



# California Regional Water Quality Control Board

## San Diego Region



**Linda Adams**  
Secretary for  
Environmental  
Protection

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

**Certified Return Receipt Requested**  
**7008 0150 0003 7457 7639**

July 17, 2008

**Jerry Backoff, Director**  
**Planning Division**  
**City of San Marcos**  
**201 Mata Way**  
**San Marcos, CA 92069-2948**

In reply refer to:  
Place IDs: 717403, 255263,  
266821  
CAU:18-2003147:jhaas

Dear Mr. Backoff:

**Notice of Violation No. R9-2008-0083, Clean Water Act Section 401 Water Quality Certifications, City of San Marcos**

**Subject Sites: Twin Oaks Valley Road Extension;  
San Elijo Road, County Dip Segment; and  
Grand Acres Commercial Shopping Center (Creekside  
Marketplace)**

Enclosed is Notice of Violation (NOV) No. R9-2008-0083 for the subject sites in the City of San Marcos, San Diego County. The violations specified were identified during a facility inspection on May 7, 2008 conducted by the California Regional Water Quality Control Board (Regional Board). A copy of the facility inspection report was previously provided to the City on May 13, 2008. Subsequently, on June 9, 2008, the City provided the Regional Board with additional details by letter to clarify the extent of violations.

I urge you to take steps to correct the noted violations and ensure that violations do not occur in the future. Pursuant to the California Water Code (CWC), the violations are subject to additional enforcement action(s) by the Regional Board including issuance of a time schedule order, cease and desist order, cleanup and abatement order, imposition of administrative civil liability, referral to the district attorney for criminal prosecution, or referral to the attorney general. Administrative civil liability amounts that may be imposed by the Regional Board may range up to \$10,000 per day, and \$10 per gallon for each gallon of waste discharged.

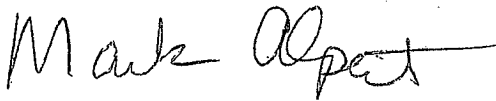
**California Environmental Protection Agency**

July 17, 2008

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions or need further clarification, please contact Jeremy Haas directly at 858-467-2735 or [jhaas@waterboards.ca.gov](mailto:jhaas@waterboards.ca.gov).

Respectfully,



MARK ALPERT  
Interim Branch Chief, Water Quality Restoration and Standards

MA:jch

Enclosure: Notice of Violation No. R9-2008-0083

**cc [via email only]**

Ken St. Clair, Administrative Analyst, City of San Marcos  
John Lorman, Esq., Procopio, Cory, Hargreaves & Savitch LLP  
Bill Orme, State Water Resources Control Board  
Chiara Clemente, Regional Water Quality Control Board, San Diego  
Robert Smith, US Army Corps of Engineers, San Diego Field Office  
Kenneth Greenberg, CWA Compliance Office, USEPA Region IX

CIWQS Entries

Regulatory Measure ID:

NOV R9-2008-0083 (348752)

Violation IDs: 754255, 754254, 754251, 754250, 754249, 754252, 754260, 754256, 754257, 773676,  
754259, 773681, 773684

Place IDs 266821 (Twin Oaks Valley Road Extension)  
255263 (San Elijo Road)

717403 (Grand Acres Commercial Shopping Center)

Party ID: 369584 (City of San Marcos)

RF

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

IN THE MATTER OF: )

Mr. Jerry Backoff, Director )  
Planning Division )  
City of San Marcos )  
201 Mata Way )  
San Marcos, CA 92069-2948 )

Subject Sites: )  
Twin Oaks Valley Road Extension; )  
San Elijo Road, County Dip Segment; and )  
Grand Acres Commercial Shopping )  
Center (Creekside Marketplace) )

Place IDs: 717403, 255263, 266821 )  
Regulatory Measure ID: 348752 )

**NOTICE OF VIOLATION  
R9-2008-0083**

**July 17, 2008**

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**The City of San Marcos is Hereby Notified of Violations** of Clean Water Act Section 401 Water Quality Certifications (§401 Certification) for the following projects:

1. Twin Oaks Valley Road Extension project (§401 Certification 03C-147);
2. San Elijo Road, County Dip Segment project (§401 Certification 03C-067); and
3. Grand Acres Commercial Shopping Center (Creekside Market) project (§401 Certification 03C-040).

