

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

IN THE MATTER OF:

**CITY OF SANTA CRUZ
DELAVEAGA GOLF COURSE**

Complaint No. R3-2005-0067

For

Administrative Civil Liability

I. INTRODUCTION

The City of Santa Cruz (City) devoted substantial resources – approximately 10% of overall project budget – and made a significant, sustained effort to achieve full compliance with the National Pollutant Discharge Elimination System General Permit No. CA 000002 (Permit) during what proved to be the wettest winter in years. Under extremely challenging conditions, the City implemented and maintained a variety of Best Management Practices (BMPs) that protected Branciforte Creek and Arana Creek by containing nearly all sediment within the 10-acre project area. The City also did its best to respond to and fully cooperate with the Central Coast Regional Water Quality Control Board (Water Board) during the DeLaveaga Golf Course renovation. Following the Water Board's initial December 8, 2004 inspection, the City immediately acted to correct the issues identified by Water Board staff. Following the Water Board's subsequent January 12, 2005 inspection, the City promptly notified the Water Board of its corrective actions and provided the requested documentation and, receiving no response from the Water Board, assumed that its response was satisfactory. The City is proud of its successful efforts to prevent storm water pollution during the project and looks forward to sharing a detailed presentation of these efforts at the July 7th Water Board meeting.

In Section II of this brief, the City offers detailed responses to each of the alleged Permit violations and explains the difficulties experienced during the renovation project. In Section III, the City offers a number of possible settlement points/proposals that build upon the City's ongoing efforts to protect and rehabilitate the Arana Gulch Watershed. Section IV explains why the City believes the proposed liability of \$150,000 is unfounded, excessive and fails to take into account a number of significant mitigating factors not addressed in the Administrative Civil Liability Complaint (Complaint). Finally, Section V states for the record objections to certain irregularities of these proceedings which call into question the impartiality and objectivity of the Water Board acting in its present adjudicatory capacity.

II. RESPONSES TO ALLEGATIONS

As an initial matter and global objection, the City disputes each and every allegation stated in the Complaint to the extent it seeks to hold the City liable based on a "zero tolerance" policy regarding erosion and sediment control that is more stringent than the Permit requires. According to the Permit, the overarching objective of the Storm Water Pollution Prevention Plan (SWPPP) is to "*reduce* or eliminate sediment and other pollutants in storm water as well as nonstorm water discharges." (Italics added.) (Permit Fact Sheet, p. 5.) The City at all times complied with this standard by successfully reducing sediments and protecting area waterways through its implementation and maintenance of a variety of BMPs throughout the project area including silt fences, sediment basins, fiber rolls, plastic sheeting, turf bioswales, sandbagging, sediment filtration systems, and others.

A. General Allegations

Allegation No. 5 states that the DeLaveaga Golf Course renovation project disturbed "up to 28.43 acres." This figure is incorrect. It is important to clarify that the project was significantly reduced from the original 28.43 acres (which was stated in the City's September 16, 2004 Notice of Intent) to less than 10 acres. (See City's Amended SWPPP, Appendix A.)

B. Alleged SWPPP Violations

1. **SWPPP was not certified. (*Dates of alleged violation: 9.20.04 through 4.04.05*)**

This allegation is repeated numerous times in the Complaint but is unfounded. The City's Superintendent of Parks Steve Hammack signed the original SWPPP on August 6, 2004. He will attest to this fact at the hearing. The City therefore complied with Permit's certification requirement. (Permit, Section C items 9a. and 9b.) Although the copy of the SWPPP which Water Board staff inspected onsite on December 8, 2004 apparently did not include a copy of the SWPPP's signed certification page, Section A item 3 of the Permit does not require that the executed copy of the SWPPP to be maintained onsite; it only requires that a copy of the SWPPP remain onsite. Because the copy of the SWPPP inspected onsite was identical to the signed copy of the SWPPP except for the certification page, this alleged violation is immaterial. Moreover, although the Complaint alleges that the violation continued from September 20, 2004 through April 4, 2005, the Complaint also acknowledges that the City signed its amended SWPPP on January 14, 2004. (See Complaint at p. 3.) Consequently, the violation, if any, did not span the duration of the project as alleged.

2. **SWPPP did not include amended site map to document decision to use fewer fiber rolls than prescribed in original version. (*Dates of alleged violation: 9.20.04 through 4.04.05*)**

The City always kept track of the changes that needed to be made to its site map and on January 24, 2005 submitted a revised site map to the Water Board pursuant to its request. The City submitted another revised site map to the Water Board on April 5, 2005 reflecting subsequent changes. The City's actions were consistent with Section A item 4 Permit which requires the submission of a revised SWPPP upon request of the Water Board.

B. Alleged Pollution Violations

1. Gasoline containers observed outside a storage shed. (Date of alleged violation: 12.08.04)

No gasoline was released from the containers and this minor oversight was immediately corrected. On the topic of pollutants, the City takes this opportunity to inform the Water Board of its voluntarily efforts to minimize the risk for pollutant-caused impacts during the project: the City required the project's contractor to refuel its vehicles at the City's offsite fueling station instead of allowing the contractor to refuel onsite.

2. Variety of chemical containers and batteries exposed to rain and runoff. (Date of alleged violation: 1.12.05)

No pollutants were released from the containers and this minor oversight was immediately corrected.

C. Alleged Erosion Control Violations

1. SWPPP did not clearly specify that erosion control method EC10 (Planting and Seeding) to be used after grading completion and after construction completion. (Dates of alleged violation: 9.20.04 through 4.04.05)

This allegation is unfounded. The Permit does not require the SWPPP to state that EC10 must be implemented as a temporary erosion control measure. (See Permit, Section A item 6.) Nevertheless, as the Complaint acknowledges, the City's SWPPP lists EC10 as one of many potential BMPs that could be used as a temporary erosion control measure during the project. In fact, the City sodded disturbed areas as soon as possible following grading, and implemented a variety of other BMPs for controlling erosion during the project. The City increased its project cost by \$15,000 for additional sodding.

2. "Large areas" of exposed soil with no erosion control. Lack of controls contributed to silt fence failures at Greens Complexes 5 and 18, and "various tees." (Date of alleged violation: 12.08.04)

As of the December 8, 2004 visit, the City had not yet deployed fiber rolls on Holes 5 and 18 because the City had planned to lay permanent sod on those areas. Those plans were unfortunately interrupted by the torrential rainstorm that began on December 7 and continued through December 8. Nevertheless, the City had implemented other BMPs on Holes 5 and 18 as of December 8, including multiple layers of silt fencing and turf bioswales. Even though five inches of rain fell on December 7 and 8, these BMPs successfully contained nearly all sediment within the area's silt fence-lined perimeter, and no sediment migrated down canyon to Arana Creek. Fiber rolls and additional silt fencing were subsequently deployed on December 9 as documented in the City's January 24, 2005 letter to the Water Board.

3. **"Disturbed areas" had no erosion controls covering erodible soil. Represents failure to implement effective combination of erosion and sediment controls. (Date of alleged violation: 1.12.05)**

This allegation is unfounded. As is recognized elsewhere in the Complaint, the City installed fiber rolls throughout the project area following the initial December 8, 2004 visit as documented in the City's January 24, 2005 letter to the Water Board.

D. Alleged Sediment Control Violations

1. **"Several" discharges of sediment-laden water from failing silt fences along the site perimeter. (Date of alleged violation: 12.08.04)**

Due to the five inches of rain that fell on December 7 and 8, certain silt fences at Holes 5 and 18 were overwhelmed by sediment. Yet even under these difficult conditions, very little sediment extended beyond the silt fence-lined project perimeter and none migrated down canyon to Arana Creek. The overwhelmed silt fences were immediately repaired as conditions safely permitted on December 9, 2004, and additional redundant fencing was added in high pressure areas.

2. **Drain at Greens Complex 18 lacked sediment controls. (Date of alleged violation: 12.08.04)**

Filter fabric and sandbags were installed on and around drain on December 9, 2004. In addition, silt fencing and fiber rolls were installed above the drain inlet to control erosion.

3. **Stockpiles at clubhouse parking lot had no erosion or sediment controls, and sediment-laden run-off from the parking lot was discharging off-site. (Date of alleged violation: 12.08.04)**

Although the temporary stockpiles were not covered, they were removed altogether on December 20, 2004. Even though no filter fabric was installed on the pipe that was used to drain water into parking lot, the water was directed towards an outlet drain which was protected by

sandbags. Water Board staff noted the effectiveness of this sediment control measure in a photo caption included in Attachment 1 to its March 14, 2005 letter to the City which states: “. . . when staff observed the discharge point, it appeared water had not yet bypassed sandbags at the parking lot low point.”

4. **Sediment from Tee Complex 1 buried the curb and a paved golf cart path directly adjacent to the main street. (Date of alleged violation: 12.08.04)**

This allegation is misleading in that no sediment reached the street; all sediment was contained within project area. Fiber rolls and silt fencing were added after the inspection.

5. **Onsite pond is existing feature not designed as a sediment basin. Pond contained sediment-laden water from the site and was discharged w/o sediment controls. (Date of alleged violation: 12.08.04)**

The City acknowledges that the golf course's irrigation pond was not designated as a sediment basin in the City's SWPPP. Although pre-project engineering did not indicate that storm water would drain towards the pond, water did in fact drain towards the pond in large quantities during the extreme weather conditions experienced during the project. The City reacted by utilizing the pond as a *de facto* sediment basin. Most water was filtered before entering the pond, and additional sediment was filtered from the water as it traveled across the pond before its discharge from the pond.

6. **Although some work was done to maintain, repair, replace and/or install sediment controls since the December 8, 2004 inspection, there were still problems. Throughout the site silt fences were improperly installed and damaged. (Date of alleged violation: 1.12.05)**

On January 12, 2005 a few silt fences were overwhelmed. These fences were noted and immediately corrected. Due to severe slopes in some areas adjacent to construction zones, it was not possible to allow the recommended two-to-five feet at toe of slope for sediment accumulation in front of silt fences. The City did its best in these difficult locations by adding redundant fencing, sandbags, and fiber rolls.

7. **At Greens Complex 5 the purpose of the pipes was to direct runoff to turf areas and use turf as bioswale. However, flow was concentrated the turf was on a slope just above discharging point. Sandbags at discharge point had sediment on them and there was sediment in the canyon just below the discharge point. (Date of alleged violation: 1.12.05)**

The City effectively utilized turf bioswale to filter sediment at Greens Complex 5.

Bioswale is a sediment control BMP recognized by the U.S. Environmental Protection Agency. The City notes that there was approximately 50 feet of turf runoff space above the discharge point which was adequate to effectively filter nearly all sediment before reaching the project site perimeter. Virtually no sediment reached beyond the perimeter because of the City's combined use of bioswale, multi-layered silt fences and other protective measures on Greens Complex 5. Greens Complex 5 was subsequently mulched and turfed.

- 8. In other areas where pipes had been placed through or under silt fences, riprap was placed below pipe discharges but there were no sediment controls or turf bioswales. (Date of alleged violation: 1.12.05)**

In certain locations, pipes were placed through and under silt fences for the purpose of the relieving overwhelmed silt fences of water pressure. The pipes were combined with sandbags and riprap to control water velocity and sediment runoff at discharge points. The City effectively utilized turf bioswales *above* discharge points to filter sediment.

- 9. Drain at Greens Complex 18 was not adequately protected: filter fabric covering drain had hole in it and at least two drain inlets in other areas were not protected. (Date of alleged violation: 1.12.05)**

Although the filter fabric at one inlet was damaged on January 12, 2005, this condition was temporary and immediately repaired. The City believes the two other inlets referred to were elevated above the area's primary discharge point and so they did not typically drain water.

- 10. Fiber rolls were placed above curb along Tee Complex 1 but the rolls were deteriorating and in need of replacement. Fiber rolls placed on slopes not effective as evidenced by rills on slopes (Hole 18). (Date of alleged violation: 1.12.05)**

The fiber rolls placed above the curb along Tee Complex 1 were approximately two weeks old and were still functional on January 12, 2005. The City does not agree with staff's conclusion that the rills on the slopes of Hole 18 were indicative of the ineffectiveness of the fiber rolls.

- 11. Onsite pond was receiving sediment-laden water during the inspection. No sediment controls at pond outlet. Pond was releasing sediment-laden water during inspection. (Date of alleged violation: 1.12.05)**

Multiple efforts were made to reduce sediment introduced into pond. Filter fabric was placed at the pond's intake pipe and the entire surrounding area was sodded and utilized as a turf bioswale. The City also notes that if a filter was placed on the pond's outlet, it could have

prevented operation of the drain and resulted in a massive overflow and discharge event. In addition, most, if not all sediment was filtered out of the water before it was released on the opposite side.

D. Alleged Non-Storm Water Management Violations

- 1. SWPPP fails to clarify that discharge of sediment-laden water that will cause or contribute to an exceedance of Basin Plan standards from a dewatering site or sediment basin into any receiving water or storm drain is prohibited without filtration or equivalent treatment. (Dates of alleged violation: 9.20.04 through 4.4.05)**

(See Section II.D.5. above regarding the irrigation pond.)

- 2. SWPPP also fails to require monitoring of non-storm water discharges and fails to list person responsible for ensuring no materials other than storm water are discharged in quantities that will adversely affect receiving waters or storm drain systems. (Dates of alleged violation: 9.20.04 through 4.04.05)**

The City acknowledges this technical SWPPP deficiency but notes that in practice, personnel were constantly monitoring the entire project area, including the area in question.

- 3. Sediment-laden water was discharging from onsite pond without treatment. Failure to ensure sediment-laden water is treated to meet Basin Plan requirements before discharge is permit violation. (Date of alleged violation: 12.08.04)**

(See the City's response at Section II.D.11. above regarding this allegation.)

- 4. Sediment-laden water being pumped from clubhouse parking lot landscaped area without filtration and without monitoring of discharge area. (Date of alleged violation: 1.12.05)**

The City used a sand bag silt basin to prevent sediment discharge out of parking lot. The Water Board notes the effectiveness of this sediment control measure in a photo caption included in Attachment 1 to its March 14, 2005 letter to the City which states: “. . . when staff observed the discharge point, it appeared water had not yet bypassed sandbags at the parking lot low point.” Moreover, personnel constantly monitored the entire project area including the parking lot.

