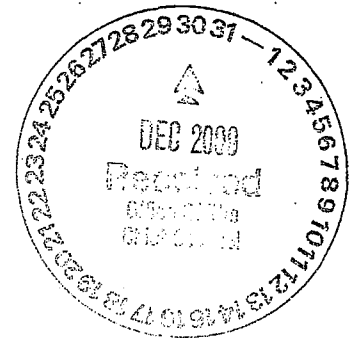


1 CARTER & MOMSEN, LLP
2 Jared G. Carter SBN 36310
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5 444 North State Street
6 Ukiah, CA 95482
7 Telephone: (707) 462-6694
8 Facsimile: (707) 462-7839



6 BEFORE THE CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD

8 JON AND DEANN GREEN)
9)
10) Petitioner,) PETITION FOR REVIEW
11) and)
12) [Cal. Water Code §13320]
13) CALIFORNIA REGIONAL WATER)
14) QUALITY CONTROL BOARD - NORTH)
15) COAST REGION)
16) Respondent.)

16 This petition for review is submitted on behalf of Jon and
17 Deann Green ("Petitioners") pursuant to California Water Code
18 ("WC") §13320 for review of the Notice of Violation for Failure
19 to Comply with Active Regional Board Orders and for New Basin
20 Plan violations, and Order Requiring Technical Reports
21 Investigating New Sources of Waste Discharge pursuant to
22 California Water Code Section 13267(b) issued by the California
23 Regional Water Quality Control Board - North Coast Region
24 ("Regional Board") on December 2, 2009.

25 While Petitioners do seek review of the Regional Boards
26 actions, as stated below Petitioners request that such review be
27 stayed pending the outcome of current efforts to resolve the
28 issues stated herein informally.

1 I. Name and Address of Petitioners

2 1) Jon and Deann Green
3 PO Box 643
4 Willits, CA 95490

5 With copy to Petitioners' Counsel:

6 2) Carter & Momsen, LLP
7 Matisse M. Knight
8 444 North State Street
9 Ukiah, CA 95482

10 II. Regional Board Action for Review

11 Petitioners request that the California State Water
12 Resources Control Board ("SWRCB") review the "Notice of Violation
13 for Failure to Comply with Active Regional Board Orders and for
14 New Basin Plan violations, and Order Requiring Technical Reports
15 Investigating New Sources of Waste Discharge pursuant to
16 California Water Code Section 13267(b)" ("Notice of Violation")
17 issued by the Regional Board on December 2, 2009. A copy of the
18 Notice of Violation is attached hereto as Exhibit A.

19 III. Date of Regional Board's Action.

20 The Regional Board issued the Notice of Violation on
21 December 2, 2009.

22 IV. Statement of Reasons Why Regional Board's Action Was
23 Inappropriate or Improper.

24 Petitioners believe that the Notice of Violation
25 inappropriately and improperly characterizes grading and
26 engineering work performed by Petitioners on Petitioners' real
27 property as violative of a Cleanup and Abatement Order issued on
28 or around June 12, 2001. Petitioners believe the

1 characterizations in the Notice of Violation are inappropriate
2 and improper for several reasons including, but not limited to,
3 the following:

4 1) Recent work has been performed on Petitioners' property
5 to reduce the potential that sediment may enter unnamed
6 tributaries on Petitioners' property.

7 2) Petitioners believe that they have not introduced Waste
8 into a Stream or Watercourse as those terms are defined in the
9 Regional Board's Basin Plan.

10 3) New construction" of a road referred to in the Notice of
11 Violation merely involved the clearing of an existing trail and
12 was done for fire protection purposes, pursuant to a Mendocino
13 County Building Permit. It did not involve the deliberate
14 placement of fill or "waste" into a stream or watercourse as
15 prohibited by the Regional Board's Basin Plan.

16 4) Any "discharge" of any substance - or potential discharge
17 - was not in an amount that could be considered deleterious to
18 fish, wildlife or other beneficial use of a stream or
19 watercourse.

20
21 **V. How Petitioners Are Aggrieved**

22 The Notice of Violation issued by the Regional Board
23 threatens the imposition of significant fines and requires that
24 Petitioners expend significant time and money to remedy the
25 alleged violations. Therefore, if adopted as is the Notice of
26 Violation stands to put a significant burden - both financially
27 and as property owners - on Petitioners.

28

1 VI. Request to Stay Review Pending Outcome of Negotiations With
2 Regional Board.

3 Petitioners do not wish to shirk any responsibilities they
4 actually have to the State of California. As such, Petitioners
5 have initiated discussions with representatives of the Regional
6 Board and other interested agencies in an effort to understand
7 the allegations and find an agreeable resolution to the issues
8 presented in the Notice of Violation. A meeting between
9 Petitioners' counsel, Petitioners' engineering consultant and
10 representatives of the Regional Board - as suggested in the
11 Notice of Violation - is currently set for January 25, 2010.
12 However, due to the requirement that review by the SWRCB of the
13 Notice of Violation be requested within 30 days of the action,
14 Petitioners are required to submit this request in order to
15 preserve the right of review and the requirement to exhaust all
16 available administrative remedies.

17 However, because the matter may be disposed of between
18 Petitioners and the Regional Board through informal discussions
19 and associated work, the Petitioners request that the SWRCB
20 accept the review of this matter but stay any furthering
21 proceeding until in or around May of 2010.

22
23 VI. Actions Petitioners Request the SWRCB to Take

24 The issues raised in this Petition may be resolved or
25 rendered moot by actions of the Regional Board following
26 negotiations pending between Petitioners and the Regional Board.
27 Accordingly, Petitioners request the SWRCB hold this Petition in
28 abeyance at this time. Depending on the outcome of the current

1 negotiations, Petitioners will, if necessary, request the SWRCB
2 to consider the Petition and schedule a hearing.

3
4 **VII. Statement of Points and Authorities**

5 The following is a brief statement of points and authorities
6 related to the issues of this petition. If Petitioners request
7 that the SWRCB consider this petition, Petitioners will file a
8 complete points and authorities at that time.

9 **A. The Actions Complained of in the Notice of Violation
10 Do Not Sufficiently State A Complaint for Violations of
the Regional Board's Basin Plan.**

11 The Notice of Violation alleges that activities upon the
12 Petitioners' property have violated two prohibitions of the
13 Regional Board's Basin Plan:

14 "Prohibition 1 - 'The discharge of soil, silt,
15 bark, slash, sawdust, or other organic and earthen
16 material from any logging, construction, or associated
17 activity of whatever nature into any stream or
watercourse in the basin in quantities deleterious to
fish, wildlife, or other beneficial uses is
prohibited.'

