



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

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August 21, 2008

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TO: SACHI A. HAMAI
Executive Officer
Board of Supervisors

Attention: Robin Guerrero
Deputy Executive Officer
Board Operations

FROM: JOHN F. KRATTLI 
Senior Assistant County Counsel

RE: **Rapp v. City National Bank, N.A., et al.**
Los Angeles Superior Court Case No. SC 087 535

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation in the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisors' agenda for September 2, 2008.

JFK:rfm

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the lawsuit entitled Rapp v. City National Bank, N.A., et al., Los Angeles Superior Court Case No. SC 087 535, in the amount of \$425,000, and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Department of Public Works' budget.

This lawsuit concerns landslide damage to three residential properties in the unincorporated Topanga area of the County.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	<u>Rapp v. City National Bank, N.A., et al</u>
CASE NUMBER	SC 087535
COURT	Los Angeles County Superior Court, Malibu Courthouse
DATE FILED	November 7, 2005
COUNTY DEPARTMENT	Department of Public Works
PROPOSED SETTLEMENT AMOUNT	\$425,000.00
ATTORNEY FOR PLAINTIFF	Damon Guizot, Esq. Marlena Mouser, Esq. Guizot & Mouser 714-748-0065
COUNTY COUNSEL ATTORNEY	Warren R. Wellen Principal Deputy County Counsel 213-974-9668 Talin Halabi Deputy County Counsel 213-974-8948
NATURE OF CASE	Paulette Rapp, City National Bank, and Jay and Virginia Siegel have filed lawsuits against the County of Los Angeles and the Los Angeles County Flood Control District ("District") arising from a landslide in January 2005 that

caused damage to their residential properties located in the unincorporated County in the Topanga area.

The property owners allege that two County drainage facilities diverted water that substantially contributed to the landslide.

The District does not own, maintain or operate any improvements in the area.

Due to the risks and uncertainties of litigation, the office of the County Counsel, with the concurrence of the Department of Public Works, recommends that the County contribute \$425,000 to a global settlement that totals \$1,850,000. In addition to the County's contribution, Rapp, City National Bank and the Siegels, in their capacity as cross-defendants, will each pay \$425,000 towards the settlement. Neighbors John Hyman and Anthea Rice will pay \$150,000.

Of the \$1,850,000 total settlement, \$750,000 will be paid to Rapp, \$300,000 will be paid to the Siegels, and \$250,000 will be paid to City National Bank. The remaining \$550,000 will be allocated for the repair of the landslide.

PAID ATTORNEY FEES, TO DATE	\$359,271 (in-house)
PAID COSTS, TO DATE	\$192,260



Summary Corrective Action Plan
County of Los Angeles Department of Public Works



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

<p>Claim: Date of incident/event:</p>	<p>Rapp et. al. January 2005</p>
<p>Briefly provide a description of the incident/event:</p>	<p>This is a property damage lawsuit by Rapp and two adjoining property owners for damage caused by a January 2005 landslide. The properties are located in the unincorporated Topanga area and surrounded by Encina Road on the west, Entrada Road on the north and Colina Drive on the east.</p> <p>The County owns and maintains a concrete berm directly in front of Rapp's property, on the northerly side of Colina Drive. The County constructed the berm in 1992 in response to complaints by a neighboring property owner that rain storms produced a tremendous amount of water runoff spilling over Colina Drive and cascading down the hillside into his property. The purpose of the berm was to alter the drainage course away from the property of the complaining owner and redirect the flow down Colina Drive. Road Maintenance Division crews designed and built the berm without consulting with an engineer or conducting analysis regarding the possibility that the berm diverted water onto Rapp's property. The County also owns and maintains a subsurface drain on the southerly side of Colina Drive, across from the Rapp property. Road Maintenance Division crews built the subsurface drain with input from an engineer.</p> <p>In January 2005 during the heavy 2004-2005 rainy season, a landslide moved significantly on the Rapp, City National and Siegel properties. The landslide undermined a portion of Rapp's structure and back porch. The landslide damaged portions of Siegel's yard, undermining structures including a sports court. The lower portion of the landslide damaged undeveloped parts of the City National Property and may be undermining parts of the residential structure.</p>

1. Briefly describe the root cause of the claim/lawsuit:

Causes of the landslide alleged by plaintiff:
 1) A berm constructed by the County on Colina Drive that diverted water from the roadway and down Rapp's driveway and onto Rapp and the others property, which contributed to the landslide.
 2) A French Drain the County failed to repair and maintain on Colina Drive which altered the subsurface flow redirecting water onto the properties and contributing to the landslide.

The County disputes these theories and investigation by our experts concluded that there was no evidence that the County improvements contributed to the landslide and there were no defects in the French Drain.