E. BMP Maintenance, Inspection, and Repair

- 1. SWPPP does not specify that inspections were required before and after storms, and every 24 hours during extended storm event. (Dates of alleged violation: 9.20.04 through 4.4.05)**

This allegation is unfounded. The City's SWPPP calls for inspections before and after half-inch rainstorms, and within 24 hours after each rainfall of one-half inches or more. (SWPPP at Section XI.A. and B.) The project site was regularly inspected in accordance with these requirements.

- 2. Inspection reports did not contain the minimum required information. Weather information (an estimate of beginning of storm event, duration of event, and time elapsed since last storm), and inspectors title and signature were missing from the inspection reports. (Dates of alleged violation: 9.20.04 through 4.4.05)**

This allegation is immaterial given the City's substantial compliance with these requirements. The SWPPP's inspection reports contain weather information by requiring the inspector to categorize each inspection as either a "Regular Inspection", "Rainfall Event Inspection (before)", or "Rainfall Event Inspection (after) __ inches [of rain]". In addition, the City's Golf Course Superintendent Miles Hicks who prepared all inspection reports often added additional relevant weather information on the inspection reports. (The City has provided these inspection reports to the Water Board.) Mr. Hicks also maintained another set of detailed daily inspection logs which noted weather information including temperature, recent rain amounts, and current conditions. Mr. Hicks, who prepared the inspection reports, is listed on the SWPPP as the person responsible for inspections. It was therefore unnecessary for Mr. Hicks to write his title and sign each separate report.

- 3. It was raining and sediment controls were failing in various locations discharging sediment-laden water. No maintenance person or crew seen making repairs and no tire marks etc indicate maintenance crew was working. Site personnel did not indicate that maintenance crews were working. Hicks said problem areas would be addressed but did not say when. (Date of alleged violation: 12.08.04)**

This allegation lacks legal and factual merit. Over three inches of rain fell on December 8, 2004 and site conditions on this date were extremely wet, muddy, and dangerous. Although the Complaint seeks to penalize the City for failing to conduct maintenance under these conditions, the Permit at Section A.11 provides that maintenance is only necessary if safe access is possible, and also that "all corrective maintenance to BMPs shall be performed as soon as possible *after* the conclusion of each storm" In any case, the City stresses that to the extent safely possible, maintenance crews worked every day during the project to inspect and maintain

BMPs.

4. **One inch of rain over two previous days. Sediment controls needed repair. No crews seen maintaining BMPs or carrying BMP tools. No evidence that repairs were being made during inspection. Hicks was on cell phone during inspection describing what needed to be fixed. Hicks pointed out BMP maintenance person "early" in inspection. (Date of alleged violation: 1.12.05)**

This allegation is false. Again, maintenance crews worked every day during the project to inspect and maintain BMPs to the extent safely possible, including on January 12, 2005.

F. Training

1. **SWPPP did not document personnel training and City "failed to have trained individual responsible for Best Management Practices (BMPs) (Dates of alleged violation: 9.20.04 through 4.04.05)**

Although the SWPPP did not document the personnel training that was conducted, the SWPPP did outline the substance of this training at Section IX. In addition, the City complied with the Water Board's request for training documentation by submitting proof that Miles Hicks, the DeLaveaga Golf Course Superintendent and individual identified as responsible for BMPs, as well as contractors Jeff Ball and Barry Jones, all received BMP training beginning on October 6, 2004. Given that Mr. Hicks and others received training beginning on October 6, 2004 and that the City documented this training, it is unclear why the Complaint contends that these violations spanned the duration of the project.

2. **Revised SWPPP specifies Stephen Halsey is responsible for training employees about BMPs but did not document personnel training. (Dates of alleged violation: 9.20.04 through 4.04.05)**

(See the City's response at Section II.F.1. directly above regarding this allegation.)

3. **Notice of Intent indicates construction began on 09.20.04 but training docs say Miles Hicks first trained on 10.06.04. (Dates of alleged violation: 9.20.04 through 10.05.04)**

Training was conducted before the start of the rainy season which the City understood to be October 15, 2004.

G. Proper Operation and Maintenance

1. **Sediment controls not effective. Failure to operate and maintain**

treatment and control systems a violation (*Date of alleged violation: 12.08.04*)

(See the City's response at Section II.E.3. above regarding this allegation.)

2. **In many areas, sediment controls needed maintenance or repair, or were improperly installed. Effectiveness of silt fences in filtering runoff was also compromised due to pipes moving unfiltered water through fencing. (*Date of alleged violation: 1.12.05*)**

(See the City's response at Sections II.D.6. and II.D.8. above regarding this allegation.)

H. Duty To Provide Information

1. **In 12.21.04 Notice of Violation Water Board requested copy of SWPPP, monitoring docs, inspection records, and corrective action and cleanup efforts. City submitted incomplete SWPPP (amended pages sent) and failed to submit monitoring docs. (*Dates of alleged violation: 9.20.04 through 01.20.05*)**

This allegation appears to be based on a simple misunderstanding; the City did its best to comply with the Water Board's requests for information. On January 24, 2005, pursuant to the Water Board's request, the City sent the Water Board an amended site map, amended SWPPP pages, amended Notice of Intent, list of corrective actions and cleanup efforts, site inspection logs, site photographs with descriptions. The City did not understand that it had been requested to send the entire amended SWPPP, and inadvertently failed to provide the monitoring and inspection program documentation.

The Water Board did not inform the City of these deficiencies until its letter of March 14, 2005 to which the City responded by letter dated March 30, 2005. In this letter, the City explained that its Superintendent of Parks Mr. Hammack was out of the office from March 14 through March 27, but that the City was compiling and would supply the requested information and documentation no later than April 8. On April 5, 2005, the City did in fact send the Water Board the entire amended SWPPP, monitoring and reporting documentation, corrective action and cleanup measures in response to the Water Board's January 12, 2005 inspection, inspection log, summary of personnel training documentation, and another amended site map. Nonetheless, the Water Board proceeded to file the Complaint on April 13, 2005.

III. SETTLEMENT PROPOSALS THAT BUILD UPON CITY'S ONGOING EFFORTS TO PROTECT AND REHABILITATE THE ARANA GULCH WATERSHED

In the event the Water Board determines that the City is responsible for violating the Permit, the City requests that the Water Board work with it to structure a settlement that is

proactive, constructive, and environmentally beneficial – a win-win scenario that will directly benefit the watershed. In this regard, the City offers the following settlement points/proposals that build upon the City's ongoing efforts to protect and rehabilitate the Arana Gulch Watershed:

- The City to continue its partnership with the Coastal Conservancy and implement the grant that was received to develop plans for erosion control on the Disc Golf Property and future locations.
- The City to invest resources to control and eventually stop erosion at the Disc Golf Course which has been identified as a high level contributor to the problems in the Arana watershed. At the same time, continue working with the State to take control of the Disc Golf Course property.
- The City to continue making erosion improvements to the drainage canyons that connect to both Branciforte Creek and Arana Creek.
- The City to continue an aggressive tree planting program in the Delaveaga Park area.
- The City to continue its Integrated Pest Management Program which mandates minimal use of extremely low impact pesticides at DeLaveaga Golf Course
- The City to complete a Delaveaga Park Master Plan that addresses erosion control along with all the other planning elements that contribute to positive environmental stewardship by 2008. The plan's estimated cost exceeds \$100,000.
- The City to continue its lead role in annual cleaning of the sedimentation basin of Arana Creek.
- The City to continue working collaboratively with the Arana Gulch Watershed Alliance as partners in providing resources to repair troubled erosion areas in the watershed that may or may not be on City-owned land.
- The City to continue working with the Santa Cruz Harbor Master and Harbor Board to devise solutions for the upper harbor sedimentation problem, including help with permits and support in obtaining grants for sedimentation removal.
- The City to work collaboratively with adjoining property owners in the Arana Watershed and continue support for their efforts in stopping erosion.
- The City to continue a proactive Fire Management program in the Arana Watershed to prevent devastating wildfires that will cause major erosion.
- The City to work with the Regional Water Quality Control Board in monitoring, repairing, and preventing known erosion problems in the Arana Watershed.

IV. RESPONSE TO PROPOSED FINE

In this section, the City comments on each of the factors the Water Board is obligated to consider pursuant to Water Code section 13385 in determining the amount of any fine that may be imposed.

A. Nature, Circumstances, Extent and Gravity

The Complaint proceeds from the premise that the City's alleged Permit violations caused damage to Branciforte Creek and Arana Creek. However, the project area where substantive violations are alleged to have occurred (Holes 5 and 18) drained only to Arana Creek and not to Branciforte Creek. Moreover, although there is evidence that small amounts of sediment moved beyond the project site's silt fence-lined perimeter, there is no evidence that any sediment migrated down canyon into either creek.

In *City of Arroyo Grande, Central Coast Water Board Order No. 2003-0103*, the Water Board determined: "Although there was evidence that sediments were discharged from the site to waters of the State, it could not be quantified and the impacts on the receiving water could not be determined. Therefore this factor supports liability less than the maximum." (Economic Benefit Analysis at p. 2.) Given the fact that there is no evidence that sediment reached any waterway, the same mitigating factor should be weighed even more heavily in the City's favor here.

B. Cleanup or Abatement

The Complaint fails to identify as mitigating factors any of the City's many voluntary, ongoing environmental projects in the Arana Gulch Watershed, most of which are listed in Section II above. One project in particular is directly relevant to this enforcement action and was discussed at the Water Board's October 22, 2004 meeting in Santa Barbara. As Water Board Executive Director Roger Briggs explained at the meeting (and illustrated with a slide), in September 2004 the City voluntarily removed 110 cubic yards from Arana Creek which it used as fill soil in the golf course renovation project. Working in conjunction with the Arana Gulch Watershed Alliance, the City plans to remove and reintroduce a similar amount of sediment this year.

The City's substantial ongoing efforts to improve the Arana Gulch Watershed mitigate heavily against the recommended liability of \$150,000.

C. Toxicity

In the toxicity section, the Complaint is again premised on the incorrect assumption that the City's alleged Permit violations caused damage to Branciforte Creek and Arana Creek. Again, the project area where substantive violations allegedly occurred drained only to Arana Creek and not to Branciforte Creek. Moreover, there is no evidence that the City was responsible for the release of any toxic runoff. This factor supports the imposition of liability of less than the recommended \$150,000.

D. Violator Ability to Pay

The Complaint fails to take into account the City's current financial crisis which obviously affects its ability to pay the proposed fine. The City's current Fiscal Year 2005 Budget provided 70 fewer full-time positions than its 2001 budget. Under the best-case-scenario, the City's Fiscal Year 2006 Budget will necessitate the elimination of 10 to 20 more General Fund positions. Under the worst-case-scenario, the City will need to cut the equivalent of about 50 positions. The \$150,000 recommended liability is equivalent to the annual compensation of three City park maintenance employees. This factor mitigates heavily against the recommended liability of \$150,000.

E. Ability to Continue Business

This factor is not relevant to the City.

F. Voluntary Cleanup Efforts

See the "Cleanup or Abatement" Section above which mitigates against the recommended liability of \$150,000.

G. History of Violations

The City has no history of environmental violations. This factor mitigates against the recommended liability of \$150,000.

H. Degree of Culpability

The City devoted substantial resources – approximately 10% of overall project budget – and made a significant, sustained effort to achieve full compliance with the Permit during what proved to be the wettest winter in years. Under extremely challenging conditions, the City implemented and maintained a variety of BMPs that protected Branciforte Creek and Arana Creek by containing nearly all sediment within the 10-acre project area. The City also did its best to respond to and fully cooperate with the Water Board during the DeLaveaga Golf Course renovation. This factor mitigates against the recommended liability of \$150,000.

I. Economic Benefits and Savings

The recommended liability of \$150,000 is excessive and disproportionate to the City's alleged violations. Although this total liability is based on an alleged "minimum" fine of \$130,500 that Water Board staff has concluded could be imposed in this action, this "minimum"

fine is actually many times greater than the appropriate minimum statutory fine. The proposed \$130,500 fine amount was established by Water Board staff based on the increased revenue (greens fees, golf cart rentals) that was allegedly generated for the City due to the renovation of the golf course in the wet versus the dry season. But this alleged economic benefit to the City is not causally related to any Permit violation. Consequently, this economic benefit analysis does not comply with Water Code section 13385(e) which states in pertinent part: "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, *derived from the acts that constitute the violation.*" (Italics added.) The City's decision to renovate the golf course during the winter is obviously not a Permit violation.

The fine should instead be based on the economic savings derived from the City's alleged noncompliance with the Permit (e.g. by failing to fully implement storm pollution prevention BMPs). This straightforward analysis has been utilized by the Water Board in the past, including in the following Water Board enforcement actions analogous to the this one.

Pajaro Valley Unified School District, Landmark Elementary School, Central Coast Water Board Order No. R3-2004-0073

In *Pajaro Valley Unified School District, Landmark Elementary School*, Central Coast Water Board Order No. R3-2004-0073, this Water Board approved a fine of \$15,000 based on the following Permit violations committed during construction of an 8.2-acre school: (1) discharging without appropriate BMPs; (2) not developing SWPPP in full accordance with permit requirements; (3) not having SWPPP available on site; (4) not implementing effective combination of erosion and sediment control on all disturbed areas during rainy season; (5) not documenting or implementing sediment control BMPs; (6) not inspecting, maintaining, and repairing BMPs; (7) not having appropriately trained personnel for site inspection and BMP maintenance; (8) not having inspection and monitory records; (9) not complying with local requirements. (A copy of *Pajaro Valley Unified School District, Landmark Elementary School, Central Coast Water Board Order No. R3-2004-0073* is attached as Exhibit A hereto.)

According to Water Board staff, the \$15,000 fine was *greater* than the economic cost benefit to the discharger derived from its failure to fully comply with the Permit requirements. Specifically, Water Board staff stated that:

"Although the discharger likely realized some cost saving from noncompliance (having an inadequate SWPPP, not implementing appropriate BMPs, and not hiring qualified personnel to conduct Site storm water inspection), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not complying with the Permit. *The proposed liability of fifteen thousand dollars (\$15,000) (or a daily average of five hundred seventy-*

seven dollars (\$577)) is likely greater than the economic savings realized by the Discharger during the period of the violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability.” (Italics added.)

