



California Uniform Construction Cost Accounting Commission

State Controller's Office – Division of Accounting & Reporting

3301 C Street, Suite 500, Sacramento, California 95816

http://www.sco.ca.gov/ard_cuccac.html

Mr. Jeff Pratt
Director of Public Works
Ventura County
800 S. Victoria Avenue
Ventura, CA 93009

August 31, 2015

SUBJECT: Notice of Review

Dear Mr. Pratt,

The purpose of this letter is to advise you that the California Uniform Construction Cost Accounting Commission (CUCCAC or Commission) has received the attached complaint from the Construction Industry Force Account Council (CIFAC) alleging that your agency has violated section 22031(e) of the Public Contract Code (PCC) on the Santa Clara Avenue Storm Drain Installation.

I called your office Thursday August 20th and left a message for you. Mr. David Fleisch returned the call on Monday August 24th. As discussed with Mr. Fleisch in our conversation, PCC section 22043 requires the CUCCAC to review all complaints filed and the CUCCAC has scheduled a hearing on this matter at our Commission meeting in Sacramento on September 9, 2015. The Commission hearing will be held during the Commission meeting scheduled to begin at 10:00 a.m. and be held at the following location:

California State Controller's Office
300 Capitol Mall
6th Floor, Terrace Room
Sacramento, CA 95814

In order to adequately review this matter and consider all relevant facts, I request that you provide a response to the Commission regarding this CIFAC complaint. You may provide your response in writing, or through oral testimony at the Commission hearing, or both. Please provide your response prior to the close of the September 9, 2015 hearing on this item.

If you have any questions regarding this item, please feel free to contact State Controller/Commission staff member Mr. Robert Szabo at (916)327-8905 or by email at RSzabo@sco.ca.gov. Thank you in advance for your cooperation in resolving this matter.

Sincerely,



George Hicks
Chairman, CUCCAC

Cc: Mr. David Fleisch, Ventura County Public Works
Robert Szabo, SCO



Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

August 18, 2015

George Hicks, Chair
 California Uniform Construction Cost Accounting Commission
 c/o State Controllers' Office
 Local Government Policies Section
 P.O. Box 942850
 Sacramento, CA 94250

RE: County of Ventura
 Santa Clara Avenue Storm Drain Installation

Dear Chairperson Hicks and Commissioners:

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that represents various members of the public works construction industry throughout California. We work to ensure compliance with the California Public Contract Code by public entities. Thus, we qualify as an interested party per the California Uniform Construction Cost Accounting Act requirements.

We request that the Commission review the County of Ventura, "Santa Clara Avenue Storm Drain Installation" project. It is our belief that they have exceeded their force account limit, as established in Public Contract Code Section 22032 (a). This violation occurred due to the Road Commissioner's failure to publicly declare that this work was to be performed by force account **prior** to commencing work. This is a requirement under PCC 22031 (e).

Here is the sequence of events:

- On April 20, 2015, CIFAC received a report, and photographs, of County of Ventura crews building a new culvert along Santa Clara Avenue at Eucalyptus Drive. It appears that the work began on April 15th with the installation of K-rail.
- Bacon spoke to Raul Gallo, Road Maintenance Engineering Manager, on April 20, 2015, and he confirmed the work in progress by county forces and said the work would take eight (8) weeks.
- Bacon contacted the County of Ventura again on April 21, 2015, and inquired if there was a Declaration of Intent to Perform Road Work for this project under Road Commissioner authority. The Management Assistant, PWA Transportation Dept., searched and could not locate the document.
- Bacon contacted them again on April 21, 2015 asking for the copy of the Declaration and was told by the Management Assistant, PWA Transportation Dept., it is "awaiting signature".
- When Bacon spoke to Raul Gallo, Road Maintenance Engineering Manager, on April 22, 2015 he said "I don't care" talk to my boss and his intent is to continue the work.
- On April 22, 2015, David Fleisch Transportation Department Director, had a conversation with Bacon stating possibilities of why the work was not declared. Bacon suggested an informal bid process (or formal, if over \$175,000) could be used for the work to be in compliance with CUCCAA.
- On April 26, 2015, David Fleisch, Transportation Department Director, said they pulled off the project and they are going to continue the work as noted on the Declaration of Intent to Perform Work that was dated on April 20, 2015. He admitted it was after the work began and he also stated "but they have now remedied it."

