

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

Comments Re. Proposed Settlement & Stipulated Administrative Civil Liability-City of Napa, Trancas Crossing Park project

I am the property owner north of the Trancas Crossing Park and have watched the City of Napa develop the project starting in September 2010 and continuing throughout the winter months. You have ample evidence of the City of Napa violating Mitigation Measure BIO 3 which states that construction would be in the dry season. In fact Mr. Parness, the City Manager, told the City Council and the Mayor that all work would stop in October and start up again in the spring, while at the same time giving Elite Construction the go ahead to start excavating throughout the wet season in the floodway. He did this for two reasons: 1) keeping the grant funds, which were over 2 million dollars and 2) avoiding construction claims from Elite Construction, up to approximately 1.5 million. As you can see, over 3.5 million dollars were at stake. It is very obvious that they derived an economic benefit by illegally starting construction early without permit coverage and continuing to work throughout the wet season. The City had no regard for the environment and the wildlife - the 2.3 million in grant funds were more important. In fact, the Water Board received photos showing at least 2 locations where the City did unpermitted work. The City of Napa, starting with the Mayor, Council, Public Works, and the City Manager were all made aware of the violations but continued on in the name of grant funds. Once again, there is ample evidence that has been provided to the State Water Board regarding this as well as illegally raising the base flood elevation level during the construction process. This has all been documented and I would encourage the Water Board to request all documents of all the complaints by the public & surrounding neighbors, all correspondence from City Staff, as well as logging online to view the City Council meeting in May 2011. What you will see is a City out of control that was willing to sweep all the violations and concerns from the public under the carpet, calling it "hearsay", and that they had more faith in their staff (the same staff that allowed all the illegal work to continue throughout the winter months.) City code enforcement was e-mailed during the construction in the wet season only to be told they would do nothing about it and it would be referred back to Jack LaRochelle, Public Works Director, who once again turned his head and let all the destruction to the environment and habitat continue.

The City operated heavy equipment in surface rain waters, the coffer dam they set up was not functioning properly for several days and they were doing work in standing water (I believe a copy of the City's biologist e-mail was sent to you in June confirming this is what happened), they put tarps on the disturbed Salvador banks and called it "erosion control," they left a huge pile of spoils (dirt and sediment) near the Salvador Creek in rainy conditions, they removed asphalt of the trail and left the piles of asphalt to be washed by the rain, they worked in extremely muddy conditions and during rainy weather, they graded and removed vegetation along the Napa River where they were not permitted to do so (CDFG knows this and required mitigation plantings), they stored chemicals where they weren't supposed to, they did not hydroseed the disturbed banks until months after the rainy season was underway (in March 2011), they did not implement required CEQA mitigation measures, and the list goes on. I personally witnessed these things. Why is the Board giving them a free pass on this considering all the evidence against them? It's a fact that CDFG was aware of the tarps on the bank, etc.

Before you issued the City of Napa certification, floodway issues were brought to your attention and all the surrounding property owners are very concerned because the City of Napa raised the base flood elevation levels during the construction of Trancas Park. In fact, all the spoils that were removed from the permitted area in the Salvador Channel were dispersed adjacent to my property (approximately 550 cubic yards) instead of being removed from the floodway, as required by the City's own mass balance calculation done by its consultant, Reichers Spence & Associates. Spoils at the entrance of the park located in the flood zone were used for fill in the turnaround in the floodway, plus over 1000 yards of asphalt, concrete, boulders, base rock and riprap were added to the floodway, not to mention a row of redwood trees (which the City told the Board would not be planted). The City of Napa was required to document and have all haul records available, and once again the City has no proof of what was removed from the floodway, is that a surprise? I would recommend to the Water Board this be investigated, and you will see that the City of Napa and West Consulting manipulated the floodway analysis to fit their project so there would be a no rise in the base flood elevation. Once again there is ample evidence to back up my claim, just ask for all the records the City of Napa has regarding this.