Based on the Water Board’s estimate of the minimum economic savings to the discharger, the Water Board imposed a \$15,000 fine, despite “evidence indicates the Discharger had an inadequate SWPPP (which is a permit violation) from construction commencement on June 1, 2003, to March 19, 2004, two-hundred eighty-eight days.” Although the maximum allowable penalty was \$2.88 million, a fine of \$15,000 was imposed.

City of Arroyo Grande, Central Coast Water Board Order No. 2003-0103

In *City of Arroyo Grande*, Central Coast Water Board Order No. 2003-0103, the staff of this Water Board proposed a fine of \$25,000 (which was later increased to \$58,000 by the Water Board inclusive of fees) based on Arroyo Grande’s inadequate SWPPP and near-complete failure to comply with Permit requirements during construction of a 7.5 acre park. During its ten site inspections, Water Board staff determined that sediment controls were never properly installed, making them “ineffective in preventing sediments from leaving the site.” Water Board also determined that the entire site was rough graded and no erosion controls were in place. Water Board staff indicated that the discharger ignored the Water Board’s specific steps that needed to be taken in order to bring the site into compliance.

According to Water Board staff, the proposed \$25,000 fine was greater than the economic cost benefit to the discharger derived from failing to fully comply with the Permit. Specifically, Water Board staff stated that the discharger “did enjoy some economic savings by not providing an adequate SWPPP and BMPs. *It is unlikely this savings exceeds the recommended liability amount [of \$25,000].*” (Italics added.) (A copy of *City of Arroyo Grande, Central Coast Water Board Order No. 2003-0103* is attached as Exhibit B hereto.)

Economic Benefit Analysis Methodology Utilized By Los Angeles Regional Water Quality Control Board

In at least two of the Los Angeles Regional Water Board’s recent storm water pollution prevention Permit-related enforcement actions, it has utilized an economic benefit methodology which assumes a cost savings of \$600 per acre of noncompliance for a discharger’s failure to fully implement BMPs, and a cost savings of \$2,000 for failing to develop and implement a complete SWPPP. (*See Merona Enterprise, Inc., Complaint No. R4-2004-0050* at p. 7; *Toll, CA, L.P., VI, Complaint No. R4-2004-0011* at p. 5) (Copies of these Administrative Liability Complaints are attached as Exhibit C hereto.)

The City points out the Los Angeles Water Board's methodology to show: (a) the relative ease of estimating cost savings resulting from a discharger's failure to comply with Permit requirements; and (b) the excessiveness of Water Board staff's determination of the City's minimum fine in this action.

Economic Benefit Analysis That *Should* Have Been Conducted To Establish City's Fine, If Any, In This Action

It is unclear why no good faith effort was made to estimate the actual City economic benefit (i.e., project cost savings realized by the City) derived from its alleged Permit noncompliance.¹ Based on the directly analogous above-described Water Board precedent, doing so would have resulted in a minimum fine of \$25,000 or less. And if Water Board staff had calculated the City's economic benefit by utilizing the Los Angeles Regional Water Quality Control Board's straightforward methodology (\$600 per acre of non-implemented BMPs; \$2,000 for noncompliant SWPPP), it would have calculated a minimum fine of approximately \$3,800 – about three percent (3%) of the “minimum” fine here.

The proposed total liability of \$150,000 against the City is clearly excessive and disproportionate to the City's alleged violations.²

V. OBJECTIONS TO ASPECTS OF ENFORCEMENT PROCEEDING

In this section, the City states for the record objections to certain irregularities which call into question the impartiality and objectivity of the Water Board acting in its current adjudicatory

¹The field notes of Water Board staff Kimberly Gonzalez indicate that on January 12, 2005, she was already investigating the City's alleged economic benefit derived from renovating the golf course during the wet versus dry season. Her field notes of that date contain the following information: **Pro Shop • rates during const. = \$10 • after constr. = \$40-45** (Attached as Exhibit D hereto.)

This evidence strongly suggests that as of January 12, 2005, Water Board staff had predetermined their use of this unorthodox fine calculation method while ignoring the commonsense alternative that would have resulted in a lower fine.

²To further put the recommended \$150,000 liability in perspective, in 2002 the Central Coast Water Board approved a settlement of \$100,000 in the action *People v. RMC Pacific Materials*, Santa Cruz County Superior Court Case No. CV 143145. In that case, defendant was accused of discharging “approximately 360,000 gallons of turbid sediment-laden process water into Zayante Creek, during an approximately eight-hour period, in violation of Water Code section 13385 and Fish & Game Code section 5650.”

capacity.

A. Overlap Of Water Board's Investigatory And Adjudicatory Functions/Board Bias

Government Code section 11425.30 and basic notions of due process prohibit Water Board members from acting in both investigative and adjudicatory capacities in the same proceeding. This impermissible overlap may have occurred with respect to Water Board members Bruce Daniels and Russell Jeffries in this proceeding.

Concurrent with the Water Board's prosecution of this enforcement action, a Water Board subcommittee consisting of Board members Daniels and Jeffries actively investigated environmental issues affecting the Arana Gulch Watershed. On or about October 5, 2004, these Board members, along with Executive Director Roger Briggs, toured the Arana Gulch Watershed, including the City's DeLaveaga Park. No representative from the City was invited on this tour which covered City-owned land.

The Water Board's Arana Gulch subcommittee and Executive Director Briggs reported its findings at the Water Board's October 12, 2004 meeting. (The oral record/transcript of this meeting is incorporated herein by reference.) There were two common themes running through the subcommittee's presentation: (a) the watershed was affected by severe erosion and sedimentation problems that were attributable in part to the City; and (b) there was a lack of funds available to address the problems. During the presentation, funding derived from the settlement of Water Board enforcement actions was explicitly mentioned as a source of revenue for rehabilitating the area. At the Water Board's May 13, 2005 meeting (which is discussed below), Executive Director Briggs specifically mentioned the current enforcement action against the City as a source of revenue for rehabilitating the Arana Gulch Watershed. The following is based on the City's unofficial transcription of Mr. Briggs comments:

And the other ...um... avenue that we mentioned is the possibility of supplemental environmental project funding, if there's an enforcement action, uh and of course the more... *the greater nexus there is with an enforcement action, in terms of uh the geographic area and the nature of the problem, the better in terms of being able to come up with a supplemental environmental project might go toward/for something like the ...uh... Frisbee project. And ...um... lo and behold we will be taking up this enforcement action watershed for sediment erosion problems at the next ...uh... regularly scheduled meeting. So there's some potential there for a supplemental environmental project but it is up to the project applicant to propose a project, and we haven't gotten far enough ...um... down that path to ...uh... discuss ...uh... that yet, but I would say that is a possibility. (Italics added.)*

While the City shares the Water Board's commitment to improving the Arana Gulch Watershed, the problem with the Water Board's investigation of Arana Gulch during this proceeding and Mr. Brigg's foregoing comments is that at a minimum, they give the impression that the Water Board cannot be objective and impartial in this proceeding with regards to: (a) determining the City's actual statutory liability; and (b) determining the amount of any resulting fine. Government Code section 11425.40 prohibits Board member "bias, prejudice, or interest in the proceeding" which are grounds for disqualification.

All Board Members have been actually or potentially biased against the City based on the these and the following irregularities. That is why the City attempted to transfer the adjudication of this enforcement action to the California Office of Administrative Hearings. The City's request was denied.

B. Water Board's Ex Parte Communications With Interested Party/Board Bias

Government Code section 11430.10 and basic notions of due process prohibit ex parte communications between an interested party and a Water Board member without notice and an opportunity for all parties to participate in the communication. At Water Board's May 13, 2005 meeting in Watsonville, there were extensive discussions regarding the Arana Gulch Watershed, this enforcement action, and the City's responsibilities and failures to "step up to the plate" with respect to managing the area. These discussions were between certain Water Board members and interested party, Arana Gulch property owner Lori Hobbs. Derogatory comments were made about the City's management of the Arana Gulch Watershed at the meeting both by Ms. Hobbs and by certain Board members. (The oral record/transcript of this meeting is incorporated herein by reference.)

Specifically, one unidentified Board member at the May 13 hearing made the following comments which were unofficially transcribed by the City:

Well... you know like... It's obvious that [the City] haven't taken any erosion controlling methods for the [DeLaveaga] park. I mean that's the reason that they have the runoff and discharge.

The City was not provided prior notice and an opportunity to defend itself at the meeting. The ex parte communications likely: (a) affected the Water Board's impression of the City and the City's management of the DeLaveaga Park area, and thereby (b) tainted the Water Board's ability to act impartially in adjudicating this enforcement action.

C. Water Board Counsel's Dual Role In Prosecuting And Adjudicating This Enforcement Action

During this enforcement action, Central Coast Water Board council Lori Okun has simultaneously served in the dual role of advisor to the Water Board in prosecution of the matter and as advisor to the Water Board in the adjudication of the matter. This violates California law. See *Nightlife Partners v. City of Beverly Hills* (2002)108 Cal.App.4th 81; *Quintero v. City of Santa Ana* (2003) 114 CalApp.4th 810.

On June 20, 2005, Ms. Okun purported to recuse herself and allow State Water Board counsel Sheryl Schaffner advise the Board during the adjudicative phase of this enforcement action. However, Ms. Okun continued to actively advise the Water Board regarding procedural and other matters concerning the adjudicative hearing and process as evidenced in the correspondence attached as Exhibit E hereto. In an email dated June 28, 2005, Ms. Okun took the unusual step of advising Ms. Schaffner as to how *Ms. Schaffner* should advise the Water Board regarding the adjudicative phase so as to insulate the Water Board's determinations from, in Ms. Okun's own words, "challenge on any procedural ground."

The City also objects to Ms. Schaffner's role as advisor to the Water Board regarding the adjudication of the enforcement action. At a minimum, Ms. Schaffner's position as a State Water Board counsel gives her the appearance of bias and partiality in favor of her employer.

D. City's Public Records Act Requests for Relevant Water Board Records

As described in the Water Board staff's agenda packet for this matter, the City requested multiple categories of Water Board public records relevant to this enforcement action. The City appreciates Water Board staff's production of documents and materials in response to the records requests. But despite the City's May 24, 2005 request made pursuant to Government Code section 6255, the City was never informed what records, if any, the Water Board withheld from production. To the extent any records were in fact withheld (which is not known), the City objects for not being informed of this fact, and also objects on due process grounds if the City has been prejudiced by any nondisclosure.

VI. CONCLUSION

For the foregoing reasons, the City requests that the Water Board issue a finding of no liability or in the alternative, that the Water Board work with the City to structure a mutually beneficial settlement that will benefit the Arana Gulch Watershed.

Dated: June 29, 2005

CITY OF SANTA CRUZ
OFFICE OF CITY ATTORNEY

By: _____

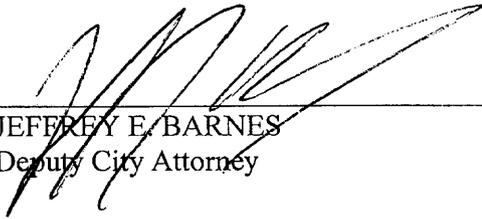

JEFFREY E. BARNES
Deputy City Attorney

Exhibit A

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004

Prepared on June 3, 2004

ITEM: 16

SUBJECT: Administrative Civil Liability Order No. R3-2004-0073; Pajaro Valley Unified School District, Landmark Elementary School

KEY INFORMATION

Discharger: Pajaro Valley Unified School District
Location: Ohlone Parkway & Harkins Slough Road, Watsonville, Santa Cruz Co.
Discharge Type: Construction Storm Water
Existing Order: Order No. 99-08-DWQ, NPDES General Permit No. CAS000002

SUMMARY

Pajaro Valley Unified School District (hereafter Discharger), owner of Landmark Elementary School construction site (hereafter Site) in Watsonville, was found to be in violation of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).

Regional Board staff inspected the Site on two occasions during the rainy season and found the Site in violation. During each inspection Regional Board staff discussed violations with Site personnel. After each inspection Regional Board staff mailed Notice of Violation letters to the Discharger, and mailed and faxed the letters to Site personnel. The first Notice of Violation letter specified the date on which Regional Board staff would return for a second inspection. There was ample time and adequate weather conditions for the Discharger to bring the Site into compliance before staff's second inspection. Additionally, the Site was not in compliance with the City of Watsonville's (City's) erosion control requirements.

The Regional Board Executive Officer issued a Complaint on May 21, 2004 in the amount of fifteen thousand dollars (\$15,000).

DISCUSSION

Background

The Discharger owns Landmark Elementary School (Site), currently under construction, located at Ohlone Parkway and Harkins Slough Road in Watsonville, Santa Cruz County. On June 10, 2003, the Discharger filed a Notice of Intent to comply with the terms of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Permit). The NOI indicated construction commenced on June 1, 2003, and the Site Storm Water Pollution Prevention Plan (SWPPP) was dated May 2003.

The majority of runoff from the 8.2-acre site flows into storm drains and drainageways that discharge to a constructed unpaved basin. From interviews with a Site representative, Regional Board staff understands the basin is for post-construction storm water retention, and the basin discharges to a second (off-site) post-construction storm water basin before discharge to Struve Slough in Watsonville.

On February 19, 2004, the City complained about the Site's noncompliance with the City's erosion control requirements. The City had already

conducted two inspections of the Site and issued the owner a citation.

When Regional Board staff inspected the Site on February 23, 2004 in response to the City's complaint, the City and the Site representative both indicated there had been no improvements with respect to erosion and sediment control since the City's last inspection. Regional Board staff discussed violations with Site personnel and followed up with a Notice of Violation dated March 5, 2004. The Notice of Violation described violations noted during the inspection, required compliance with the Permit, and specified the exact date on which Regional Board staff would return to inspect the Site.

On March 19, 2004, Regional Board staff inspected the Site again, and again found the Site in violation of Permit requirements. Regional Board staff discussed violations with Site personnel and followed up with a second Notice of Violation dated March 24, 2004.

Between the two Regional Board inspections, the Discharger had sufficient time and amiable weather in which to bring the Site into compliance.