Cathryn Hilliard, Executive Director

837 Arnold Drive, Suite 200, Martinez, CA 94553 • phone 800-755-3354 • fax 925-957-1800 • email info@cifac.org • web www.cifac.org



County of Ventura
 Santa Clara Avenue Storm Drain Installation-Formal Complaint
 Page 2

- The Declaration of Intent to Perform Road Work was “dated” April 20, 2015, and actually “signed” on April 21, 2015, after the work started on April 15, 2015.
- The County of Ventura, Declaration of Intent to Perform Road Work states “**the following work is currently scheduled to begin May 4, 2015, on Santa Clara Avenue.**”
- On May 1, a report from the field listed K-rail and traffic control signs, service tanks, active stock piles of materials remained at the site and noted it looked like a project in progress. This work began on April 15, 2015, and was confirmed by a representative of the County as “in progress” on April 20, 2015.
- The Construction Costs noted on the Declaration is in the amount of \$160,000 which is above the force account limit of \$45,000.

It is our opinion that the County has not met the requirement of publicly declaring the work prior to the commencement, that they are thus by their own records in violation of their \$45,000 force account threshold. The intent of the Act and its requirements are to allow for equitable accounting and for transparency to the industry and the general public.

We have attached the County of Ventura, Declaration of Intent to Perform Road Work, dated April 20, 2015, and photographs that were received by Bacon on April 20, 2015 of the work already in progress. Please note the “Eucalyptus Drive” sign as it is mentioned in the Limits on the Declaration. We have also attached a copy of the complaint to the County of Ventura, sent via certified mail as required. Please feel free to contact me (800) 755-3354 or Shari Bacon, Southern Region Field Representative (951) 214-9196, should you have any questions. We appreciate the Commission’s attention to this complaint.

Sincerely,


 Cathryn Hilliard
 Executive Director
 Construction Industry Force Account Council (CIFAC)

Attachments: Notice of Formal Complaint to CUCCAC addressed to the County of Ventura
 8 photographs of the Santa Clara Avenue Storm Drain Installation received on April 20, 2015
 County of Ventura, Declaration of Intent to Perform Road Work, dated April 20, 2015





Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

August 18, 2015

Jeff Pratt, Director
Public Works/Road Commissioner
800 S. Victoria Avenue
Ventura, CA 93009

Sent via Certified Mail

Subject: Violation of the California Uniform Construction Cost Accounting Act
Oxnard Area, Santa Clara Avenue Storm Drain Installation

Dear Mr. Pratt,

This letter is to serve as notice to you, per California Public Contract Code (PCC) Section 22043 (b) that we are filing a formal complaint with the California Uniform Construction Cost Accounting Commission that you are in violation of the Act. We assert that you have violated your force account limit of \$45,000 on the Santa Clara Avenue Storm Drain Installation project by not publicly declaring the intent to self-perform this work prior to the commencement of work, as required by PCC Section 22031 (e). We are requesting that the California Uniform Construction Cost Accounting Commission review this project.