18 Prohibition 2 - 'The placing or disposing of
19 soil, silt, bark, slash, sawdust, or other organic and
20 earthen material from any logging, construction, or
21 associated activity of whatever nature at locations
where such material could pass into any stream or
watercourse in the basin in quantities which could be
deleterious to fish, wildlife, or other beneficial
uses is prohibited.'" (Notice of Violation pg. 3.)

22 To support finding a violation of the above referenced
23 prohibitions, the Notice of Violation merely implies that "[t]he
24 quantity and manner in which earthen fill material was placed and
25 the manner in which the new road was constructed has caused waste
26 earthen material to discharge and threaten to discharge into the
27 unnamed tributary along the bottom of the slope below the road,
28 and thence into Scott Creek and Tomki Creek." (Notice of

1 Violation pg. 4.)

2 The Notice of Violation, however, does not attempt to
3 quantify any amount of sediment discharged such that it can be
4 determined whether it was "deleterious to fish, wildlife or other
5 beneficial uses" - a requirement to show a violation of either
6 prohibition listed above.

7 Additionally, the Basin Plan specifically defines a stream
8 or watercourse - as used in the above referenced prohibitions -
9 as a "[n]atural watercourse as designated by a solid line or dash
10 and three dots symbol shown in blue on the largest scale United
11 States Geological Survey Topographic Map most recently
12 published." (Basin Plan 4-27.00.) However, nowhere does the
13 Notice of Violation consider whether the "unnamed tributaries" -
14 or Scott Creek for that matter - fall within this specific
15 definition - which Petitioners believe they do not.

16 In other words, the prohibitions apply to "streams or
17 watercourses" as defined in the Basin Plan and it is such a
18 stream where considerations of whether a discharge was
19 "deleterious to fish, wildlife or other beneficial uses" must be
20 made. The Notice of Violation therefore inappropriately and
21 improperly assesses the amount of sediment discharge and its
22 location.

23 **B. The Notice of Violation Inappropriately and**
24 **Improperly Characterizes the Construction of a Fire**
Road on the Petitioners' Property.

25 As to the fire break and access road constructed on
26 Petitioners' Property, the Notice of Violation inaccurately
27 states,

28 "the new road was constructed without Waste Discharge

1 Requirements from the Regional Water Board nor coverage
2 under the statewide Construction Storm Water Permit,
3 and the road is impacting and threatening to impact
4 water quality at a number of locations for a number of
5 reasons...constructed without any engineering design or
6 planning beforehand, without obtaining proper permits
7 to construct the road, and without any apparent
8 engineering oversight..." (Notice of Violation pg. 5.)

9 However, those broad allegations are not supported by any facts.

10 Regarding the necessity of a General Storm Water Permit, the
11 Notice of Violation did not assess the following activities for
12 which such a permit is not required (See Water Quality Order 99-
13 08-DWQ.):

- 14 1) Construction involving a disturbance less than one acre.
- 15 2) Activity merely to maintain an original line and grade.
- 16 3) Construction activity under emergency conditions to
17 protect public safety.

18 Had the Regional Board properly considered whether a General
19 Storm Water Permit was even necessary given the above exemptions
20 it is likely it would have determined that no such permit was
21 required.

22 In addition, the broad assertions regarding the construction
23 of the fire break and fire access road are far from factual
24 assertions upon which a violation can be based. In fact, the
25 "new road" was constructed pursuant to a building permit issued
26 by the County of Mendocino and was constructed during a time of
27 extreme fire danger when neighboring hillsides were being
28 devoured by flames.

The Notice of Violation is devoid of law and fact which
support its issuance and if the SWRCB reviews this action of the
Regional Board it should dismiss it.

1 VIII. Statement of Service Upon Regional Board

2 Petitioners are serving a copy of this Petition upon the
3 Regional Board along with a request that the Regional Board
4 prepare its record for this Petition concurrently with the
5 submission of this petition to the SWRCB.

6
7 VII. Conclusion

8 Petitioners request that the issuance of the Notice of
9 Violation by the Regional Board be reviewed by the SWRCB.
10 However, because of the potential for resolution through
11 discussions between Petitioners and the Regional Board,
12 Petitioners also request that any further proceedings by the
13 SWRCB be held in abeyance until in or around May of 2010. If the
14 current negotiations fail to produce a resolution, Petitioners at
15 that time will ask the SWRCB to review the Regional Board's
16 actions and hold a hearing.

17
18 DATED: December 21, 2009


CARTER & MOMSEN, LLP

By: Matisse M. Knight
Attorneys for Petitioners
JON and DEANN GREEN

19
20
21
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28

Exhibit A



California Regional Water Quality Control Board
North Coast Region

Geoffrey M. Hales, Acting Chairman



Linda S. Adams
Secretary for
Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

December 2, 2009

Jon and Deann Green
P.O. Box 643
Willits, CA 95490

Dear Mr. and Mrs. Green,

Subject: Notice of Violation for Failure to Comply with Active Regional Board Orders and for New Basin Plan violations, and Order Requiring Technical Reports Investigating New Sources of Waste Discharge pursuant to California Water Code (Water Code) Section 13267(b)

File: Jon and Deann Green Grading Project, Willits, California

The purpose of this letter is to 1) remind you of your continued obligations under Orders issued by this office, 2) advise you that you are subject to potential future enforcement action and penalties for failure to comply with those obligations and for the continuing threats and impacts to water quality associated with uncontrolled sediment discharges from their property at 22341 Tomki Road (site), Willits, and 3) inform you that earthen fill material from the road you recently constructed on your property has discharged and threatens to discharge into State waters, violating waste discharge prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan). Furthermore, the new road was constructed in a manner that violates the Basin Plan, California Water Code, and the Federal Clean Water Act.

Noncompliance with June 12, 2001 Water Code section 13267(b) Order and Cleanup and Abatement Order (CAO) No. R1-2002-0103

On December 3, 2002, the Regional Water Quality Control Board (Regional Water Board) Board Executive Officer issued Cleanup and Abatement Order Number R1-2002-0103, requiring you to submit and implement various plans and pollution control/abatement measures. In the years since we issued that Order, you have created new sediment sources, made numerous, but inadequate, efforts to control erosion on the site, submitted various partial or incomplete plans which you have partially implemented or not implemented at all, and failed to maintain most of the erosion and sediment controls which you installed on the site over the years. With respect to specific requirements of the Cleanup and Abatement Order, you have: 1)

California Environmental Protection Agency

Recycled Paper

failed to fully or adequately implement a short term erosion control plan, 2) failed to submit and implement a long term erosion control plan, and 3) failed to provide any engineering information certifying that constructed fills, including the fills constructed since issuance of the CAO, are designed and constructed in conformance with standard engineering practice, and are stable.

In addition, site conditions have changed significantly since you submitted the October 13, 2004 Progress Report #1 (which included temporary erosion control measures and is referred to as the Short-term Erosion Control Plan) to the Regional Water Board, rendering that Plan obsolete.