The City conducted erosion control inspections of the site on February 2, February 11, February 23, March 15, March 30, and March 31, 2004. The City found the site in non-compliance with local requirements and issued three violation letters and three citations, totaling five thousand two hundred dollars (\$5,200).

Violations

The Discharger's violations of the Permit include:

- a. discharging without appropriate BMPs,
- b. not developing a SWPPP in full accordance with Permit 'Section A,'
- c. not having the SWPPP available on site,
- d. not implementing an effective combination of erosion and sediment control on all disturbed areas during the rainy season,

- e. not documenting and/or implementing sediment control BMPs as required in Permit 'Section A,'
- f. not inspecting, maintaining, and repairing BMPs,
- g. not having appropriately trained personnel for site inspection and BMP maintenance,
- h. not having inspection and monitoring records,
- i. not complying with local requirements.

These violations are described in greater detail in the attached "ACL Complaint No. R3-2004-0073." Corresponding Permit sections that were violated are listed in the attached "Applicable Permit Requirements." (For the reader's convenience, this document and both attachments use the same 'numbering' system for the above-listed violations.)

The minimum violation period extends from Regional Board staff's first inspection on February 23, 2004 to Regional Board staff's second inspection on March 19, 2004, twenty-six days. This is a conservative estimate since Regional Board staff has evidence documenting the Discharger's non-compliance with City requirements (which is a Permit violation) from February 2, 2004 to March 31, 2004, fifty-nine days. Additionally, evidence indicates the Discharger had an inadequate SWPPP (which is a Permit violation) from construction commencement on June 1, 2003, to March 19, 2004, two hundred eighty-eight days.

This ACL is issued to address the Discharger's failure to comply with Permit requirements despite sufficient discussion with and notification from Regional Board staff. Since self-monitoring and voluntary compliance with Permit requirements are important aspects of the Storm Water Program, the Discharger's continued defiance of local, state, and federal regulations despite inspections, citations, and violation letters, warrants formal enforcement action. Permit non-compliance is a serious violation, however, consideration of less than the maximum liability may be warranted because allegations are limited to permit non-compliance and *potential* water quality impacts, not *proven* water quality impacts.

CIVIL LIABILITY

Recommended Liability

After considering factors specified in California Water Code Section 13385, maximum and minimum penalties, and staff time, Regional Board staff and the Executive Officer recommend liability of fifteen thousand dollars (\$15,000). Detailed discussion of each factor can be found in the attached "ACL Compliant No. R3-2004-0073."

Maximum Liability

Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to ten thousand dollars (\$10,000) per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least twenty-six days. Maximum liability that may be imposed by the Regional Board is two hundred sixty thousand dollars (\$260,000). The Discharger violated multiple provisions of the Permit during this period. The \$260,000 maximum liability is a conservative estimate because it counts only one violation per day.

Minimum Liability

In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefit or savings (if any) derived from the violations. Although the Discharger likely realized some cost savings from noncompliance (having an inadequate SWPPP, not implementing the SWPPP, not implementing appropriate BMPs, not maintaining BMPs, and not hiring qualified personnel to conduct Site storm water inspection), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not complying with

the Permit. The proposed liability of fifteen thousand dollars (\$15,000) (or a daily average of five hundred seventy-seven dollars (\$577)) is likely greater than economic savings realized by the Discharger during the period of violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability.

Staff Time

Regional Board staff spent time responding to the City's complaint, traveling to and inspecting the Site, and preparing and reviewing enforcement documents. Estimated staff costs (including Regional Board technical staff, administrative staff, supervisors, and legal counsel) are five thousand five hundred fifty dollars (\$5,550), or seventy-four hours at seventy-five dollars (\$75) per hour.

RECOMMENDATION

Regional Board staff recommends assessment of fifteen thousand dollars (\$15,000) in administrative civil liability against Pajaro Valley Unified School District for Permit violations occurring February 23, 2004 through March 19, 2004.

ATTACHMENTS

1. Applicable Permit Requirements
2. Administrative Civil Liability Complaint No. R3-2004-0073
3. Administrative Civil Liability Order No. R3-2004-0073

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906**

**ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2004-0073**

Issued to:

**Pajaro Valley Unified School District
Landmark Elementary School, Watsonville
Santa Cruz County**

The California Regional Water Quality Control Board, Central Coast Region, finds:

1. Pajaro Valley Unified School District (hereafter Discharger) owns the Landmark Elementary School construction site at Ohlone Parkway and Harkins Slough Road in Watsonville, Santa Cruz County (hereafter Site).
2. On June 10, 2003, the Discharger filed a Notice of Intent to comply with the terms of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).
3. The Permit requires the Discharger to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Permit Section A, and "implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season."
4. On February 23, 2004 and on March 19, 2004, Regional Board staff inspected the Site and determined the Discharger was in violation of Permit requirements. Based on observations of Site conditions, discussions with Site personnel, and information from the City of Watsonville's erosion control inspector, the period of violation is at least from February 23, 2004 through March 19, 2004 (a total of twenty-six days).
5. Violations observed during the February and March inspections include discharge without appropriate Best Management Practices (BMPs), inadequate SWPPP, unavailable SWPPP (February only), ineffective and unmaintained BMPs, untrained Site personnel, no inspection records, and noncompliance with local requirements. These violations are described in Complaint No. R3-2004-0073 (Complaint), including Attachment 1 to the Complaint.
6. During the inspections, Regional Board staff discussed violations with Site personnel, and followed up with Notice of Violation letters (dated March 5, 2004 and March 24, 2004). In the first Notice of Violation letter, Regional Board staff informed the Discharger of the exact date when Regional Board staff would return to the Site for a follow-up inspection. Both letters were mailed to the Discharger, and faxed and mailed to Site personnel.
7. California Water Code Section 13385 states that any person who violates waste discharge requirements (such as the Permit) shall be civilly liable. The Regional Board may impose administrative civil liability not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. The Discharger was in violation of the Permit for at least twenty-six days, as described in the Complaint. Pursuant to California Water Code Section 13385, the Regional Board may impose a maximum civil liability of two hundred sixty thousand dollars (\$260,000).
9. As required by California Water Code Section 13385, the Regional Board considered:

- a. nature, circumstances, extent, and gravity of the violations
 - b. discharge susceptibility to cleanup or abatement
 - c. discharge toxicity
 - d. ability to pay and the effect on ability to continue in business
 - e. voluntary cleanup efforts undertaken
 - f. violation history
 - g. degree of culpability
 - h. economic benefit or savings (if any), and
 - i. other matters as justice may require (including Regional Board staff time for preparing this enforcement action).
10. After consideration of the above-listed factors, the Executive Officer issued the Complaint in the amount of fifteen thousand dollars (\$15,000), including staff costs of five thousand five hundred fifty dollars (\$5,550). The Regional Board has considered the analysis of these factors set forth in Paragraphs

(a) through (i) of the "Proposed Civil Liability" section of the Complaint, and all comments and testimony received, and agrees with and adopts that analysis as findings of the Regional Board.

11. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13385, Pajaro Valley Unified School District is assessed a total civil liability of fifteen thousand dollars (\$15,000) to be delivered to the Regional Water Quality Control Board at the letterhead address by August 9, 2004. The check is to be made payable to the State Water Resources Control Board.

I, **Roger W. Briggs, Executive Officer**, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on July 9, 2004.

Roger W. Briggs, Executive Officer

Date

Exhibit B

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF DECEMBER 5, 2003

Prepared on October 24, 2003

ITEM: 20

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2003-0103;
ARROYO GRANDE, CITY OF, RANCHO GRANDE PARK, ARROYO
GRANDE, SAN LUIS OBISPO COUNTY

KEY INFORMATION

Discharger: Arroyo Grande, City of
Location: Rancho Grande Park, 101 Avenida de Diamante, Arroyo Grande
Discharge Type: Storm Water
Existing Order: State Board Order No. 99-08-DWQ, NPDES General Permit No.
CAS000002

DISCUSSION

The City of Arroyo Grande (hereafter Discharger) is alleged to have violated provisions of State Water Resource Control Board (State Board) Order No. 99-08, for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code.

The Discharger is the owner and developer of a 7.5-acre public park construction project known as Rancho Grande Park, 101 Avenida de Diamante, Arroyo Grande, San Luis Obispo County, (Site). The majority of Site storm water run-off flows into an unnamed storm water conveyance system that is tributary to Meadow Creek a water of the United States. More than 60% of the perimeter of the site has slopes that are 2:1 or greater.

On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Order No. 99-08-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (General Permit). This General Permit, as amended, serves as waste discharge requirements regulating storm water discharges associated with construction activity for sites disturbing one acre or more in accordance with

the Federal Clean Water Act (33 U.S.C. secs. 1250 et seq.) and the Porter-Cologne Water Quality Control Act (California Water Code secs. 13000 et seq.).

On August 22, 2002, the Discharger filed a Notice of Intent (NOI) to comply with the terms of the General Permit.

The Discharger specified in the NOI that Herrera Engineering (Contractor) the general contractor for Site construction would be responsible for complying with the General Permit, and would also be the primary contact regarding compliance.

The portions of the General Permit alleged to be violated are set forth in full in Appendix A attached to and incorporated into this Order by reference. These portions are referred as "GP Portions" with roman numeral reference numbers in Appendix A and are summarized as follows:

GP Portion I: All dischargers must develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the General Permit. "The discharger shall implement controls to reduce pollutants in storm water dischargers

from their construction sites to the BAT/BCT performance standard." (Hereafter referred to as Best Management Practices or BMP's) (The BAT standard means Best Available Technology and only applies to toxic pollutants and so does not apply here. The BCT standard means Best Conventional Pollutant Control Technology. General Permit SECTION A: Storm Water Pollution Prevention Plan provides guidance on developing and implementing BMP's that would be accepted at meeting the BCT standard.)

GP Portion II: It is a goal of SWPPP development and implementation to identify, construct, implement in accordance with a time schedule, and maintain BMP's to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from the construction site during construction.

GP Portion III: The SWPPP shall be implemented concurrently with commencement of soil disturbing activities.

GP Portion IV: The SWPPP must be kept at the construction site during the term of General Permit coverage.

GP Portion V: The Discharger must comply with all General Permit provisions.

GP Portion VI: The Discharger shall provide, to the Regional Board, any information requested to determine General Permit compliance.

GP Portion VII summarized: The SWPPP must be amended whenever changes in construction or operations may effect receiving waters, when violation of the GP occurs or there is a failure to eliminate pollutants in the storm water discharge. When the Regional Board determines the discharger is in violation of the GP the SWPPP must be amended and implemented in a timely manner, but in no case more than 14 calendar days after notification by the Regional Board. All amendments must be attached to the SWPPP.

Inspections and Violations noted: Regional Board staff inspected the site and there was no SWPPP on site on January 7, 2003 (violation of GP Portion IV). Regional Board staff (staff) reviewed the SWPPP at the site on January 10, 2003 and although it was found to lack site-

specific details the SWPPP indicated the site would be provided with sedimentation fencing around the perimeter. Staff made Representatives of Herrera Engineering, Jose Herrera (J. Herrera), Superintendent and Alfonso Herrera (A. Herrera), Foreman aware that the SWPPP was inadequate. Subsequent inspections on January 16, 28, and 31, 2003, found the SWPPP unimproved (violation of GP Portion VII). In a February 5, 2003 Notice of Violation (NOV) letter staff required the Discharger to provide the SWPPP and related amendments to the Regional Board by February 14, 2003. In a February 26, 2003 letter from the Discharger to the contractor, the contractor was told that they were responsible for submitting the SWPPP to the Regional Board (violates GP Portion VI). On March 21, 2003, staff received a SWPPP from the Discharger that was described as a revised version. Although the request had been for the original SWPPP with amendments, and the request had been repeated on several occasions, the revised edition was the only one provided. The following are some of the more significant inadequacies of the revised SWPPP (violates GP Portion I and VII):

- Undated;
- Vicinity Map was of such poor quality it was unreadable;
- Site Map was very difficult to interpret and decipher because there was little or no differential in the way in which the various sedimentation BMP's were depicted, and it failed to adequately delineate storm water collection and discharge points, topography, and drainage patterns;
- Failed to include a description and verification of required training.

As with the original SWPPP, the revised SWPPP also reflected a sedimentation barrier around the perimeter. It is very difficult to determine from reviewing the SWPPP what type of barrier was intended to be in place during what phase of the project (violates GP Portion II and VI). In addition there was never a time when barriers, of any kind, were in place at all of the designated perimeter areas (violates GP Portion I, II, III, and VI).

Regional Board staff (staff) inspected the site on January 7, 2003. The entire 7.5 acres had been rough graded, was without any form of erosion controls,

and the sediment controls consisted of an improperly installed silt fence that would likely be ineffective in preventing sediments from leaving the site (violates GP Portion I and II). Staff informed J. Herrera and A. Herrera of the inadequate erosion and sediment Best Management Practices (BMP's), and the need to expedite since it was the rainy season (violates GP Portion I and II).

Staff inspected the site again on January 10, 2003. The BMP's were again found to be inadequate and unchanged since the January 7 inspection (violates GP Portion I and II). Staff noted that the primary drain for the entire site was without sediment BMP's (violates GP Portion I and II). Staff verbally informed the contractor of the inadequacies and he agreed to complete the following in one week: 1. Properly reestablish all perimeter silt fence. 2. Fill rills and reestablish grade where excessive erosion had occurred, primarily on the southwestern perimeter slope. 3. Create a sedimentation area with gravel bags in front of the east drain inlet.

Staff inspected the site on January 16, 2003. Of the three tasks listed in the preceding paragraph, only one had been partially completed. 1. The silt fencing was being removed, and the site slopes regraded for the purpose of hydroseeding (violates GP Portion I and II). The Discharger was reminded of the need to amend the SWPPP and keep staff informed of changes in BMP's (violates GP Portion I, II, and VII). 2. The filling of rills and regarding had taken place in only the southwest corner (Violates GP Portion I and II). 3. The east drain was still without BMP's (violates GP Provision I and II).

Staff inspected the site on January 28, 2003. The perimeter slopes had been completely regraded, eliminating remaining vegetation (violates GP Portion I and II). The silt fence no longer existed (violates GP Portion I and II). When asked about the complete lack of BMP's, A. Herrera directed staff to J. Herrera, who was not on site. Staff made clear to A. Herrera that with respect to complying with the General Permit the Discharger was regressing and that focused expeditious action was needed to correct the problems.

