycling trails, a canoe/kayak put-in, and natural resource information through interpretive features. The project will stabilize eighty (80) linear feet of bank on Salvador Creek and an additional one hundred forty (140) linear feet of bank will be planted with native vegetation. The park will also include a parking lot, handicap access, and a waterless bathroom.

5. The Trancas Crossing Park is funded by two grants from the State of California and City of Napa funds. One grant is funded by Proposition 40 and is in the amount of \$1,830,811. The second grant is funded by Proposition 50 and is in the amount of \$500,000. The City funded portion is \$609,435. As part of the City's agreement with the State on both grants the City must complete the construction, file a notice of completion, make final payments and take the grants administrators on site inspections of the project site. The State requirements under each grant mandate that the entire Trancas Crossing Park project be completed by April 2011 and May 2011. True and correct copies of the Proposition 40 grant and Proposition 50 grant are attached hereto as Exhibits A and B respectively.

6. Therefore, in order to meet the April and May 2011, deadlines the City must complete and close out the entire project prior to April of 2011. Thus, any injunction that is issued could cause the City to not complete the park on time, lose the grant funding, and possibly pay a construction claim. Delays may also result in additional costs due to claims and changes in conditions.

7. A preliminary injunction and the inability to complete the project could result in claims from the contractor that could be up to the total amount of the construction contract of one million, five-hundred, forty-eight thousand, four-hundred and seventy-five dollars and forty cents (\$1,548,475.40). A true and correct copy of the construction contract with Elite Landscaping,

Inc. is attached hereto as Exhibit C.
OAK #4812-7631-6167 VI

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8. The paving and addition of curbs to the parking lot, referred to by Plaintiff as the overflow parking area, is scheduled to occur during the second and third weeks in November, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the ~~11th day of November~~ Napa, California.

1 merits. (*Wilms v. Hard* (1951) 101 Cal.App.2d 811, 815.) As highlighted above, the Park Project
2 is an important public project for the entire community. To meet the deadlines provided in the two
3 state grants providing over \$2 million worth of funding to the Project, the City must complete and
4 close out the entire Project prior to April of 2011. (Tomko Decl., ¶6.) A preliminary injunction
5 pending a trial on the merits preventing the City from completing improvements to the easement
6 areas in which the City has use rights, could result in the City losing the entire grant funding,
7 having to defend claims from the contractor, and possibly be liable for immediate repayment of
8 amounts already disbursed by the State. (Tomko Decl., ¶7.) The completion of the Park and
9 receipt of grant funding most certainly qualifies as "a matter of significant public concern and
10 provisional injunctive relief which would deter or delay" the City from completing the project will
11 "entail a significant risk of harm to the public interest." (*Takeo Keys*, 23 Cal.App.4th at 1472-73.)

12 **IV. PLAINTIFF MUST BE REQUIRED TO PAY A BOND**

13 If this Court determines an injunction is appropriate, Plaintiff must be ordered to post a bond in
14 the amount of \$2.3 million under Code of Civil Procedure section 529, which reflects the amount
15 the City will likely lose if it cannot complete all of the Trancas Crossing Park Improvements by
16 April 2011. (Tomko Decl., ¶6.)

17 **V. CONCLUSION**

18 As the foregoing demonstrates, the Plaintiff has not met its burden of showing a likelihood of
19 success on the merits on its Fourth Cause of Action. Further, Plaintiff has failed to show any
20 immediate and irreparable harm justifying its Motion and the balance of hardships clearly weigh in
21 favor of the City. For these reasons, the City respectfully requests that the Court deny Plaintiff's
22 Motion.

23 Dated: **October 12, 2010.**

Burke, Williams & Sorensen, LLP

By: 

Benjamin L. Stock
Attorney for Defendant, CITY OF NAPA

Excerpt from City's contract with Elite Landscaping, Inc.
re. contract time. City issued the Notice to Proceed on 9/8/10.



DAMAGES

014101 - BEGINNING OF WORK AND TIME OF COMPLETION

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," and in Section 8-1.06, "Time of Completion," of the Standard Specifications and these special provisions.

The Contractor shall begin work within two (2) working days after receipt of the Notice to Proceed.

The Contractor shall diligently prosecute Phase 1 of the Work to completion before the expiration of fifty five (55) working days. Phase 1 includes all of the work except for the plant establishment period. Phase 2 is the plant establishment period. At the completion of Phase 1 of the Work as determined by the Engineer, Phase 2, a one hundred twenty (120) working day period will begin for plant establishment. The contract time will begin five (5) working days after the date of the Notice to Proceed or the first day of work by the Contractor, whichever occurs first.