Certain violations also constitute violations of California Water Code Section 13267.

Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board). A summary of violations is attached as Attachment 1.

Background of each Certification for each project is attached as Attachment 2.

**Summary of Violations**

**A. Twin Oaks Valley Road Extension project, §401 Certification 03C-147**

**1. FAILURE TO CONFORM TO POST-CONSTRUCTION STORM WATER  
MANAGEMENT CONTROL INSTALLATION PLAN  
(Condition B1 of §401 Certification 03C-147)**

The City of San Marcos failed to install post-construction storm water best management practices (BMPs) at required locations in violation of Condition B1 of §401 Certification 03C-147. Condition B1 requires that the City of San Marcos install inlet filters as depicted in its *Water Quality Technical Report, Twin Oaks Valley Road Roadway Improvements, IP-4647* (Hale Engineering, January 24, 2005). Post-construction BMPs are required to be installed prior to completion of the project. The City of San Marcos reported that the road project was completed in September 2007.

During an inspection on May 7, 2008, the Regional Board observed storm drain catch basins that lacked the required inlet filters. On June 9, 2008, the City of San Marcos reported that most filters were installed in August 2007, but that installation of one required filter was delayed until the first week of June 2008.

As a result, the City of San Marcos was in violation of Condition B1 of §401 Certification 03C-147 from at least October 1, 2007 to June 2, 2008 for a total of 245 days.

**2. FAILURE TO IMPLEMENT POST-CONSTRUCTION STORM WATER  
MANAGEMENT INSPECTIONS  
(Condition B2 of §401 Certification 03C-147)**

The City of San Marcos failed to conduct inspections of post-construction storm water BMPs at required frequencies in violation of Condition B2 of §401 Certification 03C-147. Condition B2 requires that the City of San Marcos inspect each inlet filter after every significant storm event and service the filter units per the manufacturer's specifications as needed.

According to a report provided by the City of San Marcos to the Regional Board on June 9, 2008, the City, through contractors, inspects the inlet filters on a biannual basis, rather than after each significant storm event. The City reported that the inlet filters were inspected during the first week of June 2008. Based on information provided by the United States Geological Survey's California Water Science Center, rainfall of at least 0.8 inches occurred on at least seven occasions since the filters were installed in August 2007 in the San Pasqual area (USGS Station ID 11027000), which is approximately 6.5 miles east of the project area and is the closest USGS precipitation station to the project site<sup>1</sup>. Although the Certification does not define a significant storm event, 0.8 inches represents a thirty three percent increase over the design standards for post-construction BMP requirements in the SUSMP section of Order No. R9-2007-0001.<sup>2</sup> Therefore, 0.8 inches is a conservative estimate of a significant storm event.

As a result, the City of San Marcos violated Condition B2 of §401 Certification 03C-147 on seven days by failing to inspect the inlet filters after significant rain events.

### **3. FAILURE TO PROVIDE POST-CONSTRUCTION BMP INSTALLATION REPORT (Condition B3 of §401 Certification 03C-147)**

The City of San Marcos failed to submit to the Regional Board a report documenting the installation of post-construction BMPs in violation of Condition B3 of §401 Certification 03C-147. Condition B3 requires that the City of San Marcos submit a BMP-installation report, with photo documentation, within 30 days after installation of BMPs that were proposed in *Water Quality Technical Report, Twin Oaks Valley Road Roadway Improvements, IP-4647* (Hale Engineering).

On June 9, 2008, the City of San Marcos reported that the post-construction BMPs were installed in August and September 2007. Therefore, a report was due by October 31, 2007. On June 25, 2008 the City of San Marcos provided a BMP Installation Report for the project.