In a January 30, 2003, telephone conversation with J. Herrera, staff was told that by the end of that day all silt fencing would be properly reinstalled, and the east drain would be provided with BMP's to prevent sediments from leaving the site.

Staff inspected the site on January 31, 2003. The reestablishment of the silt fence was less than half complete (violates GP Portion I and II). The BMP's at the east drain were inadequate for preventing sediments from migrating off site (violates GP Portion I and II). J. Herrera said the improvements would be completed by the end of that day. Staff reminded him of his responsibility to amend the SWPPP so that it reflects the changes in BMP's, and of the need to maintain weekly inspection logs (failure to do so violates GP Portion VII).

Staff inspected the site on February 1, 2003. The silt fence installation was no more than 75% complete, and it was improperly installed (violates GP Portion I and II). Rather than bury the base of the fence below grade, dirt had been piled up against the up-gradient side of the fence (violates GP Portion I and II). There was no fence along the north and south perimeter (violates GP Portion I and II). There was no representative on site.

On or about January 30, 2003, staff had a telephone conversation with Mr. Mike Linn, Assistant City Engineer/Project Manager for the City of Arroyo Grande (City). Mr. Linn was provided a summary of the permit violations associated with the site, and in closing Mr. Linn was told that a written notice of violation (NOV) was forthcoming.

On February 5, 2003, a NOV letter was sent to the City. The letter detailed the historical violations associated with the site, and the City's representatives' failure to mitigate the violations in a timely manner. The NOV directed the City to provide a copy of the SWPPP and related amendments by February 14, 2003.

Staff inspected the site on February 13, 2003. This inspection date was established in the NOV letter and staff also notified the City by telephone on the day of the inspection. Mr. Linn from the City and Mr. J. Herrera were present. During the previous 24 hours there had been approximately 0.5 inches of rainfall. Staff observed that approximately 70% of the silt fence had been properly reinstalled at the base of the perimeter slope. The north perimeter fence was not buried at the base and therefore ineffective (violates GP Portion I and II). Despite the presence of some improperly installed hay bales and gravel bags at the furthest down-gradient point on the northern side, sediments were not contained in front

of the hay bales but sediments were present down-gradient of the hay bales (violates GP Portion I and II). The sediment controls for the east drain inlet were inadequate and unchanged from what was present during the January 31, 2003 inspection (violates GP Portion I and II). The Discharger and staff agreed that attempting to contain sediment in the drain inlet was futile, and that future sediment BMP's would be established up-gradient of the drain.

Staff inspected the site on February 21, 2003. The silt fence had not been properly reestablished on the north perimeter slope (violates GP Portion I and II). BMP's for sediment control had been established further upstream of the east drain, but they were not properly installed, so there was no net improvement (violates GP Portion I and II). A dirt ramp had been established in the gutter on Avenida De Diamante (violates GP Portion I and II). Staff conveyed the findings of the inspection to Mr. Linn via a voice mail message.

Staff inspected the site on February 25, 2003. All silt fencing was in place and properly installed. However the dirt ramp that was noted during the previous inspection was still present (violates GP Portion I and II), the east drain still lacked adequate BMP's (violates GP Portion I and II), and staff noted a new violation. Residual concrete from a washout area had apparently overflowed and left the site (violates GP Portion I, II, and V). City Associate Engineer, Mr. Thomas Korman was present during the site inspection. Staff advised Mr. Korman of all of the noted violations.

On March 3, 2003, the Discharger provided staff with a copy of a letter that it addressed to its Contractor in response to the NOV that was issued by staff. The letter in part expressed the Discharger's concern for problems at the site including lack of maintenance on the silt fence, loss of sediments from the concrete wash out area, use of the dirt ramp on Avenida de Diamante, and inadequate BMP's for the control of erosion and sediment. When staff asked the Discharger about the status of submitting the SWPPP and related amendments that were referenced in the NOV and due by February 14, 2003, the discharger responded by stating they assumed their contractor had submitted it.

Regional Board staff inspected the site again on March 20, 2003. A. Herrera was unable to produce

site inspection reports that should have been generated following the rains of March 14 and 15, 2003. Excessive sediments due to a lack of erosion controls had overburdened the perimeter silt fencing, resulting in silt exiting the site (violates GP Portion I and II). The east drain was still without adequate sediment controls (violates GP Portion I and II).

Days of Violations: During the period of January 7, 2003 through March 20, 2003, a period of 73 days, staff conducted ten inspections and on each occasion staff noted multiple violations of the General Permit.

It is reasonable to conclude that the Discharger was in violation of the General Permit for no less than 73 days.

Minimum Liability: The Regional Board is required by Section 13385 of the California Water Code to assess, at minimum, civil liability at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Staff Costs: Regional Board staff costs for investigating this incident and follow-up (technical, legal and administrative) were approximately \$8,250 (calculated from 150 hours at \$75/hour).

When imposing civil liability, California Water Code Section 13385 requires the Regional Board to consider the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. California Water Code section 13385 also requires the Regional Board to consider the violator's ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts, any prior history of violations, the degree of culpability and economic savings, and other matters as justice may require.

California Environmental Quality Act: This enforcement action is taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) in accordance with sections 15307 and 15308, Title 14, California Code of Regulations.

Complaint Issued: The Executive Officer issued Complaint No. R3-2003-0103 on October 27, 2003, pursuant to Water Code Section 13385. The

complaint proposed imposing a civil liability of \$25,000.

PROPOSED CIVIL LIABILITY

Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to \$10,000 per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (Water Code section 13374). The Discharger was in violation of the General Permit for a total of no less than 73 days.

The maximum potential total civil liability amounts to \$730,000 (seven hundred thirty thousand dollars). Staff costs are estimated at \$8,250. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of

Twenty Five Thousand Dollars (\$25,000), based on consideration of statutory factors in Section 13385 of the California Water Code.

RECOMMENDATION

Board adopt proposed Administrative Civil Liability Order No. R3-2003-0103, imposing a \$25,000 liability.

ATTACHMENTS

1. Administrative Civil Liability (ACL) Complaint No. R3-2003-0103
2. Appendix A - Applicable General Permit Provisions
3. ACL Worksheet No. R3-2003-0103
4. Proposed Administrative Civil Liability Order No. R3-2003-0103

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

ACL COMPLAINT NO. R3-2003-0103

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF
ARROYO GRANDE, CITY OF
RANCHO GRANDE PARK, ARROYO GRANDE
SAN LUIS OBISPO COUNTY

ARROYO GRANDE, CITY OF IS HEREBY GIVEN NOTICE THAT:

The City of Arroyo Grande (hereafter Discharger) is alleged to have violated provisions of law, and an Order of the State Water Resource Control Board (State Board), for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code.

Unless waived, a hearing on this matter will be held before the Regional Board on December 5, 2003, at the Regional Water Quality Control Board office, 895 Aerovista Place, Suite 101, San Luis Obispo, or elsewhere, California. The Discharger and/or its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.

An agenda will be mailed to you separately, not less than ten days before the hearing date. At the hearing, the Regional Board will consider whether to affirm, reject, increase or decrease the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger is the owner and developer of a 7.5-acre public park construction project known as Rancho Grande Park, 101 Avenida de Diamante, Arroyo Grande, San Luis Obispo County, (Site). The majority of Site storm water run-off flows into an unnamed storm water conveyance system that is tributary to Meadow Creek. Meadow Creek is a water of the United States. More than 60% of the perimeter of the site has slopes that are 2:1 or greater.
2. On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Order No. 99-08-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (General Permit). This General Permit, as amended, serves as waste discharge requirements regulating storm water discharges associated with construction activity for sites disturbing one acre or more in accordance with the federal Clean Water Act (33 U.S.C. secs. 1250 et seq.) and the Porter-Cologne Water Quality Control Act (California Water Code secs. 13000 et seq.).
3. On August 22, 2002, the Discharger filed a Notice of Intent (NOI) to comply with the terms of the General Permit. *On January 10, 2003, the Regional Board staff (staff) reviewed the SWPPP at the site on January 10, 2003 and although it was found to lack the specific details the*

4. The Discharger specified in the NOI that Herrera Engineering (Contractor) the general contractor for Site construction would be responsible for complying with the General Permit, and would also be the primary contact regarding compliance.
5. The portions of the General Permit alleged to be violated are set forth in full in Appendix A attached to and incorporated into this complaint by reference. These portions are referred as "GP Portions" with roman numeral reference numbers in Appendix A and are summarized as follows:
 - a. GP Portion I summarized: All dischargers must develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the General Permit. "The discharger shall implement controls to reduce pollutants in storm water dischargers from their construction sites to the BAT/BCT performance standard." (hereafter referred to as Best Management Practices or BMPs) (The BAT standard means Best Available Technology and only applies to toxic pollutants and so does not apply here. The BCT standard means Best Conventional Pollutant Control Technology. General Permit SECTION A: Storm Water Pollution Prevention Plan provides guidance on developing and implementing BMPs that would be accepted at meeting the BCT standard.)
 - b. GP Portion II summarized: It is a goal of SWPPP development and implementation to identify, construct, implement in accordance with a time schedule, and maintain BMPs to reduce or eliminate pollutants in storm water dischargers and authorized non-storm water discharges from the construction site during construction.
 - c. GP Portion III summarized: The SWPPP shall be implemented concurrently with commencement of soil disturbing activities.
 - d. GP Portion IV summarized: The SWPPP must be kept at the construction site during the term of General Permit coverage.
 - e. GP Portion V summarized: Discharger must comply with all General Permit provisions.
 - f. GP Portion VI summarized: Discharger shall provide, to the Regional Board, any information requested to determine General Permit compliance.
 - g. GP Portion VII summarized: The SWPPP must be amended whenever changes in construction or operations may effect receiving waters, when violation of the GP occurs or there is a failure to eliminate pollutants in the storm water discharge. When the Regional Board determines the discharger is in violation of the GP the SWPPP must be amended and implemented in a timely manner, but in no case more than 14 calendar days after notification by the Regional Board. All amendments must be attached to the SWPPP.

6. First Staff Inspection and Consultation of General Permit: There was no SWPPP on site on January 7, 2003 (violation of GP Portion IV). Regional Board staff (staff) reviewed the SWPPP at the site on January 10, 2003 and although it was found to lack site-specific details the

SWPPP indicated the site would be provided with sedimentation fencing around the perimeter. Staff made Representatives of Herrera Engineering, Jose Herrera (J. Herrera), Superintendent and Alfonso Herrera (A Herrera), Foreman aware that the SWPPP was inadequate. Subsequent inspections on January 16, 28, and 31, 2003, found the SWPPP unimproved (violation of GP Portion VII). In a February 5, 2003 Notice of Violation (NOV) letter staff told the Discharger to provide the SWPPP and related amendments by February 14, 2003. In a February 26, 2003 letter from the Discharger the contractor was told that they were responsible for submitting the SWPPP (violates GP Portion VI). On March 21, 2003, staff received from the Discharger a SWPPP that was described as a revised version. Although the request had been for the original SWPPP with amendments, and the request had been repeated on several occasions, the revised edition was the only one provided. The following are some of the more significant inadequacies of the revised SWPPP (violates GP Portion I and VII):

- 1.) Undated;
- 2.) Vicinity Map was of such poor quality it was unreadable;
- 3.) Site Map was very difficult to interpret and decipher because there was little or no differential in the way in which the various sedimentation BMP's were depicted, and it failed to adequately delineate storm water collection and discharge points, topography, and drainage patterns;
- 4.) Failed to include a description and verification of required training.

As with the original SWPPP, the revised SWPPP also reflected a sedimentation barrier around most of the perimeter. It is very difficult to determine from reviewing the SWPPP what type of barrier was intended to be in place during what phase of the project (violates GP Portions II and VI). In addition there was never a time when barriers, of any kind, were in place at all of the designated perimeter areas (violates GP Portion I, II, III, and VI).

7. Regional Board staff (staff) inspected the site on January 7, 2003. The entire 7.5 acres had been rough graded, was without any form of erosion controls, and the sediment controls consisted of an improperly installed silt fence that would be ineffective in preventing sediments from leaving the site (violates GP Portion I and II). Staff informed J. Herrera and A Herrera of the inadequate erosion and sediment Best Management Practices (BMP's), and the need to expedite since it was the rainy season (violates GP Portion I and II).
8. Staff inspected the site on January 10, 2003. The BMP's were again found to be inadequate and unchanged since the previous inspection (violates GP Portion I and II). Staff noted that the primary drain for the entire site was without sediment BMP's (violates GP Portion I and II). Staff informed J. Herrera of inadequacies and he agreed to complete the following in one week:
1. Properly reestablish all perimeter silt fence. 2. Fill rills and reestablish grade where excessive erosion had occurred, primarily on the southwestern perimeter slope. 3. Create a sedimentation area with gravel bags in front of the east drain inlet.
9. Staff inspected the site on January 16, 2003. Of the three tasks listed in the preceding paragraph, only one had been partially completed. 1. The silt fencing was being removed, and the site slopes regraded for the purpose of hydroseeding (violates GP Portion I and II). The Discharger were reminded of the need to amend their SWPPP and keep staff informed of changes in BMP's (violates GP Portion I, II, and VII). 2. The filling of rills and regarding had

taken place in only the southwest corner (Violates GP Portion I and II). 3. The east drain was still without BMP's (violates GP Provision I and II).