Any private citizen in the Napa Valley who did what the City of Napa did would have a maximum fine levied on them, wrote up for a violation, and referred to the District Attorney's office for prosecution. A \$20,000 dollar fine and not being held responsible for their illegal activity will only encourage them to do it again should they be put in the same situation. In conclusion I am requesting the Water Board have a hearing, hold them legally accountable, and give the City of Napa a heavy fine so they can think twice before doing it again.

Sincerely,

Steve Brown

Hi Laurie, I have 2 e-mails that I would like to submit e-mail as well

Sincerely,

Steve

-----Original Message-----

From: Hamer, Jane <jhamer@cityofnapa.org>

To: [REDACTED]>

Sent: Wed, Mar 16, 2011 2:41 pm

Subject: RE: Violation in Progress...Please Help

Mr. Brown:

Thank you for your re-mail. It is my understanding that Public Works is fully apprised of your assertions regarding the work at the park site, and will be responding directly to you. Code Enforcement will not be involved in this matter.

*Jane Hamer
Code Enforcement Officer
Community Development Department
City of Napa
1600 First Street
Napa, California 94559
Ph: 707.257.9326
Fax: 707.257.9522*

From: [REDACTED]

Sent: Wednesday, March 16, 2011 2:07 PM

To: Hamer, Jane

Subject: Re: Violation in Progress...Please Help

Ms. Hamer,

The Public Works Department has not addressed the issue. It is raining today, and again the City is still doing construction. Please help, and please respond to this e-mail. The violation is currently occurring.

Thank you,

Steve Brown

Thank you for your e-mail. In speaking with City Public Works staff just now I was informed that the city has been made aware of this issue via an e-mail of yours sent to another department. Please be assured that the issue is being addressed by Public Works.

*Jane Hamer
Code Enforcement Officer
Community Development Department
City of Napa
1600 First Street
Napa, California 94559
Ph: 707.257.9326*

Fax: 707.257.9522

From: stukkosteve@aol.com [mailto:stukkosteve@aol.com]
Sent: Monday, March 14, 2011 3:40 PM
To: Fortune, Gregory
Cc: Hamer, Jane; Chechourka, Tina
Subject: Violation in Progress...Please Help

To Code Enforcement Officers:

The City is violating the terms of its adopted Mitigated Negative Declaration for the Trancas Crossing Project, located at 610 Old Trancas Street and continues to refuse to implement its own CEQA Mitigation Measures for the Project.

At the moment, the City is violating Mitiation Measure BIO-3 (also labeled Mitigation Measure BIO-6 in the City's Mitigation and Monitoring Program). Accoring to the adopted MND, the City is required to implement this mitigation measure which states in no uncertain terms that construction will take during the dry season.

We are currently in the rainy season, and City contractors are at the project site doing construction in the rain. The violation is in progress. Please respond as soon as possible.

Thank you.

Respectfully,

Steve Brown

-----Original Message-----

From: Hamer, Jane <jhamer@cityofnapa.org>
To: ~~stukkosteve@aol.com~~ <stukkosteve@aol.com>
Cc: Chechourka, Tina <tchechourka@cityofnapa.org>; Fortune, Gregory <gfortune@cityofnapa.org>; Perazzo, David <dperazzo@cityofnapa.org>; Andrilla, Mark <mandrilla@cityofnapa.org>
Sent: Mon, Mar 14, 2011 4:04 pm
Subject: RE: Violation in Progress...Please Help

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Thank you.

Respectfully,

Steve Brown

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=

Hi Laurie, this is the final e-mail that I would also like to submit to the Board for comments

Sincerely,

Steve

-----Original Message-----

From: steve@hickson.com

To: steve@hickson.com; dperazo <dperazo@cityofnapa.org>

Cc: Roberta.A.Morganstern <Roberta.A.Morganstern@usace.army.mil>; Sean_Mann <Sean_Mann@fws.gov>; Chris_Nagano <Chris_Nagano@fws.gov>; sgilmore <sgilmore@dfg.ca.gov>; gmartinelli <gmartinelli@dfg.ca.gov>; dana.brazelton <dana.brazelton@resources.ca.gov>; bryan.cash <bryan.cash@resources.ca.gov>; fhetzl <fhetzl@waterboards.ca.gov>; Laurie.A.Monarres <Laurie.A.Monarres@usace.army.mil>; Stateboard401 <Stateboard401@waterboards.ca.gov>; Holly.N.Costa <Holly.N.Costa@spd02.usace.army.mil>; Jane.M.Hicks <Jane.M.Hicks@usace.army.mil>; Cameron.L.Johnson <Cameron.L.Johnson@usace.army.mil>