All work within Phase 1 that is associated with bank grading and stabilization of Salvador Creek as shown on the plans or described in these Special Provisions shall only occur between August 1st and October 15th of any given year.

The Notice to Proceed will not be issued until the contract is properly executed, good and approved bonds are furnished, and all insurance requirements have been met and the certificates have been approved by the City. No work under this contract may commence until the City issues the Notice to Proceed.

Notify the City in writing, 48 hours prior to beginning work.

The City of Napa calendar of holidays shall be used to calculate working days, see Appendix G.

014102 - LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these Special Provisions. The Contractor shall pay to the City of Napa the sum of one thousand eight hundred (\$1800) per day, for each and every working day's delay in finishing the work in excess of the number of working days prescribed above for Phase 1. The Contractor shall pay to the City of Napa the sum of seven hundred fifty dollars (\$750) per day, for each and every working day's delay in finishing the work in excess of the number of working days prescribed above for Phase 2.



CITY of NAPA

PUBLIC WORKS DEPARTMENT
1600 First Street
Mailing Address:
P.O. Box 660
Napa, California 94559-0660
(707) 257-9520
FAX (707) 257-9522

September 8, 2010

Ken Reed

[REDACTED]

Subject: Trancas Crossing Park (PK04PW02)
Notice to Proceed

Dear Elite Landscaping, Inc.,

This letter serves as the Notice to Proceed for the subject project. In accordance with Section 01401, "Beginning of Work and Time of Completion," the contract time shall begin five (5) working days after receipt of the Notice to Proceed or the first day of work by the Contractor, whichever occurs first. Elite Landscaping, Inc. shall diligently prosecute the work of Phase 1 to completion before the expiration of fifty-five (55) working days.

If you have any questions or need additional information, please call me at (707) 257-9408.

Sincerely,

Mark A. Tomko, P.E.
Senior Civil Engineer
Construction Division

cc: Eric Whan, Deputy Director Public Works
Vern Godwyn, Construction Inspector
Dave Perazzo, Parks Superintendent

EXHIBIT A

Evidence of construction claim by Elite Landscaping, Inc. due to city's breach of contract.

From: Tomiko, Mark
To: MDea, Eric
Subject: RE: Trancas Crossing Park - Delay Change Order (\$250K)
Date: Tuesday, March 15, 2011, 3:05:00 PM

I plugged in the numbers and it does look like there is enough money in the total budget. I would need to verify my numbers with Elite and Perazzo.

Mark T.

From: Tomiko, Mark
Sent: Tuesday, March 15, 2011 2:49 PM
To: Whan, Eric
Subject: RE: Trancas Crossing Park - Delay Change Order (\$250K)

I was just looking at the budget and would need to run the numbers out to completion to determine if there is enough money. Right now it looks close. We should have about \$200K left in contingency due to the credit on the resin paving and about 40K-50K left in Project Admin. The other alternative is that we would pay Elite whatever is left.

Mark T.

From: Whan, Eric
Sent: Tuesday, March 15, 2011 2:23 PM
To: Tomiko, Mark
Subject: RE: Trancas Crossing Park - Delay Change Order (\$250K)

Question-

How is the \$250k change order to be paid? Does the project budget have enough in it to cover this claim as well as the \$58k that will be incurred for the trail move?

Eric B. Whan, P.E.
Deputy Public Works Director - Engineering
City of Napa
Public Works Department
1600 First Street
P.O. Box 660
Napa, CA 94558-0660
(707) 257-9634
(707) 257-9622 fax
awhan@cityofnapa.org

From: Tomiko, Mark
Sent: Tuesday, March 15, 2011 2:11 PM
To: Whan, Eric; Perazzo, David
Cc: Mazzuca, Larry
Subject: Trancas Crossing Park - Delay Change Order (\$250K)

I met with Elite Landscaping to clarify the Delay Change Order they are seeking due to the delays caused by the Rossi injunction (\$250K). The delays are broken into two

categories:

1. Direct Costs (\$105,000)
2. Indirect (Office Overhead) (\$166,000)

The direct costs as shown in the yellow box on Elite's Estimated Cost Impact to Date (Attached) is \$105,000. I need to obtain backup for the first two items but they do seem reasonable for changes that were created due to the delay and the changes made on the job.