<sup>1</sup> Data is available on-line at:

[http://waterdata.usgs.gov/ca/nwis/current/?type=precip&group\\_key=county\\_cd](http://waterdata.usgs.gov/ca/nwis/current/?type=precip&group_key=county_cd)

<sup>2</sup> NPDES No. CAS0108758 *Waste Discharge Requirements for Discharges of Urban Runoff from The Municipal Separate Storm Sewer Systems (Ms4s) Draining The Watersheds of The County of San Diego, The Incorporated Cities of San Diego County, The San Diego Unified Port District, and The San Diego County Regional Airport Authority*. The design standards are based on the 24-hour, 85<sup>th</sup> percentile storm event.

As a result, the City of San Marcos was in violation of Condition B3 of §401 Certification 03C-147 from at least November 1, 2007 through June 25, 2008 for a total of 237 days.

**4. FAILURE TO PROVIDE COMPLETED PRESERVATION MECHANISM  
(Condition C2 of §401 Certification 03C-147)**

The City of San Marcos failed to submit to the Regional Board within the specified timeframe a draft and final preservation mechanism for habitat mitigation areas in violation of Condition C2 of §401 Certification 03C-147. Condition C2 requires that the City of San Marcos submit a draft preservation mechanism (e.g., deed restriction or conservation easement) within 60 days of issuance of the §401 Certification. Condition C2 also requires the City of San Marcos to submit proof of a completed preservation mechanism within six months of issuance of the §401 Certification.

The City of San Marcos submitted a draft preservation mechanism on June 9, 2008, approximately 1,157 days late. As of July 17, 2008, the City has not provided proof of a completed preservation mechanism.

As a result, the City of San Marcos has been in violation of Condition C2 of §401 Certification 03C-147 for at least 1,157 days.<sup>3</sup>

**5. FAILURE TO PROVIDE AS-BUILT MITIGATION REPORT  
(Condition C3 of §401 Certification 03C-147)**

The City of San Marcos failed to submit to the Regional Board within the specified timeframe a report describing the as-built status of completion of the mitigation site in violation of Condition C3 of §401 Certification 03C-147. Condition C3 requires that the City of San Marcos submit a mitigation as-built report within 60 days of completion of mitigation site preparation and planting. If the site grading and planting are not completed within six weeks of each other, Condition C2 also requires the City of San Marcos to submit separate reports describing those specific as-built conditions.

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<sup>3</sup> Section 401 Certification 03C-147 was issued on February 7, 2005. Therefore, the draft preservation mechanism was due on April 8, 2005, and the final preservation mechanism was due on August 7, 2005.

On June 9, 2008, the City of San Marcos provided as-built drawings dated May 29, 2008. The City also reported that the mitigation site was prepared in January 2007, but not fully planted until March 2008. Because the grading and planting occurred more than six weeks apart, an as-built grading report was due six weeks after mitigation site preparation. Therefore, the as-built grading report was due by March 1, 2007, and the as-built planting report was due June 1, 2008.

As a result, the City of San Marcos was in violation of Condition C3 of §401 Certification 03C-147 for 463 days.

**6. FAILURE TO CONSTRUCT TIMELY HABITAT MITIGATION  
(Condition C4 of §401 Certification 03C-147)**

The City of San Marcos failed to construct habitat mitigation by the specified timeframe in violation of Condition C4 of §401 Certification 03C-147. Condition C4 requires that the City of San Marcos complete construction of its proposed mitigation by September 30 of the year following the initial discharge of fill. Condition C4 also specifies that "*delays in implementing mitigation shall result in an increased mitigation ratio by 0.5 acre for each acre of impact for each year, or part thereof, of delay.*"

On June 9, 2008, the City of San Marcos reported that the mitigation site was prepared in January 2007 and not fully planted until March 2008. Because the discharge of fill commenced in February 2005, completion of the mitigation construction was due by October 1, 2006.

As a result, the City of San Marcos was in violation of Condition C4 of §401 Certification 03C-147 between October 1, 2006 and March 31, 2008, for a total of 547 days.