Regional Water Board staff inspections of the site in June 2006, October 2008, and, more recently, on September 25, 2009 (September 2009 inspection reports attached), confirmed that you installed plastic sheets over two fill slopes, partially implementing the Short-Term Erosion Control Plan. However, that plastic has deteriorated and moved or transported in pieces to the bottom of the slopes and/or into downstream watercourses. You have reported periodic efforts to clean out accumulated sediment in sediment settlement areas on the inside of the perimeter road, and, as observed on our September 2009 inspection, you have made recent efforts to control the sources of sediment on the south end of the site (Watercourse Site #8). The current erosion control efforts consist of replacing fill material in a failed fill slope, compacting the filled material, and constructing a bench at mid-slope. My staff observed during the September 2009 site visit that the erosion control work was partially completed, with fill material placed on the failed slope and construction of the bench. You indicated in an April 6, 2009 letter that you had planned to begin this work in June 2009; however, you apparently delayed starting this work until August/September 2009. On September 25, 2009, staff observed that the failed slope repair and erosion control work had not been completed, the site was not prepared for oncoming winter rains and, given the rate of work, it did not appear that the erosion control work on watershed site #8 could be completed before the onset of winter rains. At this time, previously constructed and documented sediment sources on your site continue to discharge and to threaten to discharge substantial volumes of soil into waters of the State and the United States and violates CAO directives requiring cleanup and abatement of these discharge sources. Consequently, substantial potential liability for these violations continues to accrue due to your failure to comply with the Cleanup and Abatement Order.

In order to reduce the total liability and avoid further imposition of penalties, which are adding up by the day, with each violation as well as each discharge event, we recommend that you comply with the CAO, and that you take the following short-term measures:

- Winterize and/or stabilize any currently placed fill material at watershed site #8 (current area of erosion control work) at the south end of the Site;

- Prioritize all existing sediment sources at the Site including the new road (discussed below), and take steps to winterize the Site to control existing sediment sources starting with the highest priority sources;
- Submit/comply with outstanding provisions of Cleanup and Abatement Order Number R1-2002-0103, including submitting and implementing an updated and/or new Erosion Control Plan, prepared and overseen by a licensed civil engineer or geologist. Site conditions have changed considerably; the Erosion Control Plan should consider/reflect these changes. Potential penalties will continue to accrue until you fully comply with the provisions of the Orders we have issued and the features constructed by you on the property no longer pose a threat to water quality.

Notice of Violation Associated with Discharges that Violate the Waste Discharge Prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan), Section 13267(b) Order

Based on observations made by my staff during the September 25, 2009 site visit, as well as observations and sampling conducted previously by my staff and/or staff of other environmental protection agencies, the recently constructed road on your property has discharged and threatens to discharge earthen fill material into State waters, specifically into an unnamed tributary and ultimately to Scott Creek and Tomki Creek. The new road was constructed in a manner that violates waste discharge prohibitions contained in the Basin Plan.

The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state in order to provide for the beneficial uses. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions:

- Prohibition 1 - *"The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."*
- Prohibition 2 - *"The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."*

The Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular

importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:

- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
- Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

Sections 13267(a) through (c), and section 13304(a) of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste.

The quantity and manner in which earthen fill material was placed and the manner in which the new road was constructed has caused waste earthen material to discharge and threaten to discharge into the unnamed tributary along the bottom of the slope below the road, and thence into Scott Creek and Tomki Creek. Unless the earthen fill material is removed, the road cut and fill areas stabilized, and improvements made to the new road including construction of adequate, stable drainage features, uncontrolled discharges of sediment from the new road will prove deleterious to fish including Coho Salmon, a threatened species, and other aquatic organisms, and may cause the direct loss of other beneficial uses, in violation of Prohibitions 1 and 2 of the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the earthen fill material is therefore subject to cleanup and abatement under California Water Code section 13304, and technical reporting requirements under Water Code section 13267.

Pursuant to Water Code section 13267(b), you are hereby ordered to provide the following Technical Reports:

By December 31, 2009 submit engineering plans, prepared by a licensed civil engineer or geologist, for the new road, showing proposed emergency or short-term drainage system, slope stabilization, and erosion control. The amount of earthwork involved to implement these measures should be minimized.

Pursuant to Section 13268 of the Water Code, a violation of Water Code Section 13267 requirements may subject you to civil liability of up to \$1,000 per day for each day in which the violation occurs.

You are directed to provide this information in order to ensure that waste discharges and threatened discharges from the new road in its present condition and configuration are corrected so as to minimize, to the extent feasible, further sediment discharges and impacts to water quality and beneficial uses during the 2009/2010 rainy season. Evidence supporting this requirement is included in the attached September 25, 2009 inspection reports and referenced photographs taken during this inspection. More detailed information is available in the Water Board's public file on this matter.

Any person affected by this action of the Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Board, Office of Chief Counsel, P. O. Box 100 Sacramento, 95812 within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

Longer Term Actions Regarding the New Road

As my staff and the staff of other agencies have observed and documented, the new road was constructed without Waste Discharge Requirements from the Regional Water Board nor coverage under the statewide Construction Storm Water Permit, and the road is impacting and threatening to impact water quality at a number of locations and for a number of reasons. As with previous grading work conducted at the site, it appears that you have constructed this road without any engineering design or planning beforehand, without obtaining proper permits to construct the road, and without any apparent engineering oversight during construction in order to ensure long term stability or integrity.

We are aware of the grading permit which you obtained from Mendocino County (permit issued on June 5, 2008) for your new road, and we understand that the County has since revoked that permit. Based on our discussions with County staff and Regional Water Board observations in the field, it does not appear that the constructed road matches the description of the project permitted by the County and, in fact, is far larger and involves the movement of much larger volumes of soil than your County permit allows. On November 17, 2009, the County notified us that your permit has been revoked and it is requiring you to submit specific information in order to obtain a new permit. We have no record of any other permits which you have obtained for constructing this road. Based on our observations of the road, it appears that the construction of the road involved elements subject to coverage under the State Water Board Construction Storm Water Permit for Construction Activities. The project may also be subject to the requirements of Section 401/404 of the Clean Water Act, requiring permits from this agency and the Army Corps of Engineers, as well as compliance with Army Corps of Engineers

the California Environmental Quality Act (CEQA). It is possible that construction of this road was also subject to permitting by the California Department of Fish and Game and CalFire, and may violate regulations administered by NOAA National Marine Fisheries Service.

Given the size and location of the road, the steep slopes, and large volumes of cut and fill material necessary to construct the road in its existing alignment, it is possible that at least a portion of the road might not be able to be permitted in its existing configuration nor modified in any way that would allow it to be permitted. Please refer to the attached reports for further description of the conditions, water quality concerns, and violations which my staff observed and documented with respect to this road.