The indirect costs of office overhead is often used in delay claims. The idea is that when a contractor bids a job, they estimate the overhead for the timeframe of the job. **Any days over the expected days is not covered in the bid and contractors can submit a claim.** There are several formulas to calculate this office overhead or extended overhead but the most universally used is the Eichleay formula. Applying the formula yields a cost of \$166,000 (See attached). This could go up or down depending on some assumptions.

The delay cost is \$271,000 and Elite is seeking \$250,000.

Options:

1. Pay Elite \$250K as part of a change order
2. Offer a lower amount (\$200K, \$225K) with the idea that they will not want to file a claim and will settle for something less.
3. Have Elite file a claim at the end of the job

My recommendation is to pay the \$250K as a change order. The dollar amount is reasonable (and can be justified) and Elite has been very responsive with all of the changes that have been made on this job. I will need to get more justification for some of the numbers quoted.

Please let me know how you want me to proceed.

Mark A. Tomko, P.E.
Construction Division, Public Works
City of Napa

Phone: (707) 257-8408

Cell: (707) 320-7143

Fax: (707) 257-9522

E-mail: mtomko@cityofnapa.org

Water Board's Enforcement Policy

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

✓ Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;¹
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs), Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

Step 1. Potential for Harm from Discharge Violations – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

✓ ¹ When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

2005 Grant Guidelines For Proposition 50 Funds

Incorporated by reference into the State grant agreement

II. RIVER PARKWAY PROJECTS

Eligible River Parkway Projects - The items below provide examples of Project elements which meet statutory conditions. (This is <u>not</u> a comprehensive list.)	Ineligible River Parkway Projects - The items below provide examples of Projects and elements that will <u>NOT</u> be funded under this program. (This is <u>not</u> a comprehensive list.)
<p><u>Recreation</u></p> <ul style="list-style-type: none"> • Create or expand trails for walking, bicycling and/or equestrian activities that are compatible with other conservation objectives. • Improve existing river parkways by providing amenities such as picnic and rest areas, shade ramadas, etc. • Provide river access for non-motorized activities such as fishing, canoeing, etc. • Acquire property along a river to be used for Compatible Recreational Opportunities such as picnics, nature viewing, etc. • Relocate or reconstruct existing trails to correct environmental damage. <p><u>Habitat</u></p> <ul style="list-style-type: none"> • Convert channelized streams or rivers to a more historical flow pattern that will promote the structure, function and dynamics of Riparian and Riverine habitat. • Acquire land that will be managed to increase the size and quality of existing Riparian Habitat. • Remove exotic and/or invasive plants along stream corridors that damage habitat. <p><u>Flood Management</u> - as part of a flood management plan or flood management project</p> <ul style="list-style-type: none"> • Expand existing River Parkway by acquiring adjacent lands to accommodate periodic flooding. • Restore land to natural floodplain forms, including wetland areas that will accommodate periodic flooding. • Acquire streamside parcels that have historically flooded to become a River Parkway. <p><u>Conversion to River Parkways</u></p> <ul style="list-style-type: none"> • Convert riverfront land from industrial use into multi-use areas such as floodplains, wetlands, public trails, etc. • Revitalize urban neighborhoods by removing abandoned structures along the riverfront to provide open space with river access for the public. • Acquire commercial or agricultural property along a riverfront to expand existing River Parkways. <p><u>Conservation and Interpretive Enhancements</u></p> <ul style="list-style-type: none"> • Construct an overlook area for a restored wetland with interpretive signage, where the public can observe the project benefits. • Construct a boardwalk adjacent to sensitive habitat to allow public viewing without disturbing flora or fauna. • Develop open-space areas such as demonstration gardens/basins that illustrate Restoration/conservation project benefits. • Provide informational displays, interpretive kiosks and signage to present information/maps about the River Parkway, its Restoration projects, wildlife, etc. • Construct small scale structures designed to secure kiosks and displays. 	<ul style="list-style-type: none"> • Projects that do not meet all statutory requirements. • Projects with no river or stream linkage. • Projects that include Acquisition of property that cannot be purchased at Fair Market Value. • Operations and maintenance projects. • Planning projects. • Programmatic projects, such as education and outreach. • Projects that exclusively fulfill mitigation requirements. • Active recreation projects (including playgrounds, skateboard parks, basketball courts and ball fields). • Recreational opportunities that are not compatible with the specific environment or location in which they are being situated. • Projects that upgrade, expand or facilitate motorized use of trails (even when used by non-motorized trail users). • Projects that create or improve roads for motorized use. • Projects that will not be completed in the allotted timelines. • Projects funding primarily infrastructure, which will not result in useable amenities for the public at the conclusion of the Project Performance Period. • Parking lots or bridges. (Parking areas may be funded only as a necessary but minor component of a larger Project that makes the River Parkway accessible to the public. Small bridges that provide non-motorized access over narrow portions of rivers/streams are permissible.) • Dredging behind dams to reduce siltation, or for other purposes. • Projects that construct multiple-use buildings, educational facilities or regional community centers. • Renovation or restoration of structures on converted riverfront land.

