

OFFICE OF THE CITY CLERK
1243 National City Blvd., National City, California 91950
619-336-4228 phone / 619-336-4229 fax

To: Risk Manager

Date: 7/22/24

From: City Clerk's Office

Re: _____

(Claimant / Plaintiff / Requester)

Our office received the following document/s:

- Claim for Damages – Hand-Delivered
- Claim for Damages – Delivered via USPS Mail
- Claim for Damages – Delivered via UPS
- Claim for Damages – Delivered via FED-EX

Date Received: 7/22/24

Staff member to contact for questions regarding receipt:

We are forwarding the above document/s to your office for further action.



City Of National City

RECEIVED

JUL 22 2024

Office of the City Clerk
City of National City

CLAIM FOR DAMAGES TO PERSON OR PROPERTY

INSTRUCTIONS

1. Read entire claim form before filing.
2. This claim form must be signed at bottom.
3. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.
4. Claims must be filed with the City Clerk, 1243 National City Boulevard, National City, CA 91950 (619) 336-4228.
5. Inquiries regarding status of filed claims should be directed to the Risk Manager at (619) 336-4370.

Attention: City Clerk

The undersigned hereby presents the following claim to the City of National City, in accordance with the laws of the State of California.

1. Name of Claimant: [REDACTED]
2. Home Address of Claimant: [REDACTED] National City, CA 91950
Home Telephone Number: _____ /Cell: _____
Email: _____
3. Give address to which you desire notices or communications to be sent regarding this claim:
11601 Wilshire Blvd., 14th Floor, Los Angeles, CA 90025-1744
4. How did DAMAGE or INJURY occur? Give full particulars:
On January 22, 2024 flooding occurred in multiple areas in the County of San Diego, including the City of National City, due to overflow from drainage channels operated and/or owned by the City of National City, including but not limited to the Seventh Street Channel and Las Chollas Creek, and its offshoots and tributaries, as more fully explained in the attached letter.
5. When did DAMAGE or INJURY occur? Give the date and time of day:
January 22, 2024.
6. Where did DAMAGE or INJURY occur? Describe fully, and attach diagram where appropriate. Give street names and addresses and measurements from landmarks:
[REDACTED] National City, CA 91950

7. What particular ACT or OMISSION do you claim caused the injury or damage? Give names of City employees causing the injury or damage, if known:

8. What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damages claimed: Claimant's home and/or business was flooded and damages include: real property, personal property, business property, vehicles, loss of income, damages related to evacuation, personal injury and emotional distress, as more fully explained in the attached letter.

9. NAMES of physicians, hospitals, etc.:

10. What AMOUNT do you claim on account of each item of injury or damage as of date of presentation of this claim? Explain how you calculated this amount. In excess of \$25,000.00.

Give ESTIMATED AMOUNT as far as known you claim on account of each item of future injury or damage, giving basis of computation:

11. What INSURANCE PAYMENTS did you receive, if any, and what were the names of any Insurance Company(ies):

12. What EXPENDITURES did you make on account of accident or injury: (Date-Item) (Amount):

13. Give NAMES AND ADDRESSES of Witnesses, Doctors and Hospitals:

Attach COPIES of any photos, documents or receipts you wish considered.

I declare under penalty of perjury that I have read the foregoing claim and the papers attached thereto, and that the same are true and correct to the best of my knowledge.

DATE: 19 July 2024

SIGNATURE: 

Daniel C. Whalen, Esq.

Claimant or Agent
11601 Wilshire Blvd., 14th
Floor, Los Angeles, CA
Address of Above

(310) 552-3800
Telephone No. of Above

LAW OFFICES

ENGSTROM, LIPSCOMB & LACK

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STEVEN C. SHUMAN
ELIZABETH LANE CROOKE
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A PROFESSIONAL CORPORATION
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JASON L. TILLMAN
RYAN J. FARRELL
PAUL W. ENGSTROM (1941 – 2010)
ROBERT J. WOLFE (1961 – 2015)

355-NT

July 19, 2024

Via U.S. Mail

City of National City
ATTN: City Clerk
1243 National City Boulevard
National City, CA 91950

Re: Claim for Damages
Claimant: [REDACTED]
Our File No.: 59500/0234

To Whom It May Concern:

YOU ARE HEREBY notified that pursuant to the provisions of §§ 815, 835, 905 and 910, et seq. of the California *Government Code*, Claimant, [REDACTED] (hereinafter "Claimant") hereby makes a claim for damages from the City of National City in an amount in excess of the jurisdictional limits of the Superior Court of the State of California.