Please be advised that my staff are currently collecting and evaluating information to determine further enforcement actions and penalties to recommend to the Regional Water Board for past, continuing, and new violations, including violations associated with the newly constructed road. Our options in this matter are varied; our intended outcome is for you to take the steps necessary to control sediment discharges from your property and to ensure that your site and the results of your past and recent grading activities no longer pose a threat to waters of the State and the United States.

At this time, we suggest a meeting at our office with you, your attorney, your consultants, and our staff to discuss the next steps necessary for you to achieve compliance.

The violations noted above are serious and may result in further enforcement action by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), including: administrative enforcement orders requiring you to cleanup waste and abate existing or threatened conditions of pollution or nuisance, administrative proceedings for the assessment of civil liability in amounts of up to \$5,000 per day; referral to the State Attorney General for injunctive relief; and referral to the District Attorney for criminal prosecution.

Our staff will contact you or your attorney as necessary to continue our site investigation.

If you have any questions or if you wish to discuss this matter, please contact Cecile Morris at (707) 576-2347 or Diana Henriouille at (707) 576-2350.

Sincerely,



Luis Rivera
Assistant Executive Officer

120209_CNM_Green_NOV.doc

Certified-Return Receipt Requested

Attachments:

Compliance Inspection Memo, October 5, 2009 (revised 10/22/09) prepared by Cecile Morris
September 25, 2009 Inspection (Internal Memo) prepared by Mark Alpert
September 25, 2009 Inspection (Internal Memo) prepared by Stormer Feiler

cc: Ms. Sue Michaelsen, Michaelsen & Associates, P.O. Box 9125,
Santa Rosa, CA 95405
Pat Conway, PJC and Associates, Inc., 706 Portal St., Suite B, Cotati, CA 94931
Jan Zabriskie, Deputy Attorney General, California Attorney General's Office,
P.O. Box 944255, Sacramento, CA 94244-2550
Jose Cross, Environmental Circuit Prosecutor, California District Attorneys
Association, 921 11th Street, Suite 300, Sacramento, CA 95814
Derek Roy, National Marine Fisheries Service, 777 Sonoma Ave., Room 203,
Santa Rosa, CA 95404
Jeanette Pederson, California Department of Forestry, 17501 North Highway
101, Willits, CA 95490
Warden Cindy Pourroy, California Department of Fish and Game, P.O. Box 47,
Yountville, CA 94599
Chris Warrick, Building Official, Mendocino County Building Department, 501
Low Gap Road, Room 1140, Ukiah, CA 95482

California Regional Water Quality Control Board
North Coast Region

Compliance Inspection Memo

To: File
Date: October 5, 2009 (revised 10/22/09)
From: Cecile Morris, Water Resource Control Engineer
Subject: Compliance Inspection for Cleanup and Abatement Order R1-2002-0103 and
Inspection of New Road Grading
File: Jon & Deann Green Grading Project, Willits, California

Background:

On June 12, 2001, the North Coast Regional Water Quality Control Board (Regional Water Board) Executive Officer issued a Water Code section 13267(b) Order to Jon Green, directing him to submit engineering plans for proposed earthen fills and a drainage and erosion control plan for a grading project he was conducting on his property at 22341 Tomki Road, east of Willits, California. Mr. Green submitted an unstamped and unsigned "Erosion Control Plan" in August 2002; staff inspections before and after receipt of this plan confirmed continued grading activity, inadequate measures to control erosion and sedimentation, and sediment delivery into downstream watercourses. Thus, on December 3, 2002, the Executive Officer issued a Cleanup and Abatement Order directing Mr. Green to clean up and abate sediment discharges from his property, submit and implement an emergency erosion control plan, submit and implement a longer term erosion control plan, and provide engineering certifications for the earthen fills he had constructed at the heads of a number of watercourses draining from his property.

Over the next year, Mr. Green submitted an inadequate erosion control plan; implemented various sediment and erosion control measures that were observably inadequate in controlling slope failures, erosion, and sediment delivery from the site; and continued to grade and construct new fills on the project site. Staff inspections over 2003 confirmed evidence of new sediment discharges from the site and further sediment deposition into downstream watercourses.

On December 16, 2003, the Executive Officer advised Mr. Green by letter of his obligations under the Water Code, Basin Plan, and previously issued Orders, his documented failure to comply with those obligations, and the potential for administrative civil liability resulting from that failure and the continued adverse impacts to water quality resulting from his activities.

During 2004, the Executive Officer issued two Administrative Civil Liability (ACL) Complaints and, on November 29, 2004, the Regional Water Board issued an ACL Order

penalizing Jon and Deann Green \$250,000 for failure to comply with the 13267(b) and Cleanup and Abatement Orders, and for sediment discharges from the site into waters of the State. Staff inspections during 2004 confirmed evidence of additional grading work on the site, and further sediment discharges from the site. Prior to the Board's issuance of the ACL Order, Mr. Green hired various environmental consultants, and submitted a site assessment and a "Progress Report," which included a proposed emergency erosion control plan. The Progress Report indicated dates by which the emergency erosion control measures would be implemented, and by which further erosion control plans would be submitted and implemented, however, the Greens failed either to provide the plans or to complete the work specified in the Progress Report. Inspecting the site in June 2006 with Deann Green, landowner, and Danny Hagans (Pacific Watershed Associates, consultant hired by the Greens), Regional Water Board staff observed remains of various materials which had apparently been installed to control erosion per the emergency erosion control plan, but which had apparently subsequently failed. Staff did not observe evidence of new grading or fill construction, but did observe evidence of ongoing erosion/sedimentation throughout the site. During the inspection, staff discussed observations and the need to continue efforts to address conditions at the site and to comply with outstanding requirements and deadlines.

During 2007 and early 2008, the Greens made partial payments towards the balance of the Administrative Civil Liability. The Greens did not provide any further progress reports, nor any additional plans and/or confirmation of sediment control efforts implemented on the site. In late August/early September 2008, Regional Water Board staff contacted Pat Conway (PJC & Associates) and Danny Hagans (Pacific Watershed Associates) to inquire as to status of plans they had been retained to develop and/or progress in implementing these plans on the ground. Neither consultant was aware of any recent sediment/erosion/slope stability efforts conducted on the site.

On October 17, 2008, staff from the Regional Water Board, California Department of Fish and Game (CDFG), and NOAA National Marine Fisheries Service (NMFS) met Deann Green at the site to again observe site conditions and assess water quality threats and compliance status. Based on their observations, Regional Water Board staff concluded that the project site continued to pose a threat to water quality. Regional Water Board staff observed evidence of new grading and/or fill construction on the north end of the site near the Green's home and gully erosion along one edge of this new fill prism. At the time of the inspection, it did not appear that the Greens had made any recent efforts to control erosion or sediment delivery from the fill slopes.