From: Mazzuca, Larry
To: Tomko, Mark
Cc: Mazzuca, Larry
Subject: RE: Trancas Crossing Park - Claim
Date: Thursday, December 30, 2010 8:54:55 AM

I wonder if Rossi can be held legally responsible for this.

LARRY MAZZUCA
Parks and Recreation Services Director
City of Napa
1100 West Street
Napa, CA 94933
Phone: 707-257-9523
napaparksmasterplan.org

From: Tomko, Mark
Sent: Thursday, December 30, 2010 8:25 AM
To: Mazzuca, Larry
Cc: Perazzo, David
Subject: RE: Trancas Crossing Park - Claim

Larry,

OK, I will include you in the e-mails regarding the claim on Trancas Crossing Park. I knew there would be a claim but I was not expecting it to be that high. I will need to investigate the claims process and possibly bring in an expert for some advice. Due to the legal action the City did delay the contractor and force them into the winter (we had to do this due to the funding deadlines) ✓

*The City failed to implement
Mitigation Measure B10-6 (B10-3)
because it was more concerned
about grant funding deadlines.*

Mark Tomko
Construction Division
From: Mazzuca, Larry
Sent: Wednesday, December 29, 2010 4:46 PM
To: Tomko, Mark
Cc: Perazzo, David
Subject: RE: Trancas Crossing Park - Claim

Mark,

Please include me in these emails.

LARRY MAZZUCA
Parks and Recreation Services Director
City of Napa
1100 West Street
Napa, CA 94933
Phone: 707-257-9523
napaparksmasterplan.org

From: Juliana Inman
To: Linda Kerr
Cc: Wilbur, Eric; LaRoche, Jack; Mori, Ellen; Bostic, Kara; Rowland, Steve; Cuddy, Steve
Subject: Re: Francis Crossing Park - Relocation of First Street Bridge
Date: Wednesday, July 28, 2010 9:10:47 AM

Hello Linda,

Thanks for bringing this up again. The contract for construction of the park has been approved, and it is financed with grant funds. There is a tight timeline for construction in order to keep the funds. I discussed the possibility of re-constructing the First Street Bridge to replace the sketchy concrete bridge over the Salvador channel with Jack LaRoche. The height of the roadbed would be much higher, possibly allowing handicapped access to the site without building the handicapped parking spaces north of the bridge. I asked questions about the design and the parking lot is located there because the slope of the walkway would have been too steep to comply with ADA, therefore the drive to the other parking space was added. I don't have a set of full size drawings so that I can look at the slopes.

At this point, such a change would require a change order for the project, or a subsequent project to re-build the bridge. Perhaps the project could be modified so that if the bridge re-build is at all feasible, it could be done as a follow-up project when funds are found to do the work. First step is to take a look at the grades and see if it will work at all.

I have added Steve Cuddy to the list above.

Thanks,

Juliana Inman

↳ Napa City Council member

Juliana Inman Architect

9

On 7/28/2010 8:53 AM, Linda Kerr wrote:

Certification

Mr. Larry Mazza
City of Napa

Page 4 of 6

certification. The completed short form and map showing the project boundaries shall be submitted electronically to habitatdata@waterboards.ca.gov or shall be submitted as a hard copy to both: 1) The Water Board (see the address on the letterhead), to the attention of Wetland Tracker; and 2) The San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA, 94621-1424, to the attention of Mike May;

7. This certification does not allow for the take, or incidental take, of any special status species. The Applicant shall utilize the appropriate protocols, as approved by the California Department of Fish and Game and/or the U.S. Fish and Wildlife Service, to ensure that project activities do not adversely impact water quality or the Beneficial Use of the Preservation of Rare and Endangered Species;

8. **The Mitigation and Monitoring Plan, as proposed in Attachment 4 of the Application, Mitigation and Monitoring Plan for the Franciscan Road Crossing Park Bank Stabilization and Restoration Plan, dated February 16, 2010, as amended May 10, 2010, shall be successfully completed. Any proposed changes to the Mitigation and Monitoring Plan must be approved in writing by the Water Board Executive Officer.**