Furthermore, because the City affected 0.43 acres of waters of the U.S. and completion of mitigation was delayed for 1.5 years, Condition C4 requires the City to conduct an additional 0.32 acres of compensatory mitigation.<sup>4</sup>

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<sup>4</sup> The additional compensatory mitigation required by Condition C4 of §401 Certification 03C-147 is calculated as follows: (0.43 acre impact) x (0.5 acre per acre impacted) x (1.5 years) = 0.32 acre.

**7. FAILURE TO FURNISH INFORMATION REQUESTED PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 (Section D of §401 Certification 03C-147)**

As noted above, the City of San Marcos failed to provide information required in §401 Certification 03C-147. Section D of §401 Certification informs the City of San Marcos that all information specified to be provided in the Certification is pursuant to California Water Code (CWC) Section 13267 and that civil liability may be administratively imposed pursuant to CWC Section 13268 by the Regional Board for failure to furnish the requested information.

*Table of information requested in Clean Water Act §401 Certification 03C-147 subject to civil liability pursuant to CWC §13268.*

Condition in §401 Certification 03C-147	Information Requested	Number of Days the City Failed to Furnish Information
B.3	Post-construction BMP Installation Report	237 days
C.2	Draft mitigation area preservation mechanism	1,157 days
C.2	Completed mitigation area preservation mechanism	Ongoing violation since Aug 7, 2005.

**B. Summary of Violations - San Elijo Road, County Dip Segment project, §401 Certification 03C-067**

**1. FAILURE TO CONFORM TO FINAL MITIGATION PLAN (Condition 1 of §401 Certification 03C-067)**

The City of San Marcos failed to implement the compensatory habitat mitigation plan that was submitted to the Regional Board to satisfy Condition 11 of §401 Certification in violation of Condition 1 of §401 Certification 03C-067. Condition 1 requires the City to fully comply with the engineering plans, specifications, and technical reports submitted with the §401 Certification application and subsequent submittals required as part of the Certification. The City provided a final mitigation plan on March 3, 2004 to satisfy Condition 11 of §401 Certification 03C-067.



On May 7, 2008 Regional Board inspectors found the installed mitigation in Copper Creek did not resemble the final mitigation plan that was submitted to satisfy Condition 11. For instance, a continuously-vegetated wetland and riparian corridor was proposed to connect the mitigation site with an adjacent, downstream mitigation area. However, a grouted riprap structure has been placed within the streambed of the proposed mitigation area, which eliminates habitat continuity. On June 9, 2008 the City of San Marcos reported that mitigation was installed in November 2004 and provided reports confirming that the installed mitigation did not conform to the final mitigation plan that was submitted to the Regional Board.

As a result, the City of San Marcos has been in violation of Condition 1 of §401 Certification 03C-067 since November 2004.

**2. FAILURE TO NOTIFY PRIOR TO MITIGATION INSTALLATION AND COMPLETION  
(Condition 3 of §401 Certification 03C-067)**

The City of San Marcos failed to notify the Regional Board prior to the installation and completion of compensatory habitat mitigation activities in violation of Condition 3 of §401 Certification 03C-067. Condition 3 requires the City to notify the Regional Board at least 10 days prior to the actual start dates for grading, mitigation installation, and completion of mitigation.

The City of San Marcos notified the Regional Board prior to grading, but provided no notification of mitigation activities. On June 9, 2008 the City notified the Regional Board that mitigation installation was initiated in September 2004 and completed in November 2004.

As a result, the City of San Marcos was in violation of Condition 3 of §401 Certification 03C-067 from approximately September 3, 2004 through June 9, 2008 for a total of 1,375 days.

**3. FAILURE TO PROVIDE AS-BUILT MITIGATION REPORT  
(Condition 12 of §401 Certification 03C-067)**

The City of San Marcos failed to submit to the Regional Board within the specified timeframe a report describing the as-built status of completion of the mitigation site in violation of Condition 12 of §401 Certification 03C-067. Condition 12 requires that the City of San Marcos submit a mitigation as-built report, including topography maps and planting locations, within 90 days of completion of mitigation site preparation and planting.