In February and March 2009, in response to an anonymous complaint, staff from CDFG and NOAA NMFS inspected a newly graded road at the subject site and observed evidence of road surface and slope failure confirming sediment discharges and potential discharges to an adjacent watercourse that flows to Scott Creek. Derek Roy with NOAA NMFS inspected the site again in March, during a period of heavy rainfall, and observed a debris slope failure extending from the road down to the unnamed watercourse below (tributary to Scott Creek), and collected instream water quality samples that confirmed that sediment from the site had entered and impacted receiving waters.

On March 26, 2009, staff from the Regional Water Board, CalFire, NOAA NMFS, and CDFG accessed Scott Creek from an adjacent property to observe and investigate the extent of the sediment discharges documented by Mr. Roy. While CalFire and CDFG staff inspected the road, Regional Water Board and NOAA NMFS Staff walked the unnamed tributary from its confluence with Scott Creek; the unnamed tributary is located at the bottom of the slope below the new road. Water Board staff observed sediment deposits on the bottom of the tributary. At one point, the watercourse channel was blocked by, and flowing around the side of, earthen material extending down from the road approximately 300 feet above the watercourse; water in the stream was backed up and cloudy. Water Board staff walked further up the watercourse above this point and observed additional sediment deposits on the channel bottom, then returned to the confluence of the watercourse and Scott Creek, and noted sediment deposited in the Scott Creek channel downstream of the confluence.

On April 6, 2009, the Greens submitted a letter indicating that they planned to begin conducting erosion control work on the subject site using the recommendations contained in the 2004 Short-Term Erosion Control Plan, with work proposed to start in June 2009 and be completed by September 2009.

On August 27, 2009, Mr. Pat Conway (Green's engineering consultant) informed staff that the Greens had begun the proposed erosion control work, focusing on one slope on the south end of the site (watercourse #8). This work was periodically overseen by Mr. Conway with specific site visits on August 27 and 28, 2009 while he conducted compaction tests. Since that time, Mr. Conway informed staff on October 9, 2009 that he has been at the site periodically overseeing the work, and planned to go out again on Monday October 12, 2009 to discuss the work with Mr. Green.

Inspection:

On Friday, September 25, 2009, Regional Water Board staff Cecile Morris, Stormer Feiler, and Mark Alpert; California Department of Fish and Game Warden Cindy Pourroy; Michael Huyette of California Geological Survey (CGS); Derek Roy of NOAA NMFS; Essam Eissa and Dylan Clark of California Environmental Protection Agency (CalEPA) Department of Toxic Substance Control; and Andy Whitlock of California Department of Forestry (CAL FIRE) met with Deann Green, Sue Michaelson (Green's Attorney) and Aaron Morgan (Green's consulting contractor) at the subject site in order to observe current conditions, including the erosion control work underway and the new road, assess status of compliance with the remaining requirements of the 13267(b) and Cleanup and Abatement Orders, and determine the need for further requirements to address water quality threats posed by features on the site including the new road.

WEATHER

The past two winters (2006-07 and 2007-08) have been relatively mild. Weather conditions during our inspection were warm, sunny and clear.

INSPECTION ROUTE

We started our inspection on the perimeter road at the south side of the property, first viewing the fill prism and watercourse designated as #8 on site maps, and work underway at this location; then proceeded to the quarry and the northern end of the site, viewed fill prism and watercourse #1, walked the new road starting behind the Green's home and extending eastwardly down to Scott Creek, and returned. We took pictures as we walked; those pictures are incorporated in this report by reference, and available upon request.

SITE CONDITIONS: GRADED PORTION WITHIN THE PERIMETER ROAD

Much of the exposed soil on the interior portion of the site remains exposed and continues to erode. As observed during previous inspections, the sediment catchment areas were full at the time of our inspection, some with sediment accumulated higher than the inlet elevation of the culvert down drains. As long as sediment remains impounded in the basins, it prevents the basins from functioning as sediment catchment areas; runoff generated in the interior portion of the site can enter and flow down the drains and into tributaries to Scott and Tomki Creeks. RWB staff have observed and documented the same conditions during previous inspections; concluding that the Greens have not been regularly removing accumulated sediment from and maintaining the basins to adequately provide sediment storage capacity and prevent sediment discharges to State waters.

SITE CONDITIONS: PERIMETER ROAD, QUARRY

The perimeter road has been rocked along the north (driveway), west and partially along the south portion. The south perimeter road has been rerouted around the failed fill slope over watershed #8, discussed further below. The road is unrocked in this area. The east side perimeter road is unrocked, as are all interior roads. It appears that runoff drains down the center of most of these roads rather than down side ditches, creating rills, especially along the steeper sections.

We did not observe any apparent water quality concerns in the south end rock quarry area.

SITE CONDITIONS: FILL SLOPES

As noted earlier, we started our inspection at the fill slope over watershed #8. This fill slope has failed catastrophically, taking out a section of the perimeter road. Photographs from the July 12, 2005 inspection show that this slope was developing rills and evidence of mass slumping. Photographs from the June 1, 2006 inspection show that this slope had failed catastrophically.

During our September 25, 2009 inspection, we observed work underway on this slope. We understand that work conducted to date has included keying in rock at the base of the slope which has become the new headwater for this tributary, placing compacted fill

across the original headwater channel and bringing it back to a 2:1 slope with a bench in the middle. At the time of our inspection, the fill slope reconstruction had been completed up to the bench.

Current issues regarding the newly reconstructed fill slope:

- The erosion control plan was based on the original slope configuration prior to the slope failure; the plan should be updated to consider changed site conditions.
- The Greens are currently rebuilding a slope that they originally constructed illegally. The slope reconstruction work is following a short-term Erosion Control Plan which contains long-term erosion control aspects. The long-term aspects propose reconstructing the slopes to 2:1 and subsequently the fill slope contains less fill material than the original fill slope constructed by the Greens. The short-term Erosion Control Plan submitted in 2004 titled "Progress Report #1" was to be followed up by a Long-Term Erosion Control Plan in the spring of 2005. The Long-Term Erosion Control Plan was never submitted to the Regional Water Board. There still remain issues regarding utilizing the long-term aspects of the short-term Erosion Control Plan. The long-term aspects reconstruct the slopes back to 2:1 which is a stabilization improvement, but the reconstructed slopes still retain some fill material in the headwaters of the watersheds. I believe the Regional Water Board approved the short-term Erosion Control Plan, its emergency erosion control measures and the concepts of the long-term aspects; however, I also believe a new or revised Erosion Control Plan should be submitted that contains more detailed long-term erosion control measures, possibly requiring complete removal of fill material from the watersheds at this site, and at a minimum, that takes into consideration changed site conditions.
- The original fill slope failed. Although the original fill slope most likely had not been compacted adequately, and whereas the newly reconstructed slope is undergoing compaction and testing to ensure adequate compaction; slope failure may still remain an issue for this area.
- At the current rate of reconstruction, it appears the Greens may complete the erosion control work at slope/watershed #8 by the end of October or the middle of November 2009. We observed rolls of straw wattles, but did not observe any other evidence of site winterization materials or preparation, either for the newly reconstructed fill slope or any other part of the property.