10. Staff inspected the site on January 28, 2003. The perimeter slopes had been completely regraded, eliminating remaining vegetation (violates GP Portion I and II). The silt fence no longer existed (violates GP Portion I and II). When asked about the complete lack of BMP's, A. Herrera directed staff to J. Herrera, who was not on site. Staff made clear to A. Herrera that with respect to complying with the General Permit the Discharger was regressing and that focused expeditious action was needed to correct the problems.
11. In a January 30, 2003, telephone conversation with J. Herrera, staff was told that by the end of that day all silt fencing would be properly reinstalled, and the east drain would be provided with BMP's to prevent sediments from leaving the site.
12. Staff inspected the site on January 31, 2003. The reestablishment of the silt fence was less than half complete (violates GP Portion I and II). The BMP's at the east drain were inadequate for preventing sediments from migrating off site (violates GP Portion I and II). J. Herrera said the improvements would be completed by the end of that day. Staff reminded him of his responsibility to amend the SWPPP so that it reflects the changes in BMP's, and of the need to maintain weekly inspection logs (failure to do so violates GP Portion VII).
13. Staff inspected the site on February 1, 2003. The silt fence installation was no more than 75% complete, and it was improperly installed (violates GP Portion I and II). Rather than bury the base of the fence below grade, dirt had been piled up against the up-gradient side of the fence (violates GP Portion I and II). There was no fence along the north and south perimeter (violates GP Portion I and II). There was no representative on site.
14. On or about January 30, 2003, staff had a telephone conversation with Mr. Mike Linn, Assistant City Engineer/Project Manager for the City of Arroyo Grande (City). Mr. Linn was provided a summary of the permit violations associated with the site, and in closing Mr. Linn was told that a written notice of violation (NOV) was forthcoming.
15. On February 5, 2003, a NOV letter was sent to the City. The letter detailed the historical violations associated with the site, and the City's representatives' failure to mitigate the violations in a timely manner. The NOV directed the City to provide a copy of the SWPPP and related amendments by February 14, 2003.
16. Staff inspected the site on February 13, 2003. This inspection date was established in the NOV letter and staff also notified the City was also by telephone on the day of the inspection. Mr. Linn from the City and Mr. J. Herrera were present. During the previous 24 hours there had been approximately 0.5 inches of rainfall.

Staff observed that approximately 70% of the silt fence had been properly reinstalled at the base of the perimeter slope. The north perimeter fence was not buried at the base and therefore ineffective (violates GP Portion I and II). Despite the presence of some improperly installed hay bales and gravel bags at the furthest down-gradient point on the northern side, sediments had accumulated in the east drain. The filling of rills and regressing had violated GP Portion I, II and VII. A NOV was issued on February 13, 2003.

were not contained in front of the hay bales but sediments were present down-gradient of the hay bales (violates GP Portion I and II).

The sediment controls for the east drain inlet were inadequate and unchanged from what was present during the January 31, 2003 inspection (violates GP Portion I and II). The Discharger and staff agreed that attempting to contain sediment in the drain inlet was futile, and that future sediment BMP's would be established up-gradient of the drain.

17. Staff inspected the site on February 21, 2003. The silt fence had not been properly reestablished on the north perimeter slope (violates GP Portion I and II). BMP's for sediment control had been established further upstream of the east drain, but they were not properly installed, so there was no net improvement (violates GP Portion I and II). A dirt ramp had been established in the gutter on Avenida De Diamante (violates GP Portion I and II).

Staff conveyed the findings of the inspection to the Discharger via a voice mail message that was left for Mr. Linn.

18. Staff inspected the site on February 25, 2003. For the first time all silt fencing was in place and properly installed. However the dirt ramp that was noted during the previous inspection was still present (violates GP Portion I and II), the east drain still lacked adequate BMP's (violates GP Portion I and II), and another new violation had materialized. Residual concrete from a washout area had apparently overflowed and left the site (violates GP Portion I and II).

City Associate Engineer, Mr. Thomas Korman was present during the site inspection. Staff advised Mr. Korman of all of the noted violations.

19. On March 3, 2003, the Discharger provided staff with a copy of a letter that it addressed to its Contractor in response to the NOV that was issued by staff. The letter in part expressed the Discharger's concern for problems at the site including lack of maintenance on the silt fence, loss of sediments from the concrete wash out area, use of the dirt ramp on Avenida de Diamante, and inadequate BMP's for the control of erosion and sediment. When staff asked the Discharger about the status of submitting the SWPPP and related amendments that were referenced in the NOV and due by February 14, 2003, the Discharger responded by stating they assumed their contractor had submitted it.

20. Staff inspected the site on March 20, 2003. A. Herrera was unable to produce the mandatory site inspection report that should have been generated, if the required inspection had been conducted following the rains of March 14 and 15, 2003. Excessive sediments due to a lack of erosion controls had overburdened the perimeter silt fencing, resulting in silt exiting the site (violates GP Portion I and II). The east drain was still without adequate sediment controls (violates GP Portion I and II).

21. During the period of January 7, 2003 through March 20, 2003, a period of 73 days, staff conducted ten inspections and on each occasion staff noted multiple violations of the General Permit.

22. It is reasonable to conclude that the Discharger was in violation of the General Permit for no less than 73 days.

PROPOSED CIVIL LIABILITY

Pursuant to California Water Code Sections 13385, the Regional Board can impose civil liability up to \$10,000 per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (Water Code section 13374). The Discharger was in violation of the General Permit for a total of at least 73 days.

Therefore, maximum liability that may be imposed is \$730,000 (seven hundred thirty thousand dollars.)

Section 13385 of the California Water Code states, in part:

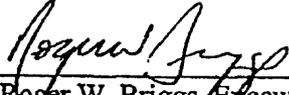
"(e) ... At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

Although the discharger probably realized some cost savings by not providing a adequate SWPPP and BMP's, Staff does not have adequate information to determine the actual economic benefit derived by not complying with the General Permit.

Staff costs for investigating this incident and follow-up (technical, legal and administrative) were approximately \$8,250 (calculated from 110 hours at \$75/hour).

When imposing civil liability, California Water Code Section 13385 requires the Regional Board to consider the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. California Water Code section 13385 also requires the Regional Board to consider the violator's ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts, any prior history of violations, the degree of culpability and economic savings, and other matters as justice may require. Consideration of these factors and Calculations of potential civil liability are provided in the "Work Sheet for Assessment of Administrative Civil Liability for the City of Arroyo Grande", attached hereto and incorporated herein by reference.

The maximum potential total civil liability amounts to \$730,000 (seven hundred thirty thousand dollars). Staff costs are estimated at \$8,250. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of Twenty Thousand Dollars (\$25,000), based on consideration of statutory factors in Section 13385 of the California Water Code.



Roger W. Briggs, Executive Officer

10-27-03

Date

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

WORK SHEET FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY

ARROYO GRANDE, CITY OF
RANCHO GRANDE PARK, ARROYO GRANDE
SAN LUIS OBISPO COUNTY

I. MAXIMUM ALLOWABLE CIVIL LIABILITY

The City of Arroyo Grande, (hereafter "Discharger") violated the General Construction Storm Water Permit for 73 days. California Water Code Section 13385 allows assessment of up to \$10,000 per day for each day a violation occurs. Although multiple violations occurred on multiple days, the maximum liability is based on only one violation per day, regardless of the number of actual violations. Therefore, the maximum liability is at least \$730,000 (seven hundred thirty thousand dollars).

II. MINIMUM CIVIL LIABILITY

Section 13385 of the California Water Code provides that, at a minimum, a civil liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. Regional Board staff do not have enough information to calculate economic benefit. The Discharger enjoyed some economic savings by not installing adequate BMP's, delaying installation of some BMP's, and not establishing an adequate SWPPP and amending it. The average recommended liability is \$342 per day. It is unlikely that the Discharger realized economic savings in excess of this amount.

III. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY (ACL)

A. VIOLATIONS

When imposing civil liability, California Water Code Section 13385 requires the Regional Board to consider the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. These factors are considered below:

1. The Nature, Circumstance, Extent, and Gravity of the Violations

The Discharger violated provisions of the General Construction Storm Water Permit, the Federal Clean Water Act, and the California Water Code by not having an adequate SWPPP and by failing to fully implement the site SWPPP. The site was never provided with any recognizable erosion control BMP's and the BMP's for controlling sediments were never adequate. These conditions prevailed throughout a seventy-three day period,

January 7, 2003, through March 20, 2003, during which staff conducted ten compliance inspections, issued a NOV, and had extensive conversations with the Discharger. Because the General Permit relies on voluntary compliance by dischargers a failure to implement BMP's is a serious violation.

Although there was evidence that sediments were discharged from the site to waters of the State, it could not be quantified and the impacts on the receiving water could not be determined. Therefore this factor supports liability less than the maximum.

2. Susceptibility to Cleanup.

In general, storm water discharge is not susceptible to complete cleanup because sediments tend to move rapidly downstream, disperse over extensive areas where they mix with naturally occurring sediments. Furthermore, cleanup efforts may have secondary adverse impacts on drainage ways and riparian resources. Because these discharges are not susceptible to cleanup, consideration of this factor does not support liability that is less than maximum.

3. Toxicity of the Discharge

There is no evidence that storm water and storm water sediments discharged from the site were toxic. Therefore consideration of this factor would justify less than maximum liability.

B. VIOLATOR

California Water Code section 13385 also requires the Regional Board to consider the violator's ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts, any prior history of violations, the degree of culpability and economic savings, and other matters as justice may require.

1. Ability to pay;

The Discharger has not provided financial data to the Regional Board to show an inability to pay.

2. Any voluntary clean up efforts undertaken by the violator;

There is no evidence of voluntary clean up efforts having taken place. Because of the difficulties associated with locating and recovering the sediments, and the potential for such activities to further impact the receiving waters, clean up was probably not practicable. Therefore this factor does not support liability that is less than maximum.

There were never adequate conditions believed throughout a complete cleanup of the site.

3. Prior history of violations;

There is no known history of prior violations. Consideration of this factor supports liability less than maximum.

4. Degree of culpability;

As the permitted party, and landowner of the Site, the Discharger is directly responsible for permit compliance, and was aware of permit conditions. Following each of the ten site inspections staff either met with on site or contacted by telephone the Discharger or its representatives and discussed permit violation issues and means of mitigating the violations. On February 5, 2003, a "Notice of Violation" letter were sent to the Discharger outlining the violations, the repetitive nature of the violations, and the need for expeditious mitigation efforts.

Although there were times that the Discharger made progress towards compliance, there were also times of regression, and times when new violations would develop. As a result, despite the efforts of staff, little in the way of a net improvement towards compliance was achieved. Therefore the Discharger's level of culpability is high. Consideration of this factor supports maximum liability.

5. Economic savings resulting from the violation; and,

Regional Board staff does not have enough information to calculate economic benefit. However, Discharger did enjoy some economic savings by not providing an adequate SWPPP and BMPs. It is unlikely this savings exceeds the recommended liability amount.

6. Other matters as justice may require.

Regional Board staff have spent time responding to the situation and preparing the administrative civil liability complaint. Estimated staff costs for preparation of this complaint are \$8,250.

A CONSERVATIVE ESTIMATE OF STAFF COSTS FOR ENFORCEMENT			
	Hours	Rate (\$/hr)	Amount (\$)
Regional Board Staff time	110	75	\$8,250

IV. RECOMMENDATION

TOTAL RECOMMENDED LIABILITY \$25,000

Staff recommends assessment of Twenty Thousand Dollars (\$25,000) in administrative civil liability against the City of Arroyo Grande.

Exhibit C

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

MERONA ENTERPRISE, INC (MERONA))	Complaint No. R4-2004-0050
9550 FIRESTONE BLVD. SUITE 105)	For
DOWNEY, CA 90241)	Administrative Civil Liability

MERONA IS HEREBY GIVEN NOTICE THAT:

1. MERONA is alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ [NPDES Permit No. CAS000002] (hereinafter General Permit) for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose civil liability under §13385 of the California Water Code (CWC). The General Permit regulates discharges of storm water associated with construction activities.
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on MERONA. MERONA will be notified at least ten days in advance of the date, time and place of the hearing. MERONA or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of a greater judicial civil liability.
4. In the event that MERONA fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

BACKGROUND

5. Storm water runoff from MERONA's 7-acre construction site, WDID No. 4 19 C 316360, located at 6218 Hooper Avenue, City of Los Angeles is regulated under the General Construction Permit. On August 21, 2001, the State Board processed MERONA's Notice

of Intent (NOI), signed by Mr. Bobby Ouellette, to comply with the terms of the General Permit.

6. In its NOI, MERONA stated that grading would be completed in October 2001, and that project completion would occur by December 2001.

ALLEGED VIOLATIONS

7. MERONA is alleged to have violated the following 3 provisions of the General Permit:
 - I. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 1. Objectives. MERONA failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for the entire 7- acre site, to meet requirements in of Sections A.1 through C.10.
 - II. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 8. Sediment Control. MERONA failed to implement sediment control along the construction site's perimeters and at all operational inlets to the storm drain system; and
 - III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 11. Maintenance, Inspection, and Repair. MERONA failed to maintain and repair the construction site's Best Management Practices (BMPs).
8. On May 6, 2003, during a storm water inspection of MERONA's Hooper Ave. construction project, Regional Board staff observed:
 - a. §A.3- (SWPPP Availability): MERONA's SWPPP was not retained on the construction site during working hours while the site was under construction.
 - b. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment had been discharged from the site into the storm drain on Hooper Street. Sediment had been tracked onto Compton Avenue, east of the site.
 - c. §A.11- (Maintenance, Inspection, and Repair): Site BMPs were not maintained and repaired at the storm drain on the East Eagle Avenue. Sediment and gravel were observed on the street next to the storm drain due to broken sandbags.
9. On May 21, 2003, a Notice of Violation (NOV) was mailed to MERONA. The NOV cited the Permit violations observed by the Regional Board staff during the May 6, 2003 inspection. The NOV stated that to come into compliance with the provisions of the Permit, MERONA was required to:

1. "By May 30, 2003 submit an updated NOI with Pertinent changes of information to State Water Resources Control Board and send a copy of NOI to Regional Board to the attention of Mr. Alex Alimohammadi."
 2. "By June 16, 2003, submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit and contains a schedule for the implementation of sediment control BMPs to Mr. Alex Alimohammadi"
 3. "Immediately implement appropriate BMPs in accordance with the schedule in your SWPPP to address all deficiencies discussed above. Submit A written certification to the regional Board (to the attention of Mr. Alex Alimohammadi), within 14 days after implementing your SWPPP, stating that the above measures have been effectively implemented and are being monitored."
 4. "Immediately pay the annual fee of \$700 to the State Water Resources Control Board."
10. On September 22, 2003 Regional Board staff left a phone message for Mr. Bobby Ouellette of MERONA that the response to the NOV was overdue.
 11. On September 23, 2003, staff tried again to contact Mr. Ouellette and again left a voice message for him.
 12. On September 25, 2003, Mr. Tim Mc Nair, the site foreman called the staff. Staff reiterated the importance of responding to the NOV. Mr. Mc Nair stated that he would follow-up on the NOV and would inform the staff. On the same day, Mr. Louis Armona, who identified himself as MERONA's president, called the staff and stated that he was unaware of an NOV sent to MERONA. Staff informed Mr. Armona that the NOV was mailed on May 21, 2003 to MERONA's address on the NOI and that Ms. Jayme Macias, a MERONA representative, had received the NOV and had signed the return receipt on May 27 2003. Mr. Armona asked the staff for a copy of the NOV to be faxed to him. Staff faxed a copy of the NOV to Mr. Armona on September 25, 2003.
 13. On February 17, 2004, staff made a follow up inspection at the site. During the inspection, Regional Board staff met with MERONA's representative, Mr. Carlos Losada. Mr. Losada submitted a SWPPP to staff that was incomplete and was only for a 2.2-acre area. Staff discussed the following with Mr. Losada:
 - a. §A.1 (SWPPP Objectives): MERONA did not develop and implement a SWPPP to address the specific circumstances for the construction site. The SWPPP submitted to the staff was not for the entire 7-acre project and did not include all the required Sections A.1 through C.10 of the Permit.
 - b. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment had been discharged into the on site storm drains.