On June 9, 2008 the City of San Marcos notified the Regional Board that mitigation installation was initiated in September 2004 and completed in November 2004. As a result, an as-built report was due by March 1, 2005. No as-built report with topography and planting locations has been submitted to the Regional Board.

As a result, the City of San Marcos has been in violation of Condition 12 of §401 Certification 03C-067 since March 1, 2005.

**4. FAILURE TO PROVIDE ANNUAL MITIGATION MONITORING REPORTS  
(Condition 14 of §401 Certification 03C-067)**

The City of San Marcos failed to submit to the Regional Board within the specified timeframe annual mitigation monitoring reports in violation of Condition 14 of §401 Certification 03C-067. Condition 14 requires that the City of San Marcos submit annual mitigation monitoring reports until mitigation has been deemed successful. Condition 14 further specifies that the monitoring reports must be submitted no later than 30 days following the end of the annual monitoring period.

On June 9, 2008 the City of San Marcos notified the Regional Board that mitigation installation was initiated in September 2004 and completed in November 2004. On June 9, 2008, the City of San Marcos provided copies of annual monitoring reports for years 2005, 2006, and 2007. Based on those reports, the annual monitoring period coincides with the calendar year, and annual monitoring activities include a site inspection each fall. Therefore, the first annual monitoring report was due by March 31, 2006, the second annual monitoring report was due March 31, 2007, and the third annual monitoring report was due March 31, 2008.

As a result, the City of San Marcos violated Condition 14 of §401 Certification 03C-067 for each of the first three annual monitoring reports. The first annual monitoring report was submitted approximately 800 days late; the second annual monitoring report was submitted 435 days late; and the third annual monitoring report was submitted 70 days late.

**5. FAILURE TO PROVIDE LONG-TERM POST-CONSTRUCTION STORM WATER BMP MAINTENANCE REPORT  
(Condition 18 of §401 Certification 03C-067)**

The City of San Marcos failed to submit a report describing long-term provisions for post-construction storm water BMP maintenance in violation of Condition 18 of §401 Certification 03C-067. Condition 18 requires that prior to completion of the project, the City of San Marcos submit a report outlining maintenance requirements and mechanisms that will be implemented to ensure post-construction storm water BMPs will be maintained throughout the life of the project. Condition 18 also requires the report identify a funding mechanism to ensure adequate maintenance.

On June 9, 2008, the City of San Marcos reported that the post-construction storm water BMPs were installed in August 2006 and that it would provide the required report at a planned meeting on June 25, 2008. On June 25, 2008 a "BMP Installation Report" was provided to the Regional Board that did not contain the information required in Condition 18. The report did not identify maintenance requirements or a mechanism to ensure that inlet filters installed on private property in the project area would be maintained.

As a result, the City of San Marcos has been in violation of Condition 18 of §401 Certification 03C-067 since at least August 31, 2006. The actual period of violation is dependent upon the date the road was completed.<sup>5</sup>

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<sup>5</sup> The City of San Marcos has not identified when construction of the road project was completed. The City reported that mitigation installation was completed in November 2004. Ordinarily, the Regional Board can identify a project completion date through review of the records for the Construction NPDES requirements for the project. However, the City has reported that a private developer (San Elijo Hills Development Company, LLC) constructed the road per a development agreement with the City and that the developer obtained coverage under the Construction NPDES requirements by amending information for WDID 9 37S309763. The Regional Board has been unable to verify the road completion date because information submitted to the Regional Board for WDID 9 37S309763 does not include a notice that the road segment was completed.

**6. FAILURE TO FURNISH INFORMATION REQUESTED PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 (Condition 8 of §401 Certification 03C-067)**

As noted above, the City of San Marcos failed to provide information required n §401 Certification 03C-067. Condition 8 of §401 Certification informs the City of San Marcos that all information specified to be provided in the Certification is pursuant to CWC Section 13267 and that civil liability may be administratively imposed pursuant to CWC Section 13268 by the Regional Board for failure to furnish the requested information.