Legality and stability of the present fill slope aside, if this is the single area in which the Greens intend to direct their time and resources, an anticipated completion date for this area (watershed #8) will be sometime in late fall which will likely not be winterized before the first rains, then we expect that this area and the site as a whole will continue to threaten and impact water quality as it has for many years already.

The fill slope over Watershed #1, on the northeast side, has not failed, but continues to erode. During our September 25 inspection, we observed accumulated sediment in the sedimentation basin on the top of this fill, large gullies, and shredded black plastic down near the bottom of the slope (residue of erosion control efforts installed per the short-term Erosion Control Plan). The short-term Erosion Control Plan identifies this slope as "unstable," a "high" priority for treatment, with a "major" potential for erosion in the future. The short-term Erosion Control Plan recommends specific erosion control measures for this slope, but it appears that the Greens only implemented one measure (black plastic cover), and did not adequately maintain it. It does not appear that the Greens have made any recent efforts to control erosion or sediment delivery from any of the fill slopes on the site.

NEW ROAD

The new road starts behind the Greens' home, and follows an existing road for about ¼ mile, and then widens out to a wide area. From this point, new road grading begins eastwardly down to Scott Creek (about ½ mile). The existing road is stable, shows no significant problems with erosion, and appears to adequately prevent sediment from entering State waters. The wide area contains new fill material on the north and south sides of the road. Agency staff observed tension cracks in fill material on the south side of the road/wide area, and new fill material (approximately 50 cubic yards) has been placed in the headwaters of a tributary on the north side of the road/wide area without adequate drainage or sediment control measures. The new road has apparently been constructed without consideration for water crossings, drainage measures, or sediment and erosion control measures. Several road cuts are over 25 feet high, and fill slopes constructed on 200 foot slopes with road debris deposited down the slopes and in the unnamed tributary below. Agency staff observed tension cracks in each fill slope. Further, staff observed water seeping from two cut bank areas, and flowing down and across the road. We observed only two water bars constructed across the lower ½ mile road section, and believe it is likely that these water bars were constructed after fill slope failures occurred this last spring. We observed several water crossings that lack any form of constructed drainage across the new road. At the base, or east end of the road, where it meets the unnamed tributary and Scott Creek, we observed a rock quarry, located approximately 25 feet from the unnamed tributary. We observed a large berm between the quarry and the unnamed tributary, forming a sediment catchment basin; however, a large black plastic drainage pipe (about 12-18 inches) has been placed in the berm to drain the quarry area making the sediment catchment basin ineffective. Staff did not observe any effective erosion or sediment control features in this area; in absence of such, sediment from the quarry will likely discharge to the unnamed tributary during runoff events.

CONCLUSIONS/RECOMMENDATIONS

Conclusions:

The project site continues to pose a threat to water quality, from a number of features throughout:

- Bare soil throughout the site continues to erode,
- The fill slopes continue to erode and/or to fail catastrophically,
- The recent work on the south end of the site (watercourse #8) has not been completed or winterized, and is likely to create new sources of sediment rather than to control existing sources,
- Other minimal measures implemented to control erosion have not been maintained and have failed,
- Sediment basins on the site have not been maintained, and can capture only a portion of the sediment eroding from the interior portions of the property,
- Water ponded in the sediment basin located above unengineered fill slopes may eventually cause catastrophic slope failures,
- The Greens have continued to use heavy equipment on the site to construct a new road without consideration of drainage, sediment control and best management practices to protect water quality.

Since construction began, the site and now the new road, has been and continues to be a major source of sediment delivery to receiving waters. Activities and features at this site continue to violate the Water Code, Clean Water Act, and Basin Plan, and the Greens continue to be in violation of Orders issued by the Regional Water Board.

Staff recommendations:

1. Regional Water Board staff letter to the Greens to advise them of their continued noncompliance, new violations, current potential liability, and the potential for further enforcement action. The letter should require the Greens discontinue construction efforts in watershed #8, winterize/stabilize placed fill, review and prioritize current sediment sources at the site including the new road, and take steps to winterize the site and to control existing sediment sources rather than spending further time and resources creating new ones;
2. Amend the Cleanup and Abatement Order to require a new or revised erosion control plan, and to add requirements for cleaning up and abating the water quality impacts caused and threatened by the new road, or
3. Referral to the District Attorney's Office.



Linda S. Adams
Agency Secretary

California Regional Water Quality Control Board North Coast Region

Bob Anderson, Chairman



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Inspection Memo

To: Cecile Morris, Enforcement Unit

From: Mark Alpert, Senior Engineering Geologist, Non-Point Source Division

Date: October 22, 2009

Subject: September 25, 2009 Inspection¹ of erosion control work and new road construction at Green Property 22341 Tomki Rd. Willits, CA

Inspection Participants on September 25, 2009

RWQCB	Cecile Morris, Stormer Feiler, and Mark Alpert
Landowner	Deann Green; Sue Michaelson, attorney, and Erin Morgan, Consultant
CAL FIRE	T. Andy Whitlock
CGS	C. Michael Huyette
DFG	Cyndy Pourroy
NOAA	Derek Roy
DTSC	present – but not sure of the name

Jon and Deann Green own several hundred acres of undeveloped land near Willits. In December 2002, the Regional Board issued Cleanup and Abatement Order (CAO) No. R1-2002-0103 for sediment discharges as a result unpermitted grading and soil disturbance on approximately 65 acres at 22341 Tomki Road. Subsequently, Administrative Civil complaints were issued and were resolved by settlement agreement which required the Green's to pay \$150,000 in liability and to achieve compliance with the CAO. Apparently, approx \$18,000 of the settlement is outstanding.

The September 25, inspection was limited to observation of two sites along the perimeter of the large graded area that was the subject of the CAO. These sites are referred to as Site 1 and Site 8 in a report prepared in 2004 by Pacific Watershed Associates and PJC and Associates. The inspection also included a new road on the north side of the property that was constructed more recently. Mrs. Green was present and consented to the inspection.