I. ADDRESS OF CLAIMANTS:

[REDACTED]
National City, CA 91950

II. ADDRESS OF ATTORNEYS REPRESENTING CLAIMANT:

ENGSTROM, LIPSCOMB & LACK
Walter J. Lack, Daniel G. Whalen, Ashley L. Arnett, and Daniel C. Whalen
11601 Wilshire Boulevard, 14th Floor
Los Angeles, California 90025-1744
(310) 552-3800

[REDACTED]

The Law Office of Evan W. Walker
Evan W. Walker, Esq.
888 Prospect Street, Suite 200
La Jolla, California 92037
(858) 324-6606

III. ADDRESS TO WHICH NOTICE OR COMMUNICATION SHOULD BE SENT REGARDING CLAIM:

ENGSTROM, LIPSCOMB & LACK
Walter J. Lack, Daniel G. Whalen, Ashley L. Arnett, and Daniel C. Whalen
11601 Wilshire Boulevard, 14th Floor
Los Angeles, California 90025-1744
(310) 552-3800

IV. DATE OF INCIDENT CAUSING DAMAGE:

On or about January 22, 2024.

V. PLACE OF INJURY:

[REDACTED], National City, CA 91950

VI. CIRCUMSTANCES OF INCIDENT:

This case involves flood damage to property located in the City of National City. The impacted property is [REDACTED] National City, CA 91950. The flooding occurred on or about January 22, 2024 and damaged the structures and contents therein. The flooding was caused by a failure of the City of National City to maintain the drainage channels and storm drains, leading to inundation and failure of the channels, and subsequent overflow into the surrounding neighborhood, including residences and businesses in the area. Claimant alleges that the City of National City failed to reasonably own, operate, and maintain the subject waterway and thus was responsible for causing Claimant's flood losses.

Failing to maintain and clean drainage channels in a FEMA designated flood zone creates hazardous and dangerous conditions. The City of National City is well aware of these issues as evidenced by the "Storm Water Program" web page. The City of National City is well aware of the strain on the stormwater system.¹

¹ <https://www.nationalcityca.gov/government/engineering-public-works/engineering-division/storm-water-program>

[REDACTED]

The City of National City failed in its duty to exercise due care commensurate with and proportionate to the combined danger of an area susceptible to flooding and the dangerous neglect of city-controlled waterways thereby being a substantial factor in the cause of the flooding, as more fully set forth herein.

VII. DESCRIPTION OF BASIS OF LIABILITY AND DAMAGES TO CLAIMANT

A. Inverse Condemnation (California Constitution, Article I, Section 19)

The City of National City is a public entity (as defined in §900.4 of the California *Government Code*) which, through its legal duties and failure to act on those duties, caused the flooding loss referenced above.

The City of National City owned and substantially participated in the ownership, planning, construction, control, maintenance, and operation of the storm water conveyance system/flood control project and the adjacent infrastructure surrounding the drainage channels and storm drain system/flood control project and exercised control and dominion over the storm water conveyance/flood control project and removal system as a public project and public benefit, and used the power of eminent domain to obtain rights of way, real property, and easements for purposes of conducting its operations.

The City of National City allowed the channels to become clogged with vegetation, silt, and debris, restricting water flow, and did not maintain or clear this vegetation, posing an inherent danger and risk of flooding to private property, and property damage was a known and reasonably anticipated incident of a public project or purpose. In acting in furtherance of the public objective of unobstructed drainage channels, the City of National City did assume such a risk on January 22, 2024, that private property would be damaged and destroyed by flooding.

City of National City's construction or maintenance of the drainage channels and storm drain system/flood control project, caused water to damage Claimant's property on January 22, 2024. City's actions of ownership, planning, construction, control, maintenance, and operation of the storm water conveyance system/flood control project and the adjacent infrastructure surrounding the drainage channels and storm drain system/flood control project were unreasonable.

City of National City was aware of the risk presented by its ownership, planning, construction, control, maintenance, and operation of the storm water conveyance system/flood control project and the adjacent infrastructure surrounding the drainage channels and storm drain system/flood control project.

[REDACTED]

The conduct, as described herein, was a substantial cause of the damage to a property interest protected by the United States Constitution, Fifth Amendment, and Article I Section 19 of the California Constitution, which entitle Claimant to just compensation according to proof at trial for all damage incurred.

Further, under and pursuant to California *Code of Civil Procedure*, Section 1036, Claimant is entitled to recover all litigation costs and expense with regard to the compensation for damage of properties, including attorneys' fees, expert fees, consulting fees, and litigation costs.

B. Negligence (Govt. Code Section 815.2(a))

The City of National City and its agents and employees have a duty to apply a level of care commensurate with and proportionate to the danger of constructing and maintaining drainage channels and their surrounding infrastructure, including, but not limited to, storm drains.

The City of National City has special knowledge and expertise far above that of a layperson that they were required to apply to the construction, use, operation, inspection, repair and maintenance of drainage channels to assure safety under all the local conditions in the area, including, but not limited to, those conditions identified herein.

The City of National City negligently breached those duties by, among other things:

- a) Failing to conduct reasonably prompt, proper, and frequent inspections of the drainage channel and adjacent infrastructure;
- b) Failing to monitor, inspect, control, and maintain storm water in a manner that avoids flooding in residential and mixed-use areas, by failing to clear vegetation and maintaining the infrastructure in drainage channels, in a manner that flooding could foreseeably occur;
- c) Failing to construct, monitor, and maintain waterways in flood-prone areas to avoid inundation;
- d) Failing to keep drainage channels in a well-maintained condition at all times to prevent flooding.

