

Frank Melbourn - Agenda

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Agenda # 7 Administrative Civil Liability- May 10 Meeting
 City of Carlsbad
 Municipal Golf Course

Regional Water Quality Control Board
 Region 9

We very much appreciate your staff diligence in discovering this violation, and in taking prompt action to prevent further damage to the Agua Hedionda watershed. Now it is time to determine an appropriate penalty.

On February 7, 2006 the City Council of Carlsbad approved at \$ 2.9 m increase to the construction budget for the golf course project- including \$ 900k for improvements to BMP's. Finally there is recognition of the shortfalls in their plan to control site run-off and an allocation of funds to hopefully do the job right. But here we are- six months after your agency notified the city of violations and they are just getting around to really addressing the problem.

Attached is a partial transcript of the February 7, 2006 City Council meeting where they approved this budget increase. We believe the city staff testimony on this issue highlights the concerns we expressed about this project in our letter of January 24th, and on numerous other projects in this city:

- lack of ownership for a deficient SWPP

They identified the problem as the requirements of the RWQCB- not their faulty plan. The city is responsible for seeing that this site meets the RWQCB requirements. Their plan was not approved- and their plan was not acceptable to your staff. Both their process and their technical review was flawed.

- insufficient knowledge of BMP requirements for large construction projects

They didn't realize that installations would need to be removed and replaced for various stages of construction, and stated its 'hard to quantify the amount of BMP's and the degree of maintenance necessary to protect the site of any mass grading'. Isn't that why you do increased monitoring and inspection and provide adequate contingencies to be able to respond to changing conditions?

- insufficient knowledge of basic BMP standards

They cited the "science of erosion control " is changing- and then highlight the use of straw rather than jute matting. How many years ago did straw matting become generally preferred for slope cover? Do lay people know this years before the engineers in charge of this project?

- no acknowledgement of any potential for damage to the watershed.

The citation was not for a direct discharge- it was for violations that under reasonably foreseeable circumstances could have resulted in direct damage to this watershed. Saying we didn't really do any damage is not the point. Furthermore College Blvd is part of this watershed so adding unprotected construction sediment does directly impact this watershed.

- protecting the watershed is an afterthought

This is the most expensive municipal golf course built in this entire country- a few feet from an impaired coastal lagoon. Why weren't adequate BMP funds included in the project from the beginning- instead of being added after a citation and notice of fine?

Adding money to improve BMP's does not address the underlying problems. We urge you to establish a fine that does address the core problems- so that this project and other projects in this city will not add to the cumulative impacts on our degraded coastal waters. We would also urge that conditions associated with this violation include the following:

1. A written report from the city identifying all of the failures in the system that resulted in this series of violations and what corrective

actions will be taken to assure this does not happen again. This was not just an administrative oversight about processing a permit- it was a complete breakdown of the entire system- from making an adequate plan, having it approved in advance of construction, getting a permit, installing BMP's consistent with the permit, and inspecting installation to assure compliance.

2. Retraining of city inspection staff on correct BMP installation and key items to inspect on their field inspection of construction sites- including such basic items as proper installation of silt fences since this was one of the violations. They claim to now be doing weekly storm water inspections on all large construction projects- but what value is that if the inspectors don't check the right things.

3. Monthly construction compliance inspection by the RWQCB of this project site during construction, and as needed for installation, operation and maintenance of the permanent BMP's. These inspections will be used as a means to continue the training of staff on how to implement an effective compliance program. The cost of such monitoring to be included in the fine.

Thank you very much for holding a hearing on this violation. We urge you to use this violation to send a strong message- that the laws to protect water quality apply to everyone- especially the city inspectors that are responsible for enforcement. If we can't trust the inspectors to do their job the best water quality regulations in the world are made worthless.