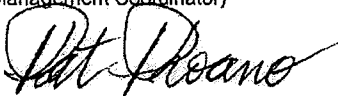
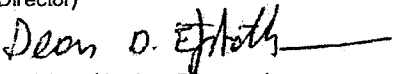
At the time of the berms construction in 1992, Superintendents and other Road Maintenance Division staff would meet with property owners experiencing drainage issues. Following the meeting Road Maintenance Division would plan and construct berms for water control if deemed appropriate.

2. Briefly describe recommended corrective actions:
 (Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

All berms for water control constructed by Road Maintenance Division shall be engineered. By December 31, 2008, Road Maintenance Division will provide guidelines to the Districts for the engineering of berms for water control.

3. State if the corrective actions are applicable to only your department or other County departments:
 (If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- Potentially has County-wide implications.
- Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- Does not appear to have County-wide or other department implications.

Signature: (Risk Management Coordinator)  Pat Proano	Date: 7/23/08
Signature: (Director)  Dean D. Efstathiou (Acting Director)	Date: 7/24/08

**DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN**

LAWSUIT OF: Rapp et. al.

INCIDENT DATE: January 2005

INCIDENT LOCATION: 21125 Colina Drive, Topanga
Unincorporated County

RISK ISSUE:

Property owners have filed an action against the County alleging causes of action for inverse condemnation and nuisance arising from landslide damage to their residential properties allegedly caused by the County's unreasonable construction and maintenance of a berm and subsurface drain on Colina Dr. and the County's unreasonable failure to properly direct surface flow from Colina Drive. The County may be liable in inverse condemnation when the County's public drainage improvements unreasonably divert, concentrate, or add water to a drainage course, and the water causes damage to downstream properties.

INVESTIGATIVE REVIEW:

The Rapp, City National and Siegel properties are located in the unincorporated Topanga area and surrounded by Encina Road on the west, Entrada Road on the north and Colina Drive on the east.

The County owns and maintains a concrete berm directly in front of Rapp's property, on the northerly side of Colina Drive. The County constructed the berm in 1992 in response to complaints by a neighboring property owner that rain storms produced a tremendous amount of water runoff spilling over Colina Drive and cascading down the hillside into his property. The purpose of the berm was to alter the drainage course away from the property of the complaining owner and redirect the flow down Colina Drive. Road Maintenance Division crews designed and built the berm without consulting with an engineer or conducting analysis regarding the possibility that the berm diverted water onto Rapp's property. The County also owns and maintains a subsurface drain on the southerly side of Colina Drive, across from the Rapp property. Road Maintenance Division crews built the subsurface drain with input from an engineer.

In January 2005 during the heavy 2004-2005 rainy season, a landslide moved significantly on the Rapp, City National and Siegel properties. The landslide undermined a portion of Rapp's structure and back porch. The landslide damaged portions of Siegel's yard, undermining structures including a sports court. The lower portion of the landslide damaged undeveloped parts of the City National Property and may be undermining parts of the residential structure.

The property owners contend that the County's berm redirected the flow of surface water from Colina Drive to Rapp's steep driveway, significantly increased the amount of

RAPP - CORRECTIVE ACTION PLAN

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water entering the Rapp, Siegel and City National properties during rain events, and substantially contributed to the landslide. The property owners further allege that the County failed to maintain and repair cracks in the subsurface drain on Colina Drive. As a result, the County allegedly altered the subsurface flow, redirected more water onto the Rapp, Siegel and City National properties, and caused landslide movement.

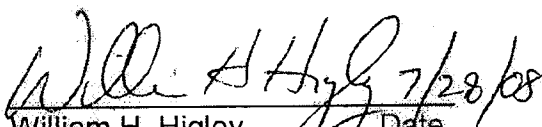
POLICY ISSUES:

At the time of the berm's construction in 1992, Superintendents and other Road Maintenance Division staff would meet with property owners experiencing drainage issues. Following the meeting, Road Maintenance Division would plan and construct berms for water control if deemed appropriate.

CORRECTIVE ACTION:

All berms for water control constructed by Road Maintenance Division shall be engineered. By December 31, 2008, Road Maintenance Division will provide guidelines to the Districts for the engineering of berms for water control.

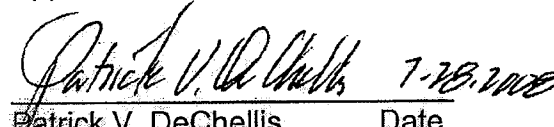
Reviewed & Recommended


William H. Higley
Deputy Director

Date

7/28/08

Approved


Patrick V. DeChellis
Deputy Director

Date

7-28-2008