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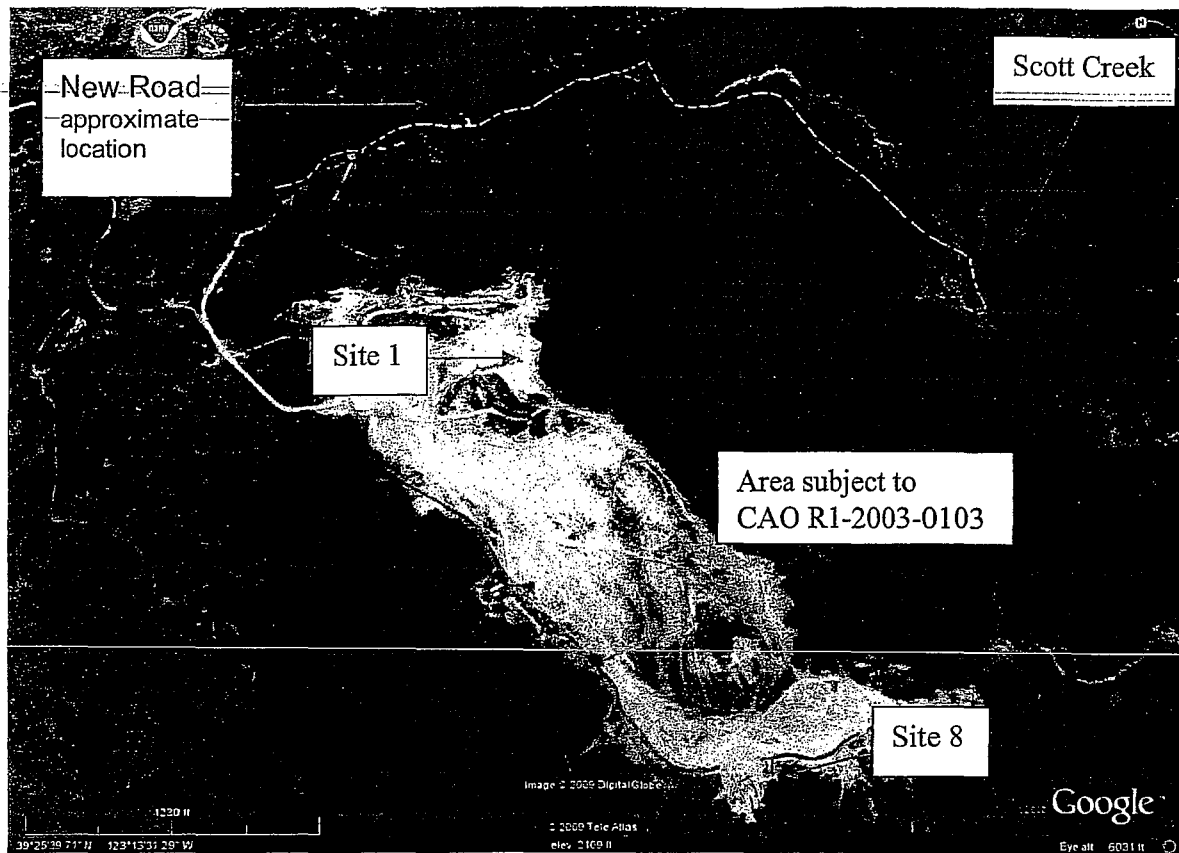


Photo of the portion of Green property subject to the Regional Board CAO. Sites 1 and 8 are identified. The new road is approximately located from Google Earth

Observations

Site 8

The group drove directly to site 8 from the south. This site is a landslide adjacent to a relatively flat graded area with little vegetation and obviously very disturbed natural drainage. The site was likely once a swale headwaters area that was filled in to create more useable land that subsequently failed into its present configuration. The 2004 PWA/PJA consultant's design plan recommended to reduce the fill slope to a 2:1 grade (50% slope), which would require removal of a significant amount of fill material (fig 3 of 2004 report).

Grading at the site began sometime in August 2009. According to Erin (consultant), they are following the 2004 PWA/PJA consultant's design plan to restore the site to conditions at that time, despite the fact the landslide occurred since then, and site conditions likely vary significantly. According to Erin, soil/fill from onsite is being compacted in 2 ft lifts, with the bottom lift keyed in and compacted. There was no work being done while we were there. Meanwhile, the rainy season is quickly approaching.

It appears that instead of reducing the slope angle and removing fill material (pre-landslide) they are adding fill to raise the slope to achieve the former design slope, if they are following it at all. Additionally, I am also concerned that instead of starting the excavation at the toe of the original native slope (which itself may not be stable), they may have started work on top of the unconsolidated landslide material that failed onto the slope below. The geotechnical consultant responsible for the site should provide field measurements to confirm.

Below the landslide is a top of well defined ephemeral stream that has been partially covered by the original grading and filling. I believe that the fill slope likely covered the upper portion (swale) above the stream channel. I do not know subsurface drainage was installed beneath the fill to allow emerging groundwater to drain.

The Green's are claiming they do not have sufficient funds to complete the restoration work that is long overdue. Despite this assertion, they are not taking a cost effective approach to reducing the erosion and sediment potential. The design should be revised to reflect the current condition of the site.

Recommendation:

There are several issues at this site that should be addressed or better understood.

- It is not clear if the Green's are actually implementing the 2004 plan, achieving compaction, keying in the soil, providing adequate drainage.
- There are less costly methods to reduce erosion from the site. Laying existing slopes back would require less work and lower risk of future failure
- The rainy season has begun, and short term erosion control needs to be installed on exposed soils regardless of the long term plan.
- Pat Conway, or a new geotechnical engineer familiar with restoration projects should be consulted to provide a more detailed explanation to support the current plan or redesign to fit the current site conditions.

Site 1

This site is a multi-acre broad catchment that was filled in and extensively graded without adequate design for drainage and erosion control. At the base of the fill, there is now a steep fill slope perched above a well developed stream that leading directly to Scott creek. Plastic that once covered the fill slope site all gone or tattered. The fill slope is significantly eroded with a large gully down the center. Groundwater was emerging at the base of the fill during the inspection.

A small sedimentation basin was created on top of fill just before the fill slope. I understand the basin was installed to reduce surface flow over the fill face. It is an unlined low spot on top of the fill and could be increasing soil saturation of the underlying fill.

The design plan for this site is similar to site 8, in that the fill slope angle is to be reduced to a 2:1 (50% slope) angle which requires excavation of a significant amount of fill material. Work could begin at this site in conjunction with and redesigning the plan at Site 8. The Greens appear to have heavy equipment onsite and could accomplish the grading and remove a significant amount of the fill out of the drainage in a main a relatively short time.

Despite the fact this fill was created several years ago and withstood previous winter rain events, it appears the fill slope could fail catastrophically as a result of soil saturation during a wet weather storm event. Regardless of the failure potential, if left in its current configuration, surface erosion is will continue to erode the fill and sediment will continue to be discharged into Scott creek.

Recommendation:

- This is a large catchment that has been significantly disturbed by grading. Failure to take action will result in continued sediment discharges and possibly a catastrophic failure.
- Failure to complete the remove this material is a violation of the CAO and settlement agreement.
- Pat Conway, or a new geotechnical engineer familiar with restoration projects should be consulted to provide a more detailed explanation to support the current plan or update the current status and what they are professing in the interim.