14. On March 16, 2004 a second NOV was mailed to MERONA. The NOV cited the Permit violations observed by the Regional Board staff during the February 17, 2004 follow up inspection. The NOV stated that to come into compliance with the provisions of the Permit, MERONA was required to:
 1. "Immediately submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit, and that contains a schedule for the implementation of the BMPs."
 2. "Immediately implement appropriate BMPs in accordance with the new schedule in your SWPPP to address all deficiencies discussed above."
 3. "Submit a written certification to the regional Board (to the attention of Mr. Alex Alimohammadi), within 14 days after implementing your SWPPP, stating that the above measures have been effectively implemented and are being monitored. Include in your submittal pictures of the BMPs implemented."
15. To date, no response to the NOV has been received from MERONA.

POTENTIAL CIVIL LIABILITY

16. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
17. Pursuant to § 13385(c)(1) of the CWC, MERONA is civilly liable for the sum of \$10,000 per day per violation of its General Permit. The total potential maximum civil liability assessment for the violations described herein is \$12,630,000 as set forth in the following chart:

POTENTIAL MAXIMUM PENALTY

<i>Penalty Category</i>	<i>Duration</i>	<i>Calculation</i>	<i>Total</i>
§A.1- (SWPPP Objectives)	404 days (5/21/03-6/28/04)	(421 days) X (\$10,000/day)	\$4,210,000
§A. 8-(Sediment Control)	404 days (5/21/03-6/28/04)	(421 days) X (\$10,000/day)	\$4,210,000
§A.11-(Maintenance, Inspection, and Repair)	404 days (5/21/03-6/28/04)	(421 days) X \$(10,000/day)	\$4,210,000
POTENTIAL MAXIMUM ACL			\$12,630,000

18. Pursuant to the CWC §13385 (e), the Regional Board has considered the following factors in determining the amount of civil liability to be imposed:

a. Nature, circumstances, extent, and gravity of the violations:

MERONA failed to develop and implement a SWPPP that identified all pollutant sources onsite, described and implemented BMPs according to a time schedule, and provided a maintenance schedule for post-construction BMPs. Sediment controls to stabilize disturbed areas throughout the construction site were not implemented. BMPs implemented were not maintained and repaired. MERONA did not respond to the due date of June 16, 2003 specified in the NOV mailed on May 21, 2003 to MERONA by the Regional Board. A second NOV was sent to MERONA on March 16, 2004. The SWPPP and the certification submitted to the Regional Board staff by MERONA's representative was incomplete and was not for the entire 7-acre site. MERONA did not respond to the NOV dated March 16, 2004. Therefore, a reduction from the maximum civil liability is not warranted.

b. Susceptibility of the discharge to cleanup or abatement:

The discharge of construction pollutants (i.e. sediment) is not easily cleaned-up once it has been released into the storm drain. Therefore, a reduction from the maximum civil liability is not warranted.

c. Violator's ability to pay:

MERONA has not provided sufficient information for the Regional Board to determine MERONA's ability to pay. The Regional Board feels that the civil liability is correctly assessed; therefore, a reduction in the civil liability is not warranted.

- d. Effect on Permittee's ability to continue its business:
MERONA has not provided any information for the Regional Board to determine the impact that the proposed civil liability may have on the MERONA's ability to continue its business.
- e. Voluntary cleanup efforts undertaken:
When the BMPs installed by MERONA failed to contain contaminated storm water runoff, MERONA did not take any voluntary efforts to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.
- f. Prior history of violations:
A review of MERONA's Hooper Ave. construction project file indicates:
- i. On April March 4, 2003, an NOV was sent to MERONA for failure to pay the required 2002-2003 annual fee.
 - ii. On May 21, 2003 an NOV was sent to MERONA for failure to have a SWPPP and for failure to implement effective BMPs at their construction site.
 - iii. On February 26, 2004, an NOV was sent to MERONA for failure to pay the required 2003-2004 annual fees.
- g. Degree of culpability:
MERONA partially complied with the terms of the General Permit by: (1) developing an incomplete SWPPP for a portion of their construction site, (2) by implementing BMPs at portions of their construction site. Therefore, a reduction from the maximum civil liability is warranted.
- h. Economic benefit or savings:
To prepare a typical SWPPP for a construction site of this size and complexity, it costs an average of \$2000. In addition, economic savings from not implementing sediment control BMPs and lack of maintenance on at least 20% of the 7 acres of disturbed land is estimated at \$840. The breakdown of this amount is as follows:
1. 20% of 7 acres = 1.4 acres;
 2. (1.4 acres) x (\$600 per acre of implementing BMPs)= \$840
 3. \$840 is the amount that MERONA saved by not implementing and maintaining effective BMPs at the construction site.
- i. Other matters as justice may require:
An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour for staff

cost recovery. With total staff time of approximately 20 hours, staff costs incurred by the Regional Board is estimated to total \$1,400:

$$20 \text{ hours} \times \$70 \text{ per hour} = \$1,400$$

19. After consideration of the factors stated in §13385(e) of the CWC, and staff's lack of data to substantiate that fauna and flora exposed to the discharged pollutants were impaired, the Regional Board Executive Officer recommends that administrative civil liability be imposed by the Regional Board in the amount of \$14,240 which includes the following:
- a. Penalty of \$2,000 for not developing and implementing a complete SWPPP;
 - b. Penalty of \$840 for not implementing and not maintaining effective BMPs;
 - c. CWC Section 13385 penalty of \$10,000 for 05/06/03 and 2/17/04 violations; and
 - d. Reimbursement of \$1,400 in Regional Board staff costs (20 hours x \$70/hour).

RECOMMENDED CIVIL LIABILITY

<i>Penalty Category</i>	<i>Calculation</i>	<i>Total</i>
<i>Avoided cost SWPPP-Section A</i>	\$2000 for not developing and implementing a complete SWPPP for the entire 7-acre site	\$2000
<i>Avoided cost-Sections A.8., and A.11</i>	§A.8-(Sediment Control): for not implementing effective sediment control BMPs §A.11 (Maintenance, Inspection, and Repair): for not maintaining the BMPs The percentage of the total disturbed area (7 acres) that effective BMPs were not implemented is estimated to be 20%. (1.4 acres)x(\$600/acres)	\$840
<i>Penalty</i>	5/6/03 and 2/17/04 violations-Section 13385 (\$5000 x 2)	\$10,000
<i>Reimbursement for Staff Costs</i>	Staff expended 20 hours x \$70/hour	\$1,400
TOTAL RECOMMENDED PENALTY		\$14,240

20. MERONA may waive its right to a hearing. Should MERONA choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint

and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on August 9, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$14,240 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.

21. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If MERONA has any questions, please contact Ejigu Solomon at (213) 620-2237 or Alex Alimohammadi at (213) 620-2243.

Date

Dennis A. Dickerson
Executive Officer

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of MERONA to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0050 (Complaint) issued by the Regional Board Executive Officer. MERONA understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes

MERONA elects to pay the civil liability in the following manner:

Enclosed herewith in full payment of the civil liability is a \$14,240 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

MERONA understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and imposition of, and the amount of, civil liability imposed. MERONA also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due in thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind MERONA in the making and giving of this Waiver.

MERONA

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Compliant No. R4-2004-0011
)	for
Toll, CA, L.P., VI)	Administrative Civil Liability
5301 ½ Upland Road)	
Camarillo, CA 93012)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Toll, CA, L.P., VI (hereafter the Permittee) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under section 13385 of the California Water Code (CWC).
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Board or a Hearing Panel within ninety days after service of this Complaint on the Permittee. The Permittee will be notified at least ten days in advance of the date, time and place of the Hearing. The Permittee or Permittee's representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, modify or reject the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of greater judicial civil liability.
4. In the event that the Permittee fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer the matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS:

5. The Permittee's 87-acre construction site in Camarillo, California, located on Woodcreek Road / Upland Road, and identified by WDID number 456C318000, is subject to the requirements of the NPDES General Permit for Storm Water Runoff Associated with Construction Activity, State Water Resources Control Board Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit). The General Permit requires the Permittee to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for each construction site (General Permit SECTION A). The General Permit also requires that the SWPPP remain on site during working hours while the site is under construction (General

Permit SECTION A.3), and that the SWPPP must be provided to the Regional Board upon request (General Permit SECTION A.15).

6. The Permittee is in violation of the Permit due to the following: an incomplete SWPPP; and failure to implement effective Best Management Practices (BMPs) contrary to statements in the SWPPP.
 - a) On March 5, 2003, Regional Board staff (Sean Lee) inspected the site. During the inspection, staff observed:
 - i. § A-(SWPPP): The SWPPP lacked a site map showing drainage areas and anticipated discharge locations, a construction activity schedule, designation of responsible parties for long-term maintenance of post-construction BMPs, a maintenance schedule for BMPs, a program to inspect and maintain BMPs, sediment tracking control BMPs and contractor & subcontractor list;
 - ii. § A.6-(Erosion Control): The Permittee failed to implement erosion control measures specified in its SWPPP, as evidenced by severe erosion along some slopes at the site;
 - iii. § A.8-(Sediment Control): The Permittee failed to implement BMPs specified in its SWPPP, as evidenced by inadequate detention and de-silting basin sediment controls and broken sandbags.
 - b) On March 7, 2003, the Regional Board issued a Notice of Violation (NOV) to the Permittee for an incomplete SWPPP and failure to implement effective erosion and sediment control BMPs cited in the SWPPP. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that a completed and revised SWPPP be submitted to the Regional Board by April 7, 2003. The Regional Board did receive a completed SWPPP for the Permittee's site on April 11, 2003, and it was determined to be adequate.
 - c) On April 29, 2003, Regional Board staff and County staff performed a follow-up inspection and observed:
 - i. § A.8-(Sediment Control): The Permittee failed to replace broken sandbags, clean accumulated sediment near a storm drain inlet and implement effective sediment tracking control BMPs on the construction entrance;
 - ii. § A.6-(Erosion Control): The Permittee failed to implement effective wind erosion control BMPs on an exposed soil pile;

- iii. § A.5-(General Housekeeping Practices): The Permittee failed to contain potential pollutant sources such as cement, concrete wastes, and oil buckets at the site.
 - d) On May 2, 2003, the Regional Board issued a second NOV to the Permittee for failure to implement effective sediment, sediment tracking, wind erosion control BMPs, and good housekeeping practices cited in the SWPPP. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that documentation that corrective actions were taken be submitted to the Regional Board by May 14, 2003.
 - e) On May 21, 2003, the Permittee certified, in a letter dated May 13, 2003, that it took all corrective actions.
 - f) On December 12, 2003, Regional Board staff and the City of Camarillo staff jointly performed rainy season follow-up inspection. During the inspection, Regional Board staff observed:
 - i. § A.6-(Erosion Control): The Permittee failed to implement effective erosion control BMPs on some slopes and implement effective wind erosion control BMPs on exposed soil piles;
 - ii. § A.8-(Sediment Control): The Permittee failed to replace broken sandbags and fallen-down silt fences;
 - iii. § A.5-(General Housekeeping Practices): The Permittee failed to contain potential pollutant sources such as a concrete mixer at the site.
7. Section 13385 of the California Water Code (CWC) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.
8. Based on the site inspections and the filing date of the NOI, the Permittee has been in violation of SECTION A.1 of the General Permit for failure to develop a complete SWPPP for the site from May 7, 2002 (the NOI filing date) through April 11, 2003 (date the Regional Board received a copy of a completed SWPPP), and is civilly liable for a total of 339 days of violation. Also, the Permittee has been in violation of SECTION A.5, 6, and 8 of the General Permit for failure to implement, maintain and improve BMPs on site from May 7, 2002 through June 17, 2004 (date the Regional Board issued Administrative Civil Liability), and is civilly liable for a total 772 days of violation. The total maximum liability that may be assessed for these violations is \$11,110,000 as follows:

MAXIMUM CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>For failing to comply with Order No. 99-08-DWQ by not developing and retaining a completed SWPPP</i>	Water Code section 13385 (c)(1): (339 days) X \$10,000/day	\$3,390,000
<i>For failing to comply with Order No. 99-08-DWQ by not implementing and maintaining effective BMPs</i>	Water Code section 13385 (c)(1): (772 days) X \$10,000/day	\$7,720,000
POTENTIAL MAXIMUM ACL		\$11,110,000

9. In determining any liability to be imposed, CWC section 13385 (e) requires the Regional Board to consider the following factors:
- a. Nature, circumstances, extent, and gravity of the violations: The Permittee operated without a completed SWPPP for the site for at least 339 days. A SWPPP mandates the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. Therefore, no reduction in the civil liability is warranted.
 - b. Susceptibility of the discharge to cleanup or abatement: The discharge of construction pollutants (such as sediment) is not easily cleaned-up once it has been released into the Flood Control Channel. Therefore, a reduction from the maximum civil liability is not warranted.
 - c. Degree of toxicity of the discharge: The discharge of construction pollutants violated water quality objectives in the Basin Plan. Total Suspended Solids (TSS) that exceeded the benchmark for TSS were discharged to a tributary of the Mugu Lagoon. Mugu Lagoon is a 303(d) listed waterbody whose beneficial uses are impaired by sediment. Therefore, a reduction from the maximum civil liability may not be warranted.
 - d. The ability to pay: The Permittee has not provided the Regional Board any information to determine its ability to pay the maximum civil liability.