9. The Applicant shall submit annual mitigation monitoring reports acceptable to the Water Board Executive Officer no later than July 15 of each year until the approved mitigation plan has been successfully completed, but for not less than a period of three years and not less than a period of two years after any mitigation habitat irrigation systems have been terminated. If the mitigation monitoring program indicates that establishment of the mitigation habitat is not progressing in a manner or rate consistent with that predicted in the Mitigation and Monitoring Plan, the annual mitigation monitoring reports shall evaluate the probable cause(s) of any problems and propose appropriate corrective measures. Proposed changes to the Mitigation and Monitoring Plan success criteria or timelines must be approved in writing by the Water Board Executive Officer;

10. The Applicant shall establish permanent photo-documentation points at both Project reaches, and both upstream and downstream of each reach, on both sides of Salvador Creek. The Applicant shall prepare site maps with the photo-documentation points clearly marked. Prior to implementing the Project, the Applicant shall photographically document the condition of the Project site. Following implementation of the Project, the Applicant shall photographically document the immediate post-construction condition of the site and submit a report to the Water Board including the pre-construction photographs, the post-construction photographs, and the map with the locations of the photo-documentation points;

11. Photos shall be taken at points required by Condition 10 and included in the annual reports to document the stabilization of the bed and banks and the progress on revegetation;

This was submitted to the Regional Board as part of the city's MMP.

Construction Avoidance Mitigation

A number of mitigation measures were identified in the MND to ensure avoidance of sensitive resources along the Salvador Creek and Napa River corridors. ~~Some of these measures have been expanded and refined to further define appropriate avoidance and protection measures as part of this MMP.~~ These refined avoidance measures are listed below and will be accomplished as part of project implementation.

Mitigation Measure BIO-1: Appropriate authorizations shall be obtained from the CDFG, Corps, and RWQCB for all in-channel activities, and all conditions required as part of any required agency authorization shall be implemented and adhered to as part of the project. The project contractor shall have copies of all agency authorizations available on-site, and shall comply with all conditions required by jurisdictional agencies.

Clearly, the City did not implement. Even the Regional Board determined the City violated the MSH General Permit and the Storm Water Permit.

Mitigation Measure BIO-2: Prior to trail construction, the location of proposed trails and other improvements will be evaluated to insure avoidance of the stands of native grassland and to minimize potential impacts on native trees including valley oak (*Quercus lobata*), coast live oak (*Quercus agrifolia*), black oak (*Quercus kelloggii*), California bay (*Umbellularia californica*), willow (*Salix* sp.), and California black walnut (*Juglans hindii*). To the maximum extent possible, the proposed multi-use trails and other open space improvements shall be sited outside the drip line of mature native trees. When there is no alternative alignment and trails pass through the drip line of these trees, no damage shall be made to tree roots from digging or other activities. If necessary, trees in close proximity to the trail or other trail features shall be trimmed in keeping with accepted arboricultural practices. Trail design and construction shall not alter the existing drainage, or result in water pooling within the drip line of trees. Stockpiling, staging and equipment storage within the drip line of a tree shall be prohibited. In addition, the alignment of trails and siting of other project features shall avoid all oak regeneration planting areas and visible oak seedlings. If oak trees or other native trees are removed or destroyed during construction, they shall be replaced as part of project revegetation at a ratio of three to one.

City cut down protected oak tree in violation of the WDFG Notification of Streambed Alteration Agreement

Mitigation Measure BIO-3: During construction the following measures shall be implemented to reduce indirect effects on riparian and wetland communities downstream and adjacent to the construction site.

- Prior to construction, the limits of construction in the vicinity of the wetland or riparian community will be established with construction fencing, installed under the supervision of a qualified biologist. The temporary construction fencing shall remain in place until construction is completed.
- Removal and trimming of native vegetation will be minimized.
- Construction will take place during the dry season.
- As needed, sites will be temporarily dewatered with sheet piles or cofferdams with flows directed through a bypass pipe. Dewatering will be of short

City Info/Response to Order for Technical Report

improbably false

Construction of Francis Crossing Park was complete on July 3, 2011, and was completed in accordance with the project plans and the project's Mitigation and Monitoring Plan. The stated construction activities and mitigation measures listed in the Mitigation and Monitoring Plan were followed during the construction.