The negligence of the City of National City was a substantial factor causing Claimant's damages, including personal injury and emotional distress.

The City of National City's failure to comply with their duty of care proximately caused damage to Claimant.



C. Dangerous Condition of Public Property (Govt. Code § 835)

At all times relevant herein, the City of National City owned, operated, maintained, and/or controlled the property rights, the water, and the waterways which were responsible for the cause of the flood.

On and prior to January 22, 2024 the property, inclusive of the easement rights, including, but not limited to, the drainage channels, storm drain, adjacent infrastructure, vegetation, and water therein, were in a dangerous condition which was the proximate cause of Claimant's injury and damages as more particularly set forth herein. There appears to be incomplete and/or improper maintenance and/or repair of the subject infrastructure prior to the origination of the subject flooding.

The dangerous condition of the property owned and/or controlled by the City of National City created a reasonably foreseeable risk that the vegetation, silt, and debris lying in the drainage channels and the storm drain system would prevent the waterways from operating in a manner to prevent flooding.

The City of National City had actual or constructive notice of the dangerous condition in a sufficient amount of time to have protected against it. The City of National City is responsible for routine inspection and maintenance of the subject drainage channels and infrastructure under its ownership and/or control located at the origin of the flood. The subject drainage channels and adjacent infrastructure were known to the City and located in an open and visible area, easily accessible to conduct proper maintenance and repair or otherwise safeguard against the foreseeable risk of flood from excess vegetation, silt, and debris. Thus, the difficulty of protecting against the risk of such harm was minimal.

As a result of the dangerous condition of the City of National City's property, Claimant was harmed and the dangerous condition of the City of National City's property was a substantial factor in causing Claimant's harm.

E. Trespass

At all times relevant herein, Claimant was the owner, tenant, and/or lawful occupier of property damaged by the aforementioned flooding.

At no time did Claimant give the City of National City permission to flood their property with storm water or any water.

The City of National City's wrongful conduct resulting in the flooding located at the subject properties constitutes a trespass in accordance with California *Civil Code* § 3334.

[REDACTED]

The City of National City negligently allowed the flooding to occur, and the water previously contained therein to spread out of control, causing damage to Claimant.

As a direct, proximate and substantial cause of the trespass, Claimant has suffered and will continue to suffer damages, including, but not limited to, damage to property, loss of profit, and lost income in an amount to be proven at trial.

F. Private Nuisance

The City of National City's wrongful conduct resulting in the flooding located at the subject properties constitutes a nuisance in accordance with California *Civil Code* § 3479 because it was an improper diversion of water due to City of National City's failure to maintain storm water conveyance system/flood control project and the adjacent infrastructure surrounding the drainage channels and storm drain system/flood control project.

At all times relevant herein, the City of National City owned, maintained, and operated the subject waterways which caused the flooding.

By failing to properly own, maintain, and operate the subject waterways and adjacent infrastructure, the City of National City created a dangerous condition that resulted in the subject flood and invaded Claimant's property.

The floodwaters and resulting vegetation, silt, and debris is and was offensive to senses and an obstruction to free use of Claimant's property.

The City of National City's conduct has interfered and continues to interfere with the use of Claimant's property, including but not limited to causing Claimant to forego the use of their property.

As a result of the foregoing conduct, Claimant has suffered and continues to suffer damages to their property and business, as alleged herein.

Claimant did not consent to the invasion of the floodwaters upon their property and business.

An ordinary person would be reasonably annoyed or disturbed by the City of National City's conduct.

The seriousness of the harm outweighs the public benefit of the City of National City's conduct.

[REDACTED]

City of National City
[REDACTED]

July 19, 2024

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The City of National City's substantial and unreasonable interference with Claimant's use and enjoyment of their property constitutes a private nuisance for which the City of National City is liable to Claimant for all damages arising from such nuisance, including compensatory relief.

VII. AMOUNTS CLAIMED

The amount claimed is unknown at present. Claimant has incurred partial losses of their structures and contents therein and have also incurred considerable lost rents, business profits, personal injury, and emotional distress. Claimant estimates that their losses may exceed 2 million dollars.

Claimant has incurred and will incur reasonable attorney's fees and costs including engineering, construction, and investigative fees as a result of this proceeding, in amounts that cannot yet be ascertained, which are recoverable under the provisions of Section 1036 of the California *Code of Civil Procedure*.

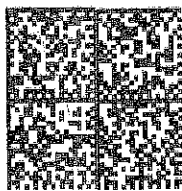
Sincerely,

[REDACTED]

DANIEL C. WHALEN

DCW/nr
Enclosures
469745

City of National City
ATTN: City Clerk
1243 National City Boulevard
National City, CA 91950



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JUL 22 2024

Office of the City Clerk
City of National City

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