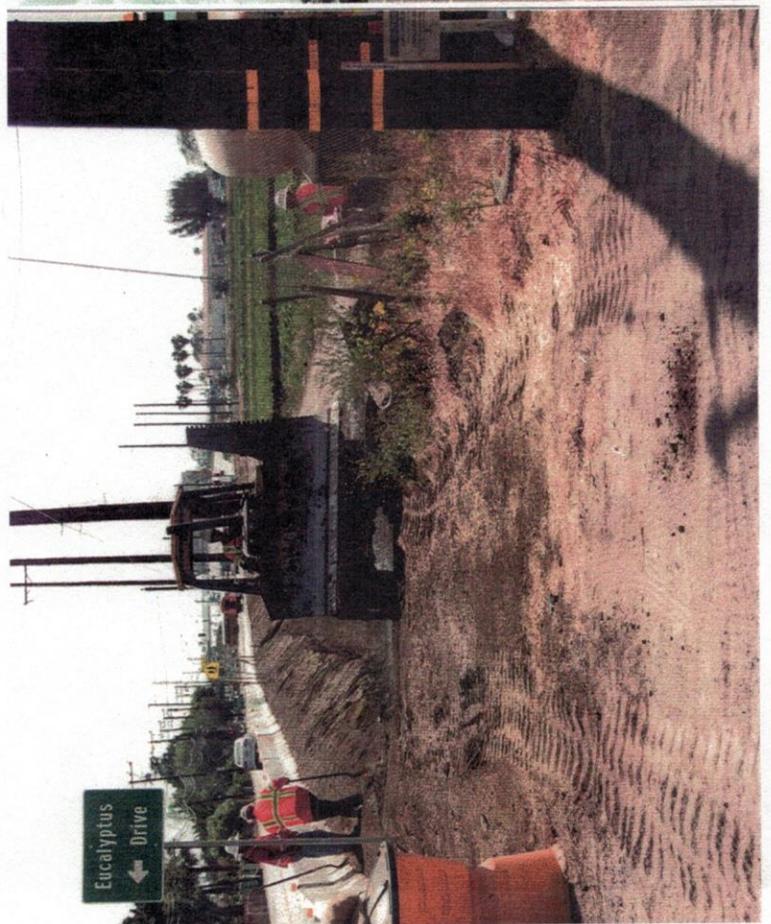
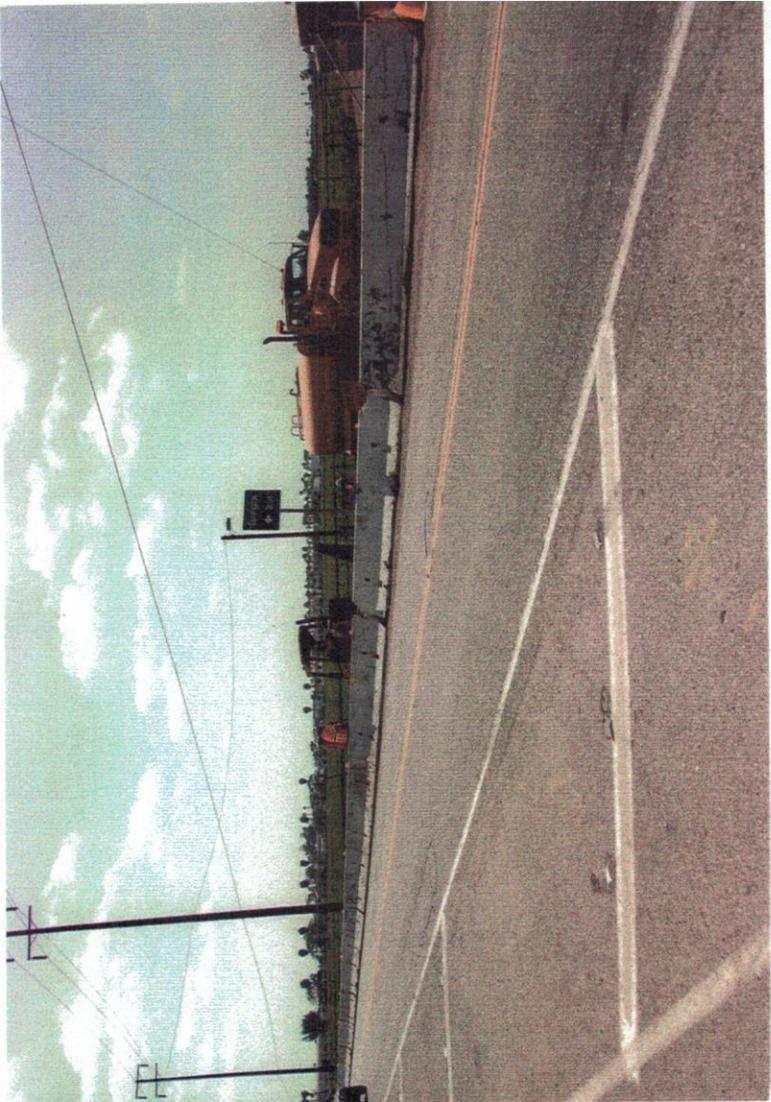
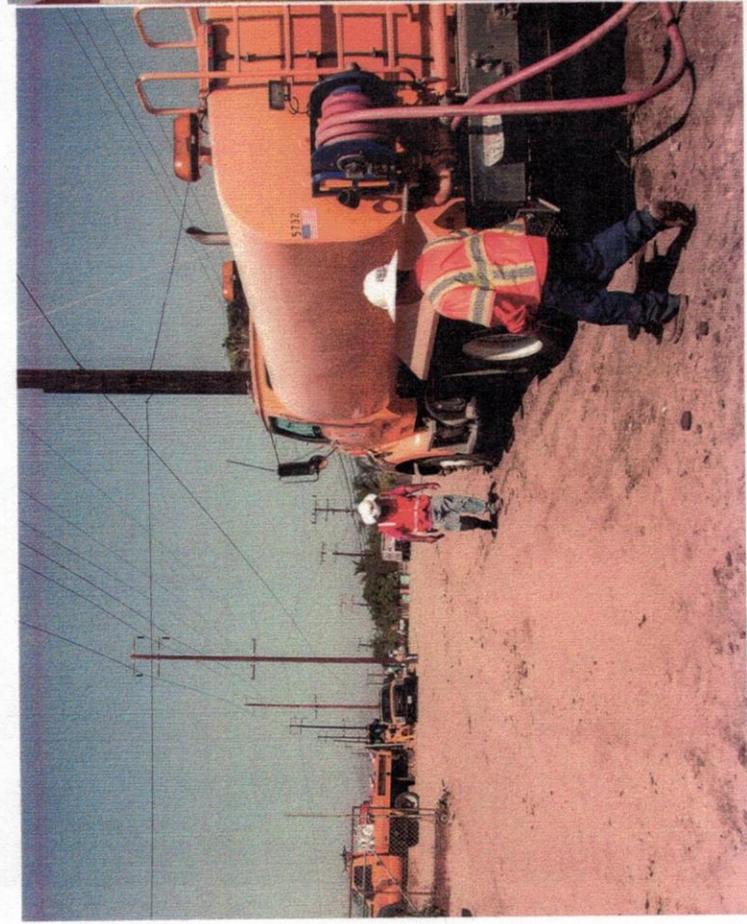