The restoration plan for both stabilization sites was completed according to project plans, including:

- Removal of invasive and non-native species
- Hydroseeding and native plantings
- Installation of vegetated rock wall at Salvador Bridge site, including willow cuttings
- Grading, bank stabilization and willow cuttings at upper stabilization site
- Removal of existing concrete rubble from the channel bottom at the Salvador Bridge site

Monitoring will be provided in accordance with the Mitigation and Monitoring Plan. Condition of RWQCB certification (CIWQS Place No. 749715) states that the annual monitoring report will be provided on July 15th. Due to the timing of construction and the need to monitor and maintain, we are requesting that the annual reports be provided before December 31st. In addition, implementation of the Mitigation and Monitoring Plan will include additional plantings as requested by CDFG in three areas along the Niapa River.

A number of mitigation measures were identified in the MND to ensure avoidance of sensitive resources along the Salvador Creek and Niapa River corridors. Some of these measures were expanded and refined to further define appropriate avoidance and protection measures as part of the MMP. Mitigation Measures are in bold; responses are in italics.

Mitigation Measure BIO-1: Appropriate authorizations shall be obtained from the CDFG, Corps, and RWQCB for all in-channel activities, and all conditions required as part of any required agency authorization shall be implemented and adhered to as part of the project. The project contractor shall have copies of all agency authorizations available on-site, and ~~adhere to all conditions~~ *Permits were obtained for all in-channel activities. Contractor had copies available on-site during construction and was instructed to comply with all conditions.*

What about the Certificate of MSH General Permit or the Constructive Storm Water Permit?

Mitigation Measure BIO-2: Prior to trail construction, the location of proposed trails and other improvements will be evaluated to insure avoidance of the stands of native grassland and to minimize potential impacts on native trees including valley oak (*Quercus lobata*), coast live oak (*Quercus agrifolia*), black oak (*Quercus kelloggii*), California bay (*Umbellularia californica*), willow (*Salix* sp.) and California black walnut (*Juglans hindsi*). To the maximum extent possible, the proposed multi-use trails and other open space improvements shall be sited outside the drip line of mature native trees. When there is no alternative alignment and trails pass through the drip line of these trees, no damage shall be made to tree roots from digging or other activities. If necessary, trees in close proximity to the trail or other trail features shall be trimmed in keeping with accepted arboricultural practices. Trail design and construction shall not alter the existing drainage, or result in water pooling within the drip line of trees. Stockpiling, staging and equipment storage within the drip line of a tree shall be prohibited. In addition, the alignment of trails and siting of other project features shall avoid all oak regeneration planting areas and visible oak seedlings. If oak trees or other native trees are removed or destroyed during construction, they shall be replaced as part of project revegetation at a ratio of three to one.

Trail and other improvements were designed to limit impact to the existing landscape and avoid existing trees to the extent possible. The canal/leakage trail required maintaining a path through existing riparian trees to reach the water. The trail was field headed to minimize impact and to use existing information trails. Trail construction within the tree canopy is compacted earth to limit impact and avoid the need for removal of trees; other trails in the park are asphalt. Non-native trees and invasive plants were

TRANCAS CROSSING PARK & NAPA RIVER TRAIL
 DRAFT MITIGATED NEGATIVE DECLARATION AND INITIAL STUDY
 MITIGATION MONITORING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM (CONTINUED)

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
other trail features shall be trimmed in keeping with accepted arboricultural practices. Trail design and construction shall not alter the existing drainage, or result in water pooling within the drip line of trees. Stockpiling, staging and equipment storage within the drip line of a tree shall be prohibited. In addition, the alignment of trails and siting of other project features shall avoid all oak regeneration planting areas and visible oak seedlings. If oak trees or other native trees are removed or destroyed during construction, they shall be replaced as part of project revegetation at a ratio of three to one.					
<p>BIO-6. During construction, the following measures shall be implemented to reduce indirect effects on riparian and wetland communities downstream and adjacent to the construction site.</p> <ul style="list-style-type: none"> ◊ Prior to construction, the limits of construction in the vicinity of the wetland or riparian community will be established with construction fencing, installed under the supervision of a qualified biologist. The temporary construction fencing shall remain in place until construction is completed. ◊ Removal and trimming of native vegetation will be minimized. ◊ Construction will take place during the dry season. ◊ As needed, sites will be temporarily dewatered with sheet piles or coffer dams with flows directed through a bypass pipe. Dewatering will be of short duration and at a time of year that no special-status species are adversely impacted. ◊ Hazardous materials such as fuels, oils, solvents will be 	City/Project Biologist	Prior to issuance of grading permit and through the duration of construction ✓	City/Project Biologist	Avoidance fencing installed prior to grading and site inspections during construction	As needed prior to and during construction