Sent: Wed, Mar 16, 2011 2:12 pm

Subject: Re: City of Napa Is Not Implementing Its CEQA Mitigation Measures for Trancas Crossing Park Project

Dear Mr. Perazzo:

I just received your initial response, and I am very disappointed. Clearly, the City does not wish to take responsibility for its wrongful actions or address why it is constructing its project during the rainy season (October 15, 2010 to April 15, 2011) in violation of its adopted CEQA Mitigation Measure BIO-6 (also referred to as Mitigation Measure BIO-3 in the City's written correspondence to State and Federal agencies).

In your response you stated, "There has been some erosion issues up stream of the project area in the Salvador Channel as a result of natural occurrence of heavy flow of water and trees failing due to undermining from that flow."

It appears you are insinuating that the City did not do any work whatsoever in the area where the severe bank erosion occurred. In fact, the City did invasive species removal work in that specific location; the City's contractor aggressively sprayed the invasive Himalyan blackberry thickets embedded along the banks there. Notably, the spraying of this location along Salvador Creek is consistent with the City's prior communications to the California Department of Fish and Game (CDFG) in which the City stated that work would be done along the **entire** Salvador Creek Corridor. In an e-mail sent to CDFG, the City's biologist, James Martin of Environmental Collaborative, stated the following:

"Again, regarding the project and determining the appropriate fee, the habitat restoration work will extend along the entire Salvador Creek corridor, connecting and extending beyond the two bank stabilization areas. This includes removal of invasive species and planting of natives along the entire creek corridor."

The erosion started from the top of the bank, and it was caused by the City's extensive removal of Himalayan blackberry and other invasive species in this location and the City's subsequent failure to implement its mitigation measures adopted pursuant to CEQA as well as measures in its Stormwater Pollution Prevention Plan to prevent and control erosion. Even the CDFG has indicated that the City's contractor has had several compliance issues with the Streambed Alteration Agreement for the project along Salvador Creek. CDFG biologists can attest to the fact that the City's contractors did not implement required erosion control measures to stabilize disturbed banks. The contractor threw a few tarps over the banks along Salvador Creek and then failed to re-vegetate as required.

You stated, "We want to assure everyone that the contractor has been testing the water quality upstream and downstream of the site and indicated the water quality had improved."

Water degradation has occurred - just look at the attached photos showing the severely eroded bank and the substantial amount of soil, sediment, and debris blocking Salvador Creek Channel. The photos speak for themselves. Furthermore, the contractor who supposedly tested the water is the same contractor who violated the Streambed Alteration Agreement, who failed to implement required erosion control measures per the MND and SWPPP, and who caused the water degradation in the first place. I believe it would be more appropriate to have a representative or biologist from the California Regional Water Quality Control Board test the water instead of relying on the City's highly questionable, self-serving assurances.

The City has demonstrated a pattern of failing to implement its adopted CEQA mitigation measures. It started when the City attempted to avoid consultation with the U.S. Fish and Wildlife Service (USFWS) regarding special-status species even though it was required to consult with the Service per its adopted CEQA Mitigation Measure BIO-3. Fortunately, a concerned citizen notified the Service, and the Service responded in a prompt and appropriate manner to ensure the Mitigation Measure BIO-3 was implemented. Had the Service not been notified by a vigilant citizen, the City, on the advice of its biologist (with whom it now wishes to consult about the issues raised in this e-mail) would have broken ground on the project without consulting the Service.