Diane Nygaard
On Behalf of Preserve Calavera

Partial Transcript
City of Carlsbad City Council Meeting February 7, 2006

Item # 1 Request for Additional Appropriation for Municipal Golf Course

Presentation by Glenn Pruijm- Public Works Director and Skip Hammond Deputy City Engineer

SH- We are requesting an additional increase of \$ 2.9m to the golf course construction contingency fund of \$ 1.7 m for a revised construction contingency of \$ 4.7 m which is approx 13.4 % of the original three contracts. There are a number of increased costs that have exceeded the intent of the original construction contingency.

Change Order # 6 Additional BMP's the city has had to provide for on this project. The original bid documents for the mass grading of this project included best management practices or BMP's as part of the project. However the bid documents were not sufficient to meet the requirements of the Regional WQCB for a project with direct discharges to impaired waterbodies and environmentally sensitive areas.

There are a number of reasons for the significant cost increases for BMP's such as it was assumed that BMP's installed during phase I which was the clearing and grading operation or the mowing operation that was conducted last year, that those BMP's would be still functional at the time of this contract but due to the heavy winter storms of last year they needed replacement and maintenance which added to the cost. Another factor was the plans not addressing the necessity of maintaining, modifying, removing or replacing the BMP's to accommodate various construction phases throughout the rainy season.. In other words, most of the BMP's it was anticipated that they would be installed one time, and not removed and replaced to accommodate the various phases of construction. During the mass grading with all of the earth moving that was going on you can't have the BMP's in place except around the perimeter so you have to remove them or replace them so that added additional cost. Another item was the science of erosion control and the standards of BMP's have evolved to become more sophisticated and effective to the point that the standards that were applicable when the plans were first drawn up were either antiquated or unacceptable. It should be noted that the city has implemented BMP's on this site that would be required on any other development site in the city.

It is estimated that these additional BMP's today will add approx \$ 800k to the contract after all credits have been applied. Staff anticipates this number to increase to approx \$ 900k in this contract. Quantifying the amount of BMP's and the degree of maintenance necessary to protect the site of any mass grading project with any reasonable accuracy is very difficult if not impossible and potentially the penalty for not properly implementing adequate BMP's can be severe and can be as severe as the associated cost of implementing BMP's.

Council Member Sigafoose : You had mentioned that the BMP's that were in place at the time that we decided to look at building a golf course had changed a lot. Were they not looked at at the time that we went out to bid and when we actually went out for construction?

SH: The one example that I can use in regard to standards is that one of the older standards that the city used in the past is material that covers slopes called jute matting. It's a like a jute rope but the standard and what we use now is a fiber blanket or straw matting so the costs are now significantly different. There are a number of reasons why we do that. It is more effective for erosion control and lasts for several seasons. Another reason is that the jute matting for the source comes from overseas and it has insecticides and other things in it that kills plant growth so it is not a desirable thing.. But the plans and specifications called for jute matting and that was something that we asked the contractor to upgrade. That wasn't a significant cost, but that is an example of one of the changes.

Council Member Packard : The water quality review fine, was that based on any actual run-off or any actual damages or was it because of not having a permit?

SH : There were two things. Well that's all subject to negotiations now with the city but as agreed to or suggested by the Regional Board staff that went to their board in December of 05 there were two issues. One was for the failure to get the NOI, the permit. The other portion of the fine was in the Regional Board staff recommendation they determined the inadequacy of the SWPP and the lack of implementation of BMP's in the field. During their site investigation in mid October that was the basis of it as I understand it. Once the permit was brought to the city's attention that it had not been properly obtained, we obtained one within the next working day. And the implementation of BMP's is an ongoing process throughout the course of construction.

Council Member Sigafoose: I'd like to go back to the fine for the infractions that we had.. And that is not included in your figure here but is that because we don't know what that is and there is going to be an additional cost?

SH : Yes that is not included in this information.

GP : I would like to add a little bit on that whole discharge issue. There is no evidence that were any discharges into Agua Hedionda Creek or any tributaries to Agua Hedionda Creek Nor was there any action of the Board for any clean-up of Agua Hedionda Creek. The only discharges that were cited were into College Blvd and the city believes those were from an existing SDG & E access road and the discharge was eventually cleaned up by the contractor.