- e. Effect on the Permittee's ability to continue its business: Regional Board staff have no information to determine the impact of the proposed penalty on the Permittee's ability to continue its business.
- f. Voluntary cleanup efforts undertaken: When the BMPs installed by the Permittee failed to contain sediment-laden storm water runoff, the Permittee took efforts to remove sediment-laden storm water runoff using a water truck from its construction site. Therefore, a reduction from the maximum civil liability is warranted.
- g. Prior history of violations: On February 11, 2003, the Permittee pumped sediment-laden water from the site into a storm drain inlet without appropriate BMPs. On March 7, 2003, County staff collected a sample of the discharge, and the result indicated 120 mg/l of TSS exceeding benchmark limits for TSS. This showed the Permittee did not upgrade the BMPs at the site. Therefore, a reduction in the maximum civil liability may not be warranted.
- h. Degree of culpability: The Permittee violated the terms of the General Permit by failing to develop a completed SWPPP and implement effective BMPs, which led to a discharge of sediment to waters of the United States during the rainy season. However, the Permittee partially improved erosion control BMPs and retained a complete SWPPP on site in response to the first NOV. Therefore, a reduction from the maximum civil liability may be warranted.
- i. Economic benefit or savings: By not implementing and maintaining effective BMPs on at least 10% of its 87 acres of the site, the Permittee realized an economic savings of at least \$5,220, which breaks down:
 - i. 10% of 87 acres = 8.7 acres;
 - ii. 8.7 acres x \$600 per acre for implementation of BMPs = \$5,220;
 - iii. \$5,220 is the amount that the Permittee saved by not maintaining and implementing effective BMPs throughout its construction site for 2003.
- j. Other matters as justice may require: Staff time to prepare this Complaint is estimated to be \$4,200 (60 hours at \$70 per hour).

RECOMMENDED CIVIL LIABILITY

- 10. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the Permittee in the amount of \$54,420, which includes recovery of the Regional Board's staff costs, as outlined below:

PROPOSED CIVIL LIABILITY

Penalty Category	Calculation	Total
Avoided costs: Cost to implement effective erosion, sediment, sediment tracking, wind erosion control BMPs, and housekeeping practices	\$5,220 in avoided cost, from not maintaining and implementing effective erosion sediment, sediment tracking, wind erosion control BMPs, and housekeeping practices as required by the General Permit.	\$5,220.00
Penalty	CWC SECTION 13385 \$45,000 for violations of Section A.5,6 and 8 of the General Permit for three days = 9 violations [Inspections on March 5 (3 violations), April 29 (3 violations) and December 12, 2003 (3 violations)], \$5,000 per violation (9 violations) for 3 days	\$45,000.00
Staff Costs	60 hours at \$70 per hour	\$4,200.00
	Total	\$54,420.00

11. This matter will be heard before the Regional Board or Hearing Panel pursuant to Water Code section 13323 unless the Permittee waives the hearing and pays the penalty of \$54,420 in full by July 17, 2004. The Permittee will be notified of the date, time, and location of the Hearing.
12. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the General Permit for Storm Water Discharge Associated with Construction Activities, including but not limited to implementation of a SWPPP.

13. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
14. The Permittee may waive the right to a hearing. If the Permittee chooses to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 17, 2004. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$54,420 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver or;
 - a. The Permittee may propose to pay up to \$40,815 of the civil liability by:
 - i contributing to a SEP on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html, or
 - ii carrying out the Permittee's own independent SEP.

In the event that the Permittee proposes to invest in a SEP, a check in the amount of \$13,605 (payable to the State Water Resources Control Board Cleanup and Abatement Account) together with the Permittee's written statement confirming that the Permittee contributed to a SEP on the SEP List or proposes to carry out an independent SEP will be submitted along with the executed waiver and received by the Regional Board by the close of business on July 17, 2004.

If the Permittee elects to contribute to a SEP on the SEP List, the Permittee shall pay \$40,815 to the chosen SEP by the close of business on July 17, 2004, and notify the Regional Board of the date, amount and method of payment by the close of business on July 17, 2004.

If the Permittee proposes to carry out an independent SEP, a detailed description of the SEP shall be received by the Regional Board by the close of business on July 17, 2004. A proposal for an independent SEP will be subject to public notice and approval of the Regional Board. Should the Regional Board not approve the Permittee's proposal for an independent SEP, or should the Permittee later fail or elect not to implement the proposed independent SEP, the remainder of the civil liability will be due and payable within 30 days of such an event.

15. Regulations of the US Environmental Protection Agency require public notification of any

proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Dennis A. Dickerson
Executive Officer

Date _____

Exhibit D

Feb 9 straw bales + silt fence

Feb 8 silt fencing extended

(a holes open, shorter)

Feb 7 silt fencing + storm water log

Feb 6 silt fence

miles Hicks left @ 1pm - permission to walk around

Pro Shop local discount

• prices during constr = \$10

• after constr = \$40-45

→ chemical storage area

→ pipes under silt fences near G-18 +

→ silt fences need maint. at GCS

→ drains need protection

→ sediment in pond

(photos)

Exhibit E



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>

June 23, 2005

[via e-mail and U.S. mail]
George J. Kovacevich, Esq.
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Office of the City Attorney
City of Santa Cruz
333 Church Street
Santa Cruz, CA 95060

Sheryl L. Schaffner, Esq. [via e-mail only]
sschaffner@waterboards.ca.gov
c/o North Coast Regional Water
Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Dear Mr. Kovacevich and Ms. Schaffner:

DELAVEAGA GOLF COURSE, SANTA CRUZ, ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. RB3-2005-0067: REQUEST FOR FORMAL HEARING AND
CONTINUANCE

Central Coast Regional Water Quality Control Board staff prosecuting the above-referenced Complaint ("Staff") submit the following objections to Mr. Kovacevich's letter dated June 21, 2005. Staff also requests the Chair not to allow the Discharger to submit written materials after the due date in the agenda for the July 7/8, 2005, meeting.

The City of Santa Cruz (Discharger) has requested a formal hearing pursuant to California Code of Regulations, title 23, section 648.7. Staff has no objection to this request. In fact, the Central Coast Regional Water Quality Control Board (Central Coast Water Board, or Water Board) cannot refuse this request since an evidentiary hearing is required by statute, unless the discharger waives the hearing. (Ca. Gov. Code, § 11445.20(d); Ca. Wat. Code, § 13323(b).)

Staff objects to the inference that only the Office of Administrative Hearings (OAH) can conduct formal hearings, or that Chapter 5 of the Administrative Procedure Act (Ca. Gov. Code, § 11500 et seq.) applies to administrative civil liability proceedings.

Chapter 5 only applies if an agency elects to be subject to Chapter 5 in regulations. (Ca. Gov. Code, § 11501(a).) The State Water Resources Control Board (State Water Board) regulations have not made the State Water Board or regional water boards (collectively, Water Boards) subject to Chapter 5. Rather, hearings are conducted pursuant to Chapter 4.5 (Ca. Gov. Code, § 11400 et seq.), and Chapter 5 is expressly inapplicable. (Cal. Code Regs., tit. 23, § 648(a), (c).) The July 7/8 Agenda states that hearings will not be conducted according to Chapter 5. (See page 8 of the Agenda.)¹

¹ The Agenda is available at http://www.waterboards.ca.gov/centralcoast/Board/Meetings/documents/070805agenda_000.pdf.

The Porter-Cologne Water Quality Control Act ("Porter-Cologne") also prohibits a referral to the OAH, since it requires the regional water boards to conduct administrative civil liability hearings. (Wat. Code, § 13323(b).)²

Thus, when a formal hearing is required or appropriate, the Water Boards conduct formal hearings themselves, and do not refer them to the OAH. Even if the Water Boards had the ability to refer an administrative civil liability hearing to the OAH, an administrative law judge could not issue an administrative civil liability order. Section 13323 presumes that only the State Water Board or a regional water board will issue administrative civil liability orders, since they are the only bodies authorized to hear them. Other statutes specifically state that a *regional board*, not the OAH, will issue administrative civil liability orders. (Ca. Wat. Code, §§ 13327, 13385(c); see also, §§ 13261(b), 13265(b)(1), 13268(b)(1), 13350(e).) Therefore, even assuming OAH could conduct a hearing, at most an administrative law judge (ALJ) could issue a recommendation for Water Board consideration and adoption at a subsequent public hearing. Porter-Cologne does provide for panel hearings, but the panels must be comprised of regional water board members. (Ca. Wat. Code § 13228.14.) Porter-Cologne's inclusion of the hearing panel procedure and its exclusion of a provision for OAH hearings or ALJ recommendations strongly suggests that OAH hearings are improper.

Allowing the OAH to issue an administrative civil liability order would also eliminate the right to file a petition for review to the State Water Board, since the State Water Board only reviews actions or inactions of the regional water boards. (Ca. Wat. Code, § 13320(a).)

The Water Boards' practice is to make the following procedural protections available at formal hearings: the right to call and examine witnesses; the opportunity to introduce exhibits; the right to cross-examination; the opportunity for formal rebuttal and to make closing statements; and the right to have all testimony heard under oath. Dischargers and Staff also typically receive more time to present their cases than in an informal hearing. Staff agrees that the Discharger is entitled to all of these protections at the Central Coast Water Board hearing.

In some cases, the Central Coast Water Board has required pre-submittal of all written testimony before formal hearings. In this case, it is too late to require either Staff or the Discharger to submit formal written testimony or rebuttal. However, Staff provided its written materials in the agenda package. Staff also typically prepares Supplemental Sheets for the Board members if Dischargers submit written materials after the agenda mail-out. The agenda notice allows the Discharger until Wednesday, July 29, 2005, to submit written comments. (See July 7/8 Agenda, page 1.) Unless the Chair rules that a late submission would be prejudicial, the Discharger can submit late comments until noon on Monday, July 4, 2005. (See July 7/8 Agenda, page 8.) Due to the State

² Because of this language, it is clear that Government Code section 11445.20(d) does not guarantee a hearing conducted by the OAH. If the City of Santa Cruz is requesting a hearing before the OAH, such a hearing is not required by statute.

holiday, the Discharger would have to submit any late materials by Friday, July 1 at 5:00 p.m.) Due to the formal nature of the hearing, Staff requests the Chair to rule now that any submissions received after June 29 will prejudice Staff. Staff also requests the Chair to decide whether or not Staff may submit Supplemental Sheets regarding the Discharger's written submissions, if Staff believes Supplemental Sheets are appropriate, and by what date.

To the extent the Discharger's assumption that the July 7, 2005 hearing date³ will be dropped is a request for continuance, Staff objects to the request. Staff previously noticed this matter for the May 12-13, 2005, board meeting, but continued the matter at the Discharger's request. After obtaining this continuance, the Discharger requested a further continuance, which the Chair denied. The Discharger has had adequate time to prepare for the hearing, and we request that the Chair not move the date.

Thank you for considering Staff's objections and requests for rulings. Please call me at (916) 341-5165 if you would like to set up a conference call to discuss these issues.

Sincerely,



Lori T. Okun
Senior Staff Counsel

cc: Mr. Roger Briggs, Executive Officer [via e-mail only]
Ms. Kimberly Gonzalez [via e-mail only]
Central Coast Regional Water
Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

³ The Discharger's letter incorrectly refers to a July 8 date.

Jeffrey Barnes

From: Lori Okun [LOkun@waterboards.ca.gov]
Sent: Tuesday, June 28, 2005 12:28 PM
To: Jeffrey Barnes; Sheryl Schaffner
Cc: George Kovacevich; John Barisone
Subject: RE: DeLaveaga

I am not advising the board. I am ensuring that there is an appropriate record to support any action the board takes based on the recommendations of the staff members that I am representing in this matter, and that any such action is not subject to challenge on any procedural ground.

>>> "Jeffrey Barnes" <JBarnes@abc-law.com> 06/28/05 12:20 PM >>>
Ms. Okun wrote:

"Also, you may not be aware that the Board established a subcommittee consisting of Board members Bruce Daniels and Russell Jeffries to look into issues related to Arana Gulch, which is in the area of the Golf Course. These board members toured the general area and reported to the Board. In response to the City's request, we produced meeting minutes and emails related to the subcommittee reports and the tour. The tour passed by the Golf Course, but the Golf Course was not included in the tour. You may wish to contact Mr. Daniels and Mr. Jeffries to discuss whether they should make any disclosures on the record. I will send you their confidential contact information under separate cover."

For the record, I would object to Ms. Okun's attempt to advise the Board, albeit indirectly through Ms. Schaffner, regarding this and all other issues concerning the enforcement action.

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

From: Lori Okun [mailto:LOkun@waterboards.ca.gov]
Sent: Tuesday, June 28, 2005 11:01 AM
To: Sheryl Schaffner
Cc: Jeffrey Barnes
Subject: DeLaveaga

Ms. Schaffner:

The two City letters I faxed you this morning (which are also available in Attachment 1 posted on the Board's website for this agenda item) did not include the attachments. Staff will be posting those attachments shortly. (I believe the April 4 letter included all attachments to the January 24 letter, so we will post only the April 4 attachments.) In addition, staff will post a copy of the complaint, and the CEQA document for the project, which is cited on page 12 of the draft order. Staff will also provide copies of these items to the Board members in a supplemental sheet. Please let Kimberly Gonzalez at the regional board know if you would like hard copies of these documents. A notice of the posting will be sent to the interested parties list.

Also, you may not be aware that the Board established a subcommittee consisting of Board members Bruce Daniels and Russell Jeffries to look into issues related to Arana Gulch, which is in the area of the Golf Course. These board members toured the general area and reported to the Board. In response to the City's request, we produced meeting minutes and emails related to the subcommittee reports and the tour. The tour passed by the Golf Course, but the Golf Course was not included in the tour. You may wish to contact Mr. Daniels and Mr. Jeffries to discuss whether they should make any disclosures on the record. I will send you their confidential contact information under separate cover.

Lori T. Okun

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