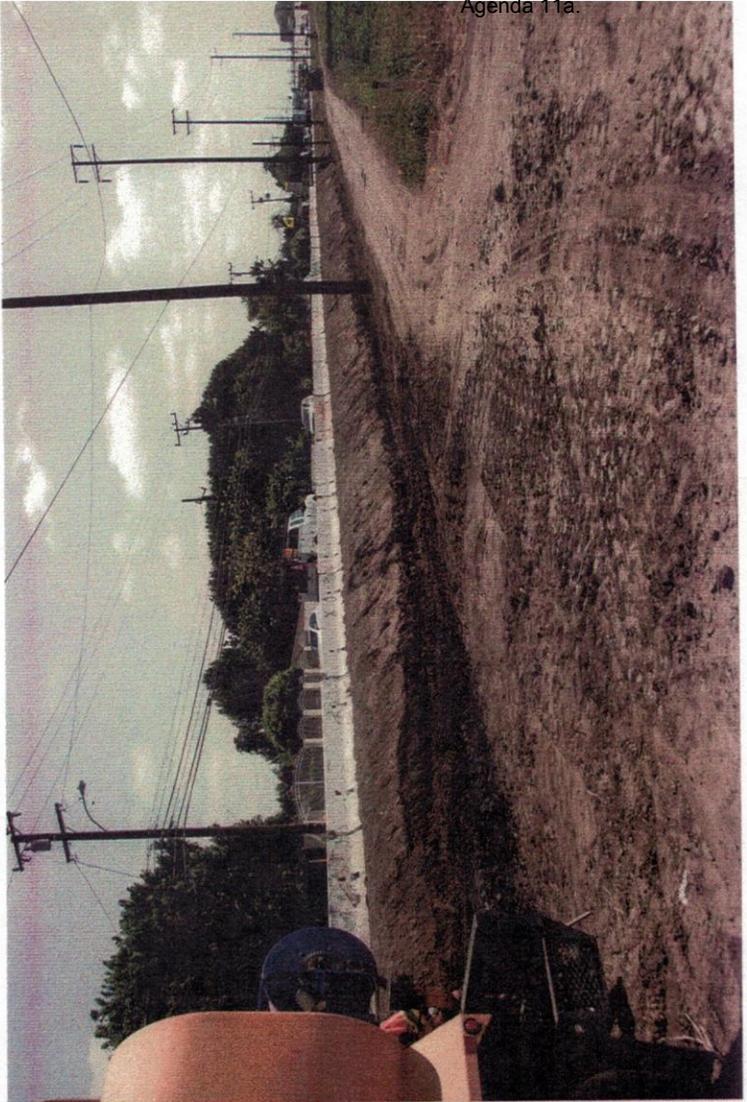
The Construction Industry Force Account Council is a non-profit organization that represents members of the public works construction industry.