*Table of information requested in Clean Water Act §401 Certification 03C-067 subject to civil liability pursuant to CWC §13268.*

Condition in §401 Certification 03C-067	Information Requested	Number of Days the City Failed to Furnish Information
3	Notification of Mitigation Installation	1375 days
12	As-Built Mitigation Report	Ongoing violation since March 1, 2005
14	First Annual Mitigation Monitoring Report	800 days
14	Second Annual Mitigation Monitoring Report	435 days
14	Third Annual Mitigation Monitoring Report	70 days
18	Post-Construction Storm Water BMP Maintenance Report	Ongoing violation since at least August 31, 2006

**C. Summary of Violations - Grand Acres Commercial Shopping Center  
(Creekside Market) project, §401 Certification 03C-040**

**1. FAILURE TO NOTIFY PRIOR TO MITIGATION INSTALLATION AND  
COMPLETION  
(Condition 7 of §401 Certification 03C-040)**

The City of San Marcos failed to notify the Regional Board prior to the installation and completion of compensatory habitat mitigation activities in violation of Condition 7 of §401 Certification 03C-040. Condition 7 requires the City to notify the Regional Board at least 10 days prior to the actual start dates for grading, mitigation installation, and completion of mitigation.

In September 2006, the City has reported that mitigation construction activities were completed in December 2005. No other notifications pursuant to Condition 7 were submitted to the Regional Board.

**2. FAILURE TO PROVIDE ANNUAL MITIGATION MONITORING REPORT WITHIN  
THE DESIGNATED TIME PERIOD  
(Condition 11 of §401 Certification 03C-040)**

The City of San Marcos failed to submit to the Regional Board within the specified timeframe the second annual mitigation monitoring reports in violation of Condition 11 of §401 Certification 03C-040. Condition 11 requires that the City of San Marcos submit annual mitigation monitoring reports until mitigation has been deemed successful. Condition 11 further specifies that the monitoring reports must be submitted no later than 30 days following the end of the annual monitoring period.

The first annual monitoring report was submitted on January 25, 2007. Based on that report, the annual monitoring period is the calendar year (January to December). Therefore, each subsequent annual report is due by January 30 each year. The City submitted the second annual monitoring report on June 9, 2008.

As a result, the City of San Marcos was in violation of Condition 11 of §401 Certification 03C-040 from January 30, 2008 to June 9, 2008 for a total of 130 days.

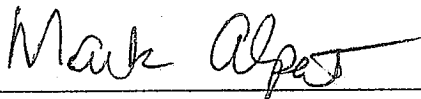
**D. Potential Civil Liability**

1. Pursuant to CWC Section 13385 any person who violates any waste discharge requirements or dredged and fill material permit or any water quality certification issued pursuant to CWC Section 13160, including any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended, shall be liable civilly in accordance with the section.

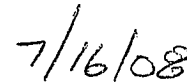
Pursuant to CWC Section 13385 the maximum civil liability that the Regional Board may assess is ten thousand dollars (\$10,000) per day of violation (per violation).

In determining the amount of any liability imposed under CWC Section 13385, the Regional Board, the State Board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. 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 (CWC Section 13385(e)).

2. Pursuant to CWC Section 13268 the maximum liability that the Regional Board may assess is one thousand dollars (\$1,000) for each day in which any person failed or refused to furnish technical or monitoring program reports as required by CWC Section 13267(b).