It is documented that the City failed to implement its adopted CEQA Mitigation Measure BIO-6 when it constructed its project throughout the rainy season and when it failed to stabilize the streambanks with native plants, hydroseeding, or other means to prevent erosion as defined in the SWPPP for the project. It is documented that the City failed to implement its adopted Mitigation Measure GEO-3 when it did not hydroseed disturbed slopes by October 1, 2010; in fact it was still altering the banks of Salvador Creek with heavy equipment in October 2010. Further, there was no growth established by November 1, 2010, as required per this mitigation measure, because construction was still taking place along the slopes. These are just a few examples; there are more.

You stated, "All of the recent activities being performed on site are related to construction of the park are only being performed as part of the project."

The City was recently removing over 400 feet of asphalt near sensitive wetland and riparian habitat while it was raining; this was not part of the construction plans for the park. Furthermore, I along with others, witnessed the City do unauthorized, undisclosed, unpermitted work with heavy equipment along the Napa River during the rainy season.

During the process, special-status species were most likely harmed considering the nature and location of the unauthorized construction activities and the time of year they occurred.

Finally, why are you and every other City official, including the City Attorney, City Manager, Project Manager, Public Works Engineer, and Code Enforcement, avoiding the implementation of adopted CEQA Mitigation Measure BIO-6 in the City's MND? It clearly states construction will take place during the dry season. Apparently, the City has decided it is going to continue constructing its project during the rainy season until the project is complete. This is wrong, and it sends the wrong message to the public, i.e. the City can break the rules when it benefits the City.

Sincerely,

Steve Brown

-----Original Message-----

From: Perazzo, David

Sent: Friday, March 11, 2011 4:56 PM

To: Finigan, Monica;

Cc: Roberta.A.Morganstern@usace.army.mil; [Sean Mann@fws.gov](mailto:Sean.Mann@fws.gov);

[Chris Nagano@fws.gov](mailto:Chris.Nagano@fws.gov); sgilmore@dfg.ca.gov; gmartinelli@dfg.ca.gov;

dana.brazelton@resources.ca.gov; bryan.cash@resources.ca.gov;

fhetzel@waterboards.ca.gov; Laurie.A.Monarres@usace.army.mil;

Stateboard401@waterboards.ca.gov; Holly.N.Costa@spd02.usace.army.mil;

Jane.M.Hicks@usace.army.mil; Cameron.L.Johnson@usace.army.mil; Tomko, Mark;

Mazzuca, Larry; LaRoche, Jack; Barrett, Michael; Andrilla, Mark

Subject: RE: City of Napa is not Implementing its CEQA Mitigation Measures for
the Trancas Crossing Park Project

The City is looking into the allegations that were presented in this email.

We want to assure everyone that the contractor has been testing the water quality upstream and downstream of the site and indicated the water quality had

improved. The comment that, "...substantial environmental damage has been done

including the degradation of water quality in the Napa River and Salvador Creek

channels due to large amounts of silt and sediment entering the waterways, serious erosion along the banks of Salvador Creek, blockage of flow in Salvador

Creek, and harm to special-status species" has not occurred to our knowledge and

is not a result of the project.

There has been some erosion issues up stream of the project area in the Salvador

Channel as a result of natural occurrence of heavy flow of water and trees failing due to undermining from that flow. In addition local wildlife as

assisted with this natural process, apparently a beaver, has created a natural dam and felled some trees on its own within the Salvador Channel.

All of the recent activities being performed on site are related to construction of the park are only being performed as part of the project.

As our biologist who assisted in developing the mitigation measures and assisted with the permit approval process is unavailable at this time, the City will have a more thorough response to these remaining concerns next week.

David M. Perazzo
Parks Superintendent
City of Napa
Parks & Recreation Services Dept.
1100 West Street Napa, CA 94559
Phone (707) 257-9234 Fax (707) 257-9532
dperazzo@cityofnapa.org www.cityofnapa.org

"Dedicated to improving the quality of life for the community by providing exceptional programs, facilities and services."