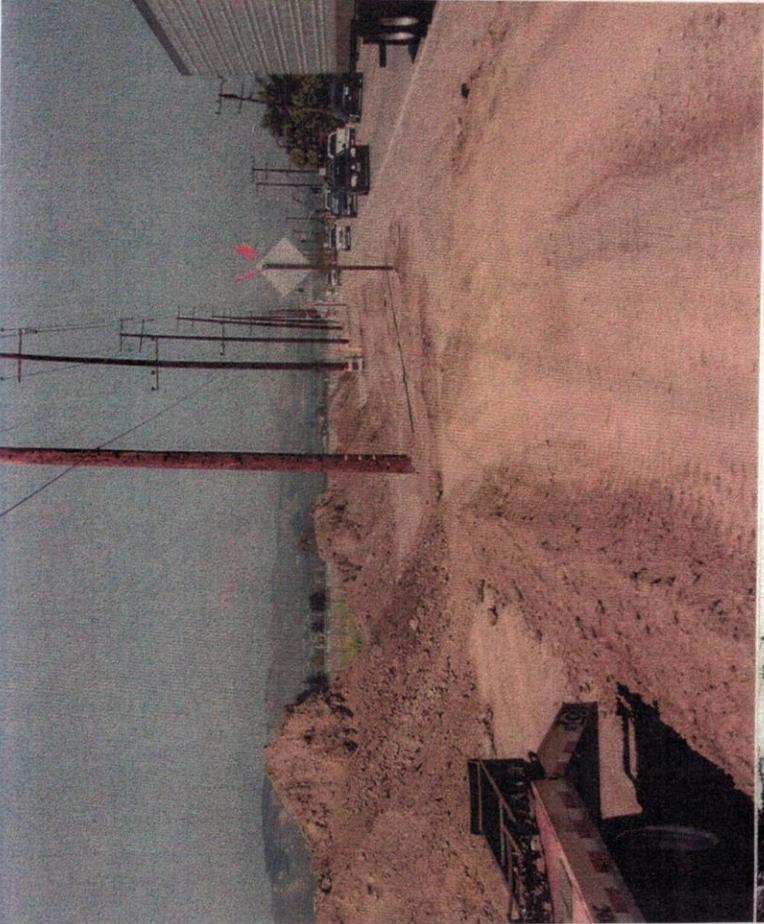
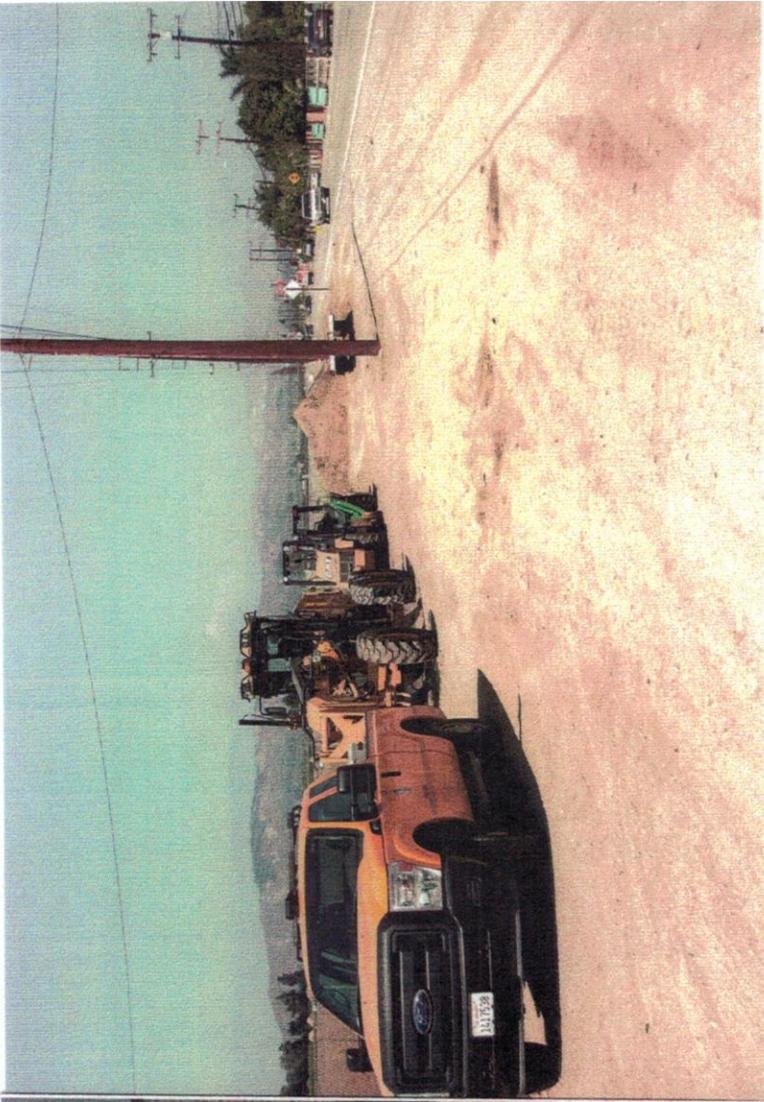
Sincerely,