MARK ALPERT  
Interim Branch Chief  
Water Quality Restoration And Standards



Date

MA:fm:jh

- Attachments: 1. Summary of Violations  
2. Background Information

**Attachment 1**

**Summary of Violations**

<b>Water Quality Certification</b>	<b>Certification Condition</b>	<b>Violation ID</b>
03C-147	B1: Failure to Install Post-Construction Storm Water BMPs	754255
	B2: Failure To Implement Post-Construction Storm Water Management Inspections	754254
	B3: Failure To Provide Post-Construction BMP Installation Report	754251
	C2: Failure To Provide Completed Preservation Mechanism	754250
	C3: Failure To Provide As-Built Mitigation Report	754249
	C4: Failure To Construct Timely Habitat Mitigation	754252
03C-067	1: Failure To Conform To Final Mitigation Plan	754260
	3: Failure To Notify Prior To Mitigation Installation And Completion	754256
	12: Failure To Provide As-Built Mitigation Report	754257
	14: Failure To Provide Annual Mitigation Monitoring Reports	773676
	18: Failure To Provide Long-Term Post-Construction Storm Water Bmp Maintenance Report	754259
03C-040	7: Failure To Notify Prior To Mitigation Installation And Completion	773681
	11: Failure To Provide Annual Mitigation Monitoring Report Within The Designated Time Period	773684

## Attachment 2

### Permits/Background

1. Twin Oaks Valley Road Extension project. On February 7, 2005, the Regional Board issued Clean Water Act Section 401 Water Quality Certification (§401 Certification) 03C-147 to the City of San Marcos for the Twin Oaks Valley Road Extension project. As conditioned, the §401 Certification was consistent with conditions specified in the Water Quality Control Plan for the San Diego Basin (Basin Plan) for a waiver of waste discharge requirements.
  - a. The City of San Marcos received §401 Certification 03C-147 for the permanent discharge of fill into 0.30 acre of waters of the United States associated with the extension of Twin Oaks Valley Road and San Elijo Road;
  - b. The Regional Board included conditions in the §401 Certification for the City of San Marcos to implement specifically-proposed plans for storm water runoff and compensatory habitat mitigation; and
  - c. According to the City of San Marcos, the Twin Oaks Valley Road Extension project commenced in February 2005 and was completed in September 2007.
  
2. San Elijo Road, County Dip Segment project. On February 20, 2004, the Regional Board issued §401 Certification 03C-067 to the City of San Marcos for the San Elijo Road, County Dip Segment project. As conditioned, the §401 Certification was consistent with conditions specified in the Water Quality Control Plan for the San Diego Basin (Basin Plan) for a waiver of waste discharge requirements.
  - a. The City of San Marcos received §401 Certification 03C-067 for the permanent discharge of fill into 0.43 acre of waters of the United States associated with a project to widen and realign the "County Dip" segment of San Elijo Road, an approximate 2,100-foot long portion of the existing road;
  - b. The Regional Board included conditions in the §401 Certification for the City of San Marcos to implement specifically-proposed plans for storm water runoff and compensatory habitat mitigation; and
  - c. According to the City of San Marcos, the San Elijo Road, County Dip Segment project commenced in September 2004 and was completed in November 2004.



- RF
3. Grand Acres Commercial Shopping Center (Creekside Market) project. On September 17, 2003, the Regional Board issued §401 Certification 03C-040 to the City of San Marcos for the Grand Acres Commercial Shopping Center (Creekside Market) project. As conditioned, the §401 Certification was consistent with conditions specified in the Water Quality Control Plan for the San Diego Basin (Basin Plan) for a waiver of waste discharge requirements.
    - a. The City of San Marcos received §401 Certification 03C-040 for the permanent discharge of fill into 0.05 acre of waters of the United States associated with a project to construct approximately 273,841 square feet of retail space, including a 133,841 square foot major retail store, with associated utilities and parking;
    - b. The Regional Board included conditions in the §401 Certification for the City of San Marcos to implement specifically-proposed plans for storm water runoff and compensatory habitat mitigation; and
    - c. According to the City of San Marcos, the Grand Acres Commercial Shopping Center (Creekside Market) project was completed in August 2004.
  
  4. Regional Board Inspection. On May 7, 2008 Regional Board inspectors identified noncompliance with the three §401 Certifications. The results of the inspection were provided to the City of San Marcos on May 13, 2008. The City of San Marcos provided a written response to the inspection report on June 9, 2008. The Regional Board inspectors and the City held a meeting to discuss the inspection report and the City's response on June 25, 2008