SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET

Creation Date: 6/1/04
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Resolution(s):

Ordinance(s):

Contract(s):

Continue Date(s):

Index: --Letter of County Counsel dated June 8, 2004
--Claim of James Cunningham

Item: 10. REJECTED the claim of James Cunningham, No. 304-109, and referred to County Counsel

COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL
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David Kendig
Miriam L. Stombler
Jason M. Heath

Special Counsel
Dwight L. Herr
Deborah Steen

GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda June 8, 2004

To: Board of Supervisors

Re: Claim of James Cunningham, No. 304-109

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

X 1. Reject the claim of James Cunningham, No. 304-109 and refer to County Counsel.

____ 2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.

____ 3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.

____ 4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.

____ 5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

cc: Tom Bolich, Director
Department of Public Works

RISK MANAGEMENT

By Janet McKinley
Janet McKinley, Risk Manager

DANA McRAE, COUNTY COUNSEL

By Julia Hill
Julia Hill, Assistant County Counsel

PER5107 Word Rev 2/2004

APR 2004 RECEIVED CLERK OF THE BOARD BOARD OF SUPERVISORS

LAW OFFICES OF THOMAS J. BRANDI
THOMAS J. BRANDI #53208
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44 Montgomery Street, Suite 1050
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Attorneys for Claimant:
JAMES CUNNINGHAM

CLAIM OF:

JAMES CUNNINGHAM Claimant, v. CITY OF SANTA CRUZ, COUNTY OF SANTA CRUZ, and STATE OF CALIFORNIA Respondents.	)	**CLAIM** FOR **PERSONAL INJURY** *AND* PROPERTY LOSS [Government Code §910]

TO THE CITY **OF SANTA CRUZ,** THE ***COUNTY*** **OF** SANTA CRUZ, and THE **STATE OF** CALIFORNIA:

Claimant JAMES CUNNINGHAM, claims damages from the **CITY OF** SANTA CRUZ, THE COUNTY **OF** SANTA CRUZ, and the **STATE OF** CALIFORNIA.

(a) Claimant's post office address is: c/o Law Offices of Thomas J. Brandi, **44** Montgomery Street, Suite 1050, San Francisco, CA 94104.

(b) The **post** office **address** to which Claimant **desires** notices to be sent is c/o Law Offices of Thomas J. Brandi, 44 Montgomery Street, Suite 1050, San Francisco, California 941**04.**

(c) This claim is based on the personal injuries sustained by the claimant JAMES CUNNINGHAM. On the afternoon of October 26, 2003, at approximately 4:50 p.m., JAMES CUNNINGHAM was operating a bicycle on the east side of Branciforte near its intersection with Grunewald Court in the City of Santa Cruz, County of Santa Cruz, State of California (hereafter, the "ACCIDENT LOCATION.")

At approximately that tine and place, Claimant JAMES CUNNINGHAM became involved in a bicycle accident when the front tire of his bicycle, followed by the rest of his bicycle, suddenly plunged into and became caught and trapped in an open culvert, causing him severe injuries. Specifically Claimanr suffered loss ofconsciousness and severe injuries to his face and head requiring hospitalization and surgeries including extensive reconstructive surgery as well as other damages to his body.

The accident was caused by the CITY OF SANTA CRUZ, THE COUNTY OF SANTA CRUZ, and the STATE OF CALIFORNIA (hereinafter referred Io as the "PUBLIC ENTITES") and/or their employees by reason of, among others, the following acts and/or omissions:

The PUBLIC ENTITIES negligently and carelessly designed, warned, failed to warn, constructed, created, maintained, repaired,,owned, operated, controlled, signed, and regulated the aforementioned ACCIDENT LOCATION, thereby creating a dangerous condition by:

- creating a large, uncovered drainage culvert immediately adjacent to the traveled roadway which trapped and disrupted claimant's bicycle;
- creating a trap for motorists and bicyclists by failing to cover, protect, and warn against the presence of a large open drop off into a drainage culvert immediately adjacent to the traveled way;

- failure to warn of, and/or prevent and/or correct a "dangerous condition" (a condition of property that creates a substantial [as distinguished from a minor, trivial or insignificant] risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used) on, or immediately adjacent to, public property;
- failure to provide and/or maintain an adequate shoulder along the roadway;
- failure to prevent and/or correct an unsafe and dangerous "drop-out" between the edge of the paved roadway and the shoulder and the drainage tiarurc:
- placement of an unsafe curb too close to the traveled lanes of the roadway:
- failure to provide and/or maintain adequate signs, signals, deviccs, channelization, pavement, and striping;
- failure to provide a safe and reasonable geometric alignment of the roadway;
- failure to adequately warn of the dangerous and unsafe conditions set forth above.

The aforesaid acts and omissions of the PUBLIC ENTITES created and caused dangerous conditions in that said conditions created a substantial risk of rhc type of injury hereinafter alleged when respondents' property was used in a foreseeable manner.

The PUBLIC ENTITES had actual and/or constructive notice of the defective and substantially dangerous conditions a sufficient time prior to Claimant's injuries to have taken measures to protect against the dangerous condition. The actual notice existed because the PUBLIC ENTITIES and/or their empioyees and agents had actual knowledge of the existence of the condition and knew, or should have known, of its dangerous character since the PUBLIC ENTITIES and/or their employees and agents owned, constructed, maintained and

created by direction said condition. Constructive notice existed because the condition had existed for such a period of time and was of such an obvious nature that the PUBLIC ENTITIES, in the exercise of due care, should have discovned the condition and its dangerous character. The existence of *the* condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate to inform the PUBLIC ENTITIES whether the property was safe for the use or uses for which the PUBLIC ENTITIES used or intended others to use the public property and for uses that the PUBLIC ENTITIES actually knew others were making of the public property, including but not limited to visual inspections of the ACCIDENT LOCATION in use. During the course of any such reasonably adequate inspection, the PUBLIC ENTITIES would havc discovered the conditions, and their dangerous character, as listed above.

In light of the notice to the PUBLIC ENTITES and their agents and employees, the PUBLIC ENTITIES' .failureto adequately sign, remedy, or otherwise warn of the dangerous condition of *the* roadway caused a trap to exist for bicyclists and motorists approaching and proceeding on the Accident Location.

(d) As far as is known at the time of the presentarion of this claim, Claimant claims damages for medical costs, lost wages, and pain and suffering, as well as property loss and/or damage and other damages arising therefrom.

(e) The name or names of the public employee or employees causing the injury, damages or loss is unknown.

(f) The amount claimed exceeds ten thousand dollars ($10,000) as of the date of the presentation of this claim.

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The jurisdiction over the claim would rest in Superior Court.

LAW OFFICES OF THOMAS J. BRANDI

Date: April 21, 2004

By: _____
JOHN FITZPATRICK VANNUCCI
Attorney for Claimant

CUNNINGHAM
(duplicate)

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Attorneys for Claimant:
JAMES CUNNINGHAM

2004 RECEIVED Clerk of the Board Board of Supervisors County of Santa Cruz

APR 2004 RECEIVED Clerk of the Board Board of Supervisors County of Santa Cruz

CLAIM OF:

JAMES CUNNINGHAM Claimant, v. CITY OF SANTA CRUZ, COUNTY OF SANTA CRUZ, and STATE OF CALIFORNIA Respondents.	CLAIM FOR PERSONAL *INJURY AND* PROPERTY LOSS [Government Code §910]

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