Page 221 of 228

ENDORSED

MAR 10 2008

NOTICE-OF-DETERMINATION
CITY OF NAPA COMMUNITY RESOURCES DEPARTMENT
1100 WEST STREET, P.O. BOX 660, NAPA, CA 94559-0660

To: Office of Planning and Research
P.O. Box 3044, 1400 Tenth Street, Room 222
Sacramento, CA 95812-3044
Date received for filing:

JOHN TUJEUR
Napa County Agency, County Clerk
By ALLOHENSEN
DEPUTY RECORDER - CLERK

To: County Clerk
County of Napa
900 Coombs Street, Room 116
Napa, CA 94558

State Clearinghouse Number: 2007102004

Project Name: Trancaes Crossing Park and Napa River Trail
Lead Agency Contact Person: Monica Frutiger, Special Projects Consultant, (707) 257-9673
Location:

610 Old Trancaes Street
Napa, CA 94558
APN: 038-190-020 and 038-570-001 (segment)

Owner: City of Napa

Project Description: This project includes the establishment of a new 23-acre park along the Napa River and a trail connection to an existing segment of the Napa River Trail. The park and trail extension will provide riparian restoration and other habitat protection and enhancement measures, open space and floodplain protection, access to open space, walking and bicycling trails connecting to a city-wide trail system, a canoe/kayak put-in, natural resource information through interpretive features, and a new trailhead at the northern terminus of the Napa River Trail.

The project would require the City of Napa to amend the project site which is currently located outside the City's Sphere of Influence and process a zoning code update.

This is to advise that the City of Napa as the Lead Agency has approved the above-described project on March 4, 2008, and has made the following determinations regarding the above-described project:

The project will not have a significant effect on the environment.

A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.


Mitigation measures were made a condition of the approval of the project.

A statement of Overriding Considerations was not adopted for this project.

Findings were made pursuant to the provisions of CEQA.

This is to certify that the Negative Declaration and record of project approval are available to the public at:

City of Napa Community Resources Department, 1100 West Street, P.O. Box 660, Napa, CA 94559-0660


Larry Mazzuca
Community Resources Director
3/10/08
Date

RECEIVED
MAR 11 2008
STATE CLEARING HOUSE

California Public Resources Code Section 21081.6

Legal Research Home > California Laws > Public Resources Code > California Public Resources Code Section 21081.6

ASB Online This site is available here.

Search Law & Justice

to: When making the findings required by paragraph (1), of subsection (b) of section 21081, or when making a mitigation decision under section 21081.6, the following requirements shall apply:

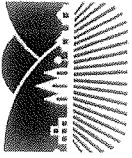
(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project at locations of present interest, assigned to identify or assess significant effects caused by the project or by recurring program activities. The program shall be designed to ensure compliance with the requirements of the project at the locations which have been required or incorporated into the reporting or monitoring program.

(2) The lead agency shall specify the location and subsection of the documents or other material which constitute the record of proceedings upon which its decision is based.

(3) The lead agency shall provide the necessary and appropriate information to the public regarding the project and the mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or standards which would address the significant effects on natural resources affected by the project. The project shall be subject to the natural resource impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency of agency having jurisdiction over natural resources affected by a project shall not be the basis for a finding that the project or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

Memorandum

City Manager's Office



City of Napa

To: City Council

From: Mike Parness, City Manager

Date: October 6, 2009

Re: Council Update

Announcements

City Clerk - Election Day is right around the corner and the City Clerk office is preparing for a fun night at "Election Night Central" here at City Hall on November 2nd. We're still in the "idea" phase so if anyone has some fun, fresh ideas, let us know. City Clerk is working with Napa High to get their "Jazz Band" on board, and as usual, Napa TV (NVTV) will be handling coverage. The Napa Register is going to stream NVTV activities during the evening. KVON will simulcast audio and NVTV will be streaming on their own site as well as airing on Comcast & AT&T cable. NVTV has already begun pre-taped interviews with several of the candidates, and 'man-on-the-street' interviews already filmed. Stay tuned!

Parks & Recreation Services

Francis E. Dawson - Alston Park Fund - In 2008 the City was notified by the Napa Valley Community Foundation that Francis E. Dawson created a Trust Fund for Alston Park. The NVCF is responsible for managing the trust. The Trust would be funded from proceeds derived from the Return on Investment from the Trust. NVCF estimated that approximately \$30,000 annually would be provided to the City from the Trust for additional maintenance efforts at Alston Park.

In 2009, the first year the City anticipated receiving proceeds from the Trust, the City was informed by the NVCF that due in large part to the poor economy, no revenue from the Return on Investment would be provided to the City of Napa.

