



# ***Atascadero City Council***

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## ***Staff Report - City Attorney***

### **SUPPLEMENTAL REPORT**

#### **City Attorney Report on Potential Third Party Liabilities Storm Water Management Plan**

#### **DISCUSSION:**

On September 23, 2008, City Staff presented a Staff Report on the Storm Water Management Plan designated as Item C-1 on the Agenda. After the Staff Report was presented to the City Council, there was public comment from a number of individuals, including representatives from the Regional Water Quality Control Board (RWQCB). During the comment period, one of the RWQCB representatives stated that there was potential liability faced by the City for third party lawsuits in the event the City did not obtain an approved Storm Water Management Plan. The City Council requested that the City Attorney review the issue of potential third party liability and report back to the Council at its next meeting.

Rufus Young of Burke, Williams & Sorensen submitted a Memorandum to City Attorney Brian Pierik on September 29, 2008 regarding the issue of potential third party liability. This Memorandum is attached to this report. Mr. Young has substantial experience in storm water issues including drafting and negotiating storm water permits with regional water quality control boards and the State Water Resources Control Board. Mr. Young's comments on the drafts of the Small Cities NPDES MS4 storm water permit resulted in a number of changes to that permit. Mr. Young is a member of the faculty of the ALI-ABA Land Use Institute, where his topics include the Clean Water Act and its effect on land use.

#### **FISCAL IMPACT:**

The City Attorney is unable to estimate the potential fiscal impact which might result from third party lawsuits as it is unknown at this time when the City might obtain

approval of its Storm Water Management Plan and, further, the nature and extent of any third party lawsuits is unknown as none have been filed to date.

**ATTACHMENTS:**

Memorandum from Rufus Young to Brian Pierik dated September 29, 2008