Cathryn Hilliard
Executive Director

cc: Michael Powers, County Administrative Officer







county of ventura

PUBLIC WORKS AGENCY
JEFF PRATT
 Agency Director

April 20, 2015

Watershed Protection District
 Tully K. Clifford, Director

Transportation Department
 David L. Fleisch, Director

Engineering Services Department
 Herbert L. Schwind, Director

Water & Sanitation Department
 David J. Sasek, Director

Central Services Department
 Janice E. Turner, Director

Declaration of Intent to Perform Road Work Public Contract Code section 22031(b) (2)

The Ventura County Public Works Agency declares its intent to perform the following road construction or reconstruction work using the alternative procedures set forth in Article 25 (commencing with Section 20390) of Chapter 1 of the Public Contract Code as authorized by Public Contract Code section 22031(b) (2). The following work is currently scheduled to begin May 4, 2015, on Santa Clara Avenue.

Road Name	Limits	Construction Costs	Description of Work
Santa Clara Avenue	905' S of Eucalyptus to Central Avenue	\$160,000	Installation of Corrugated metal pipe storm drain

Jeff Pratt
 Agency Director
 Road Commissioner



August 31, 2015

George Hicks, Chair
California Uniform Construction Cost Accounting Commission
c/o State Controller's Office
Local Government Policies Section
P.O. Box 942850
Sacramento, CA 94520

Watershed Protection District
Tully K. Clifford, Director

Transportation Department
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Herbert L. Schwind, Director

Water & Sanitation Department
David J. Sasek, Director

Central Services Department
Janice E. Turner, Director

**SUBJECT CONSTRUCTION INDUSTRY FORCE ACCOUNT COUNCIL
COMPLAINT REGARDING THE COUNTY OF VENTURA
SANTA CLARA AVENUE STORM DRAIN INSTALLATION**

Dear Chairperson Hicks and Commissioners:

This letter is in response to the Construction Industry Force Account Council (CIFAC) complaint of violation by the County of Ventura Public Works Agency (PWA) of the California Uniform Construction Cost Accounting Act (CUCCAA) dated August 18, 2015 and agendized for your September 9, 2015 meeting.

The project in question is the Santa Clara Avenue Storm Drain Installation. This is work in preparation for a federally funded bicycle and pedestrian project expected to be out to bid in June, 2016. The storm drain installation replaced an existing open drainage ditch to easier facilitate the construction of the bicycle lanes, and was not included in the funded scope of the Highway Safety Improvement Fund funded project. Further, we wanted to complete these drainage modifications prior to the expected weather for the 2015/16 winter season. The work was within the capabilities of the Public Works Agency Transportation Department (PWATD).

In July, 2014, the PWATD Director, David Fleisch, worked with the County of Ventura County Counsel's office to ensure that the PWATD declaration of intent procedure was in accordance with the CUCCAA. At this time, several projects were noticed. Projects noticed can be found at: <http://pwa.ventura.org/transportation-department/transportation-active-projects>. This project was originally scheduled on the notice list dated July 21, 2014 by the PWATD Operations and Maintenance Division Manager Mr. Raul Gallo, but was removed by Mr. Fleisch because it was not planned to begin until 6 months after the other projects. Another notice was posted on April 14, 2015, the day before this project was to begin, which is when the project should have been noticed. However, it was in advertently left off the declaration.

Work began on Wednesday April 15, 2015 with 148 labor hours expended to mobilize, and install K-rail and other traffic-control devices. No work was completed Thursday or



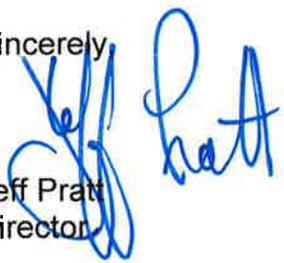
Friday. On Monday, April 20, 2015, the crew was on site to begin work. As stated in the complaint, Mr. Gallo was contacted by Ms. Shari Bacon from CIFAC regarding the project, informing him that it had not been noticed. Mr. Gallo consulted with Mr. Fleisch, and it was determined that the project had in fact not been noticed, although at the time the project began, they both thought it had been. Mr. Fleisch directed that the project be stopped until appropriate options and remedies could be considered. The crew was pulled from the site and no work was done (except one person out on the site on April 21 to review materials at the site and ensure the site was safe and organized) until May 5, 2015.

Between April 20 and April 24, Mr. Fleisch spoke with Ms. Bacon and received her input regarding CIFAC's concerns and desires and consulted with the County Counsel's office to request research on legal requirements and remedies. Also, Mr. Fleisch had a Declaration of Intent to Perform Work for this project prepared and signed by the PWA Director/Road Commissioner Jeff Pratt. It was e-mailed to Ms. Bacon on April 21, 2015 at 3:17 pm and posted on April 21, 2015 at 3:55 pm. Upon completion of the review with County Counsel, a determination was made that no specific remedy is required if a declaration of intent is not noticed properly. With this in mind, on Monday, April 27, Mr. Fleisch contacted Ms. Bacon and informed her that the County would commence work again on the project the week of May 4, 2015, having now properly noticed the project.