-----Original Message-----

From: Finigan, Monica
Sent: Thursday, March 10, 2011 3:18 PM
To: ~~Stateboard401@waterboards.ca.gov~~
Cc: Roberta.A.Morganstern@usace.army.mil; Sean.Mann@fws.gov;
Chris.Nagano@fws.gov; sgilmore@dfg.ca.gov; gmartinelli@dfg.ca.gov;
dana.brazelton@resources.ca.gov; bryan.cash@resources.ca.gov;
fhetzel@waterboards.ca.gov; Laurie.A.Monarres@usace.army.mil;
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Jane.M.Hicks@usace.army.mil; Cameron.L.Johnson@usace.army.mil; Perazzo,
David;
Tomko, Mark
Subject: RE: City of Napa is not Implementing its CEQA Mitigation Measures for the Trancas Crossing Park Project

Mr. Brown,

I am referring your e-mail to Dave Perazzo, Parks Superintendent and Mark Tomko, PW Engineering Project Manager for a response. These two persons work directly on the this project and would be better able to respond to your question. I am a consultant and only work on this project in a very limited capacity related to grants.

Sincerely,

Monica Finigan

From: [REDACTED]
Sent: Thursday, March 10, 2011 11:24 AM
To: Finigan, Monica
Cc: Roberta.A.Morganstern@usace.army.mil; Sean Mann@fws.gov;
Chris Nagano@fws.gov; sgilmore@dfg.ca.gov; gmartinelli@dfg.ca.gov;
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Jane.M.Hicks@usace.army.mil; Cameron.L.Johnson@usace.army.mil
Subject: City of Napa is not Implementing its CEQA Mitigation Measures for
the
Trancas Crossing Park Project

Ms. Finigan:

Why is the City engaging in construction today when it is the rainy season, the ground is wet, and it's raining? The City has been constructing all during the rainy season, and it is just not right. I have notified the City on more than one occasion, but the City continues to violate its CEQA mitigation measures.

In the City's Mitigation Measure BIO-3 (also known as BIO-6 in the City's Mitigation and Monitoring Plan), it states in no uncertain terms that construction will take place during the dry season. ~~Further, it states that the~~ City shall implement this mitigation measure to mitigate potentially-significant environmental impacts on riparian and wetland communities on and adjacent to the construction site.

This mitigation measure was included in the City's applications for permits to the U.S. Army Corps of Engineers, the California Regional Water Quality Control Board, and the California Department of Fish and Game, as well as in written communications to the U.S. Fish and Wildlife Service. Moreover, the construction activities that the City is engaging in today and for the past three days were not part of the project, and their impacts were never considered pursuant to CEQA.

Please note, this is just one of many examples of the City not implementing required mitigation measures, which it adopted pursuant to CEQA and submitted to State and Federal agencies. As a consequence of the City not following through with its CEQA mitigation measures, substantial environmental damage has been done including the degradation of water quality in the Napa River and Salvador Creek channels due to large amounts of silt and sediment entering the waterways, serious erosion along the banks of Salvador Creek, blockage of flow in Salvador

Creek, and harm to special-status species.

Please stop construction immediately, and resume during the dry season as mandated by the City's CEQA Mitigation Measure BIO-3 (a.k.a. MM BIO-6). Please respond to this e-mail promptly, as time is of the essence.

Thank you.

Respectfully,

Steve Brown

-----Original Message-----

From: Finigan, Monica <mfinigan@cityofnapa.org>
To: Perazzo, David <dperazzo@cityofnapa.org>; ~~stlbrstave@aol.com; stlbrstave@aol.com~~
Cc: Roberta.A.Morganstern@usace.army.mil <Roberta.A.Morganstern@usace.army.mil>;
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<bryan.cash@resources.ca.gov>; fhetzel@waterboards.ca.gov <fhetzel@waterboards.ca.gov>;
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<Cameron.L.Johnson@usace.army.mil>; Tomko, Mark <mtomko@cityofnapa.org>; Mazzuca, Larry
<lmazzuca@cityofnapa.org>; LaRochelle, Jack <jlarochelle@cityofnapa.org>; Barrett, Michael
<mbarrett@cityofnapa.org>; Andrilla, Mark <mandrilla@cityofnapa.org>
Sent: Mon, Mar 14, 2011 4:38 pm
Subject: RE: City of Napa is not Implementing its CEQA Mitigation Measures for the Trancas Crossing Park Project

Here it is.

-----Original Message-----

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