Recently the City received its 2010 notice from NVCF that once again the City would not receive proceeds from the Trust due to lack of revenue derived from Trust investments. It should be noted that the Trust has a current June 30, 2010 balance of \$558,289 of which it only generated \$4,039.68 in Return on Investments. From this amount, NVCF paid itself \$2,794.36 for administering the Trust.

Klamath Park Play Equipment Removal - Located at 3999 Klamath Way (near Trower Ave.), the playground equipment at this park had to be removed by staff as the platform and slide failed during a routine inspection. The equipment is 20 years old. The manufacturer reviewed the equipment and informed staff that replacement parts no longer are available for this equipment. Prior to removal of the equipment, Klamath Park was No. 6 on the park playground equipment replacement list. Because

the entire structure was removed, Klamath will move up to No. 1 on the replacement list. Staff's goal is to address this issue as soon as funding has been identified. Hopefully the new equipment will be installed spring 2011.

Trancas Crossing Park Construction Update - Work on the park is moving forward. The contractor is performing all the "in the water" work in Salvador Creek. This consists of non-native vegetation removal and installation of a rock wall along the creek bank. This work has to be completed by October 15, 2010. Efforts will then move forward with the construction of the rest of the park, which will start back up in spring 2011.



Soscol Avenue Tree Issue - In a joint effort, the Parks and Recreation Services and Public Works Departments, along with the Redevelopment Agency are addressing the future removal of 18 street trees and sidewalk, curb and gutter repair as part of the cost share program. The location of this project is near the Jimmy Vasser Chevrolet Dealership along Soscol Avenue. The Agency has indicated that this is in the current project area and will provide one-half the funding as it will improve sidewalk, add curb ramps and add new trees. The remainder of the project cost will come from the cost share program. If the work were to be performed using outside contractors, it would exceed \$100,000. However, doing this work using City staff from Parks and Public Works Department's will result in a significant money savings, therefore, the work will be done in-house. This project will begin in November after the Public Works paving project is done for the season. It will be done in phases over a period of time so that all of the businesses in the area will not be impacted at the same time.

Public Works

Materials Diversion (Recycling) Division

AB 2398 & AB 1343 - Two significant bills related to solid waste and recycling were signed into law by the Governor last week. These bills are as follows:

- **AB 2398 (Perez)**; Establishes Extended Producer Responsibility (EPR) for carpet.
- **AB 1343 (Huffman)**; Establishes Extended Producer Responsibility (EPR) for paint.

According to the California Product Stewardship Council, paint collection costs local California government \$27 million per year and waste carpets represents approximately 3.2% of the disposal volume in state landfill. Per City Council Resolution R2009-133 supporting Expanded Producer Responsibility (EPR) legislation, the City sent in letters of support for the AB 2398 (Carpet EPR) and AB 1343 (Paint EPR). In addition to the carpet and paint EPR recycling bills, the Governor also

11, 2011; a set of undated and unlabelled Park Project BMP photographs; a Park Project map including the delineation of Section 404 jurisdictional waters; photographs of the dewatering activities; inspection forms dated October 21, 2010, through February 15, 2011; and a set of incomplete REAPs, including incomplete inspection forms and sampling results.

9. After reviewing the City's July 15, 2011, response, Regional Water Board staff determined that the City violated the Construction Storm Water Permit and its Certification by failing to do the following:

[Construction Storm Water Permit]

- a. Obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project;
- b. Amend and certify the SWPPP and each amendment throughout the various stages of the Park Project;
- c. Adequately maintain and document maintenance of BMPs;
- d. Perform all required qualifying rain event inspections; and
- e. Perform all required qualifying rain event sampling and analysis.

[Certification]

- f. Document implementation and maintenance of adequate BMPs;

- g. Obtain an approved dewatering plan prior to the start of construction;
- h. Submit the Short Form within 14 days of issuance of the Certification;
- i. Establish and document upstream and downstream photo-documentation points; and
- j. Submit the annual monitoring report.

Staff communicated these violations to the City in a letter dated August 19, 2011.

10. The City violated applicable sections of the Construction Storm Water Permit, its Certification, and the MS4 General Permit. These are violations for which the Regional Water Board may impose administrative civil liability pursuant to CWC section 13385(a)(2) and (c), on a daily basis, not to exceed \$10,000 for each violation for each day in which the violation occurs. The authority and process for imposing civil liability are set forth in CWC section 13323.

City failed to successfully implement BIO-1 of the mmp which is a violation of the certification.