There were 238 labor hours expended (mobilization, installation of K-rails and traffic-control devices, and material preparation) on April 15 and 20, and 10 hours expended on April 21 to review materials at the site and ensure the site was safe and organized. No other work was performed until the project was restarted on May 5, 2015. The cost for the effort expended between April 15 and April 21 was \$19,951.37, which includes labor, heavy equipment, and miscellaneous equipment rentals. This is less than the \$45,000 limit. Once properly noticed, the project was restarted and completed on August 5, 2015.

The County of Ventura Public Works Agency takes its responsibilities seriously regarding compliance with all local, state, and federal laws and regulations. Attached is the PWATD internal process which was reviewed and updated after this incident to ensure appropriate declarations are completed and posted prior to work being performed.

Sincerely,


Jeff Pratt
Director

cc: Michael Powers, CEO

Attachment: PWATD internal declaration process

TRANSPORTATION DEPARTMENT

Effective: 08-25-15

Name of Process: Declaration/Notice of Intent to Perform Work (O&M)

Revised: 08-25-15

Drafted: 04-14-2015

Description of Process

Step	Responsible Party	Description
1	Engineering Manager – Operations & Maintenance	Initiates the draft Notice of Intent to Perform Work utilizing the appropriate template: Declaration of Intent to Perform Road Work <ul style="list-style-type: none"> Public projects as defined below listed in the draft are greater than \$45,000. Saves a draft of the letter (Word file) as well as any attachments in the appropriate file (see #11 below). Sends OAIII/MAIII a hyperlink of the draft Declaration.
2	Office Assistant III (SOY)/ Management Assistant III	1. Receives hyperlink of the draft from the Originator. Turn tracking on, proof, and make any changes that are necessary to draft. Add in dates construction will begin for each project if available. 2. Send back to Originator via hyperlink to review changes.
3	Engineering Manager – Operations & Maintenance	Reviews draft, inserts dates for construction if not already given; either accepts or makes other changes. Sends back to OAIII/MAIII via hyperlink for finalization.
4	OA III (SOY)/ MA III	OAIII/MAIII sends hyperlink of Declaration to PWATD Director for review.
5	PWATD Director	Approves for signature by PWA Director.
6	MA III	Prints out Declaration and sends to PWA Director (Jeff Pratt/via Clerical Services Manager Glenna Inouye) for signature.
7	PWA Director	Signs and returns to MA III (via Glenna Inouye)
8	MA III	Scans signed hard copy of Declaration and saves to appropriate file.
9	MA III	Posts on the PWATD website : <ul style="list-style-type: none"> Send Agnes Kish (Engineering Technician IV) a link to the scanned Declaration for posting to website Post for at least 5 work days prior to start of new construction and the first day of work Declaration is moved to website archives after first day of work starts
10	MA III	Posts signed hard copy of Declaration in the Hall of Administration Bulletin Board Glass Case in the main entryway: <ul style="list-style-type: none"> Gets keys from CSD OA IV (CJ Farrar) for outside bulletin board Post for at least 5 work days prior to start of new construction and through the first day of work
11		Save the final, signed letter as a PDF on T drive under the specific road file. See T:\Roads - Areas - Cities\Roads If more than one road is on the notice, save to the road with largest dollar amount associated with the construction being performed.

For the definition of public projects and construction, see below (in addition to the AB720/PCC language), which is extracted from the California Uniform Construction Cost Account Commission Manual (http://www.sco.ca.gov/files-ard-local/cuccac_cuccac_man.pdf)

- 22002
Definitions
- (a) "Public agency" for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
- (b) "Representatives of the construction industry" for purposes of this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.
- (c) **"Public project" means any of the following:**
- (1) **Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.**
 - (2) Painting or repainting of any publicly owned, leased, or operated facility.
 - (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.
- (d) **"Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:**
- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) **Resurfacing of streets and highways at less than one inch.**