New Road construction

While we were at the site, Mrs. Green consented to an inspection of the new road. The road starts just north of their residence home and close to a large windowless building/structure.

According to Mrs. Green the road was recently constructed to gain access to water in the Scott creek for fire emergency. They apparently did get some kind of grading permit from the county, but were not required to prepare any type of engineering design or plan. The new road was is not part of the existing CAO Order No. R1-2002-0103.

The mile plus road that begins near the ridge top and descends down through steeper slopes and ends at the confluence of the unnamed tributary and the Scott creek. The road starts up near a windowless building and initially maintains a steady grade (<15%) until it descends into mid slope area, and then steepens onto lower slopes and ultimately the inner gorge of the tributary and Scott creek. In places the road is 10-15 feet wide with relatively high cutbanks (> 15 feet high), on a steep grade (estimate >20% grade) and traversed steep slopes (>50%). The road ends at the confluence of the unnamed tributary and Scott Creek. Here at the lowest section the road grade steepens significantly to >20%.

Despite Mrs. Green assertion that the road is needed for access to the river in case they need to respond to a fire, it is a long and steep road and access to water during such an emergency appears difficult. CDF inspector Andy Whitlock was of the opinion that a loaded water truck would not make it up the road out of the creek.

I believe a case could be made that the purpose of the road is to for construction or development (it terminates at the windowless building). In that case, the landowners should have designed and been built in compliance with the requirements of the construction storm water permit. This entails submitting a Notice of Intent and obtaining a permit from the State Water Resources control Board. They would also have been required to develop and implement Best management practices to reduce erosion and sediment transport in accordance with a storm water pollution prevention plan. Since none of these requirements were done, these represent multiple violations. In addition, there is evidence of discharges that have already occurred and that will likely occur during rainfall events that would be violations as well.

I am particularly concerned about the lower portion of the road where it enters within the steeper inner gorge of the unnamed tributary stream near its confluence with Scott creek. There are several swales that were crossed and filled in with no water conveyance structure. I believe, Calfire would not have approved the location and design of the road under the Forest Practice Rules which requires additional protections for road construction on steep slopes with close proximity to a watercourse. In any case and proper drainage structures are standard practice. The road was built with disregard to swales and other features that should have lead to anticipation that water would emerge from the slopes, cutbank, or fillslope below the road is very troubling.

Sometime prior to our inspection, the road was re-graded. It is evident that blowouts fill failures, and debris flows have already occurred in several locations that discharged sediment into the stream. These were refilled and will likely fail again. Field measurements would be necessary to estimate of the volume discharged.

Recommendations

- An immediate response is needed to install erosion control along the entire road, and in particular the lower section.
- A longer term plan should be considered that reduces the potential for failure and imminent failures along the road. Requiring the total removal of the road prism and restoration of original hydrology should be considered.
- The County should be informed about the road and determine whether it exceeded the conditions of the County's grading permit.

The following photos were taken by Stormer Feiler and illustrate some of the problems along the new road.



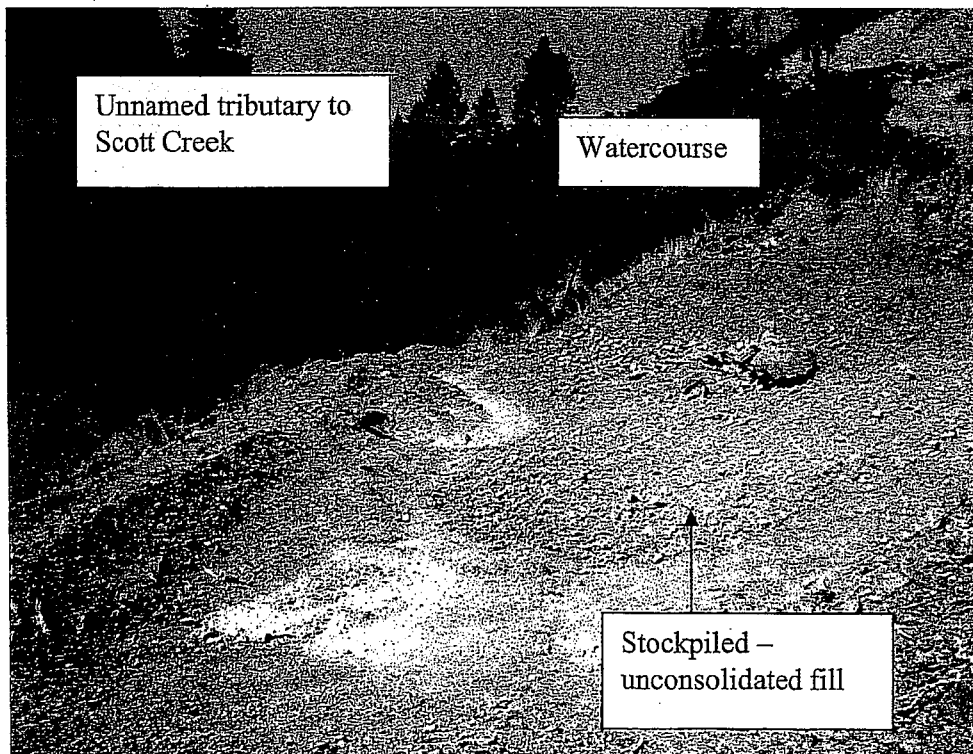
9/25/2009 wide spot in road at saddle filled top of ephemeral swale



9/25/2009 new road fill across ephemeral swale with no drainage structure



9/25/2009 debris slide/fill failure on new road. The road appeared to be repaired prior to inspection.



9/25/2009 photo of rock quarry on right and fill material with crude sediment basin at end of road within the flood plain of the Scott Creek.



Linda S. Adams
Agency Secretary

California Regional Water Quality Control Board North Coast Region

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Inspection Memo Green Property 22341 Tomki Rd. Willits, CA

Date: October 19, 2009
Subject: Compliance Inspection of Green Property
From: Stormer Feiler, Environmental Scientist

Inspection Attendance on September 25, 2009

Cecile Morris, Diana Henry-Henriouille, Stormer Feiler, Mark Alpert- Regional Board
C. Michael Huyette-California Geologic Survey
Cyndy Pourroy- California Department of Fish and Game
Derek Roy- National Oceanic Atmospheric Administration (NOAA)
T. Andy Whitlock-CAL FIRE
Deann Green-Landowner
Sue Michaelson-Landowners attorney
Erin Morgan- Gen. Eng. Contractor
Essam Eissa- Department of Toxic Substance Control (DTSC)
Dylan Clark- DTSC

Introduction

This report constitutes a summary of observations of the Green Property while conducting an inspection on September 25, 2009 and approximately one year ago on October 17, 2008.

Observations will be discussed in the order in which areas were reviewed during the inspection on September 25, 2009. This report does not constitute a review of the entire CAO area. The inspection was limited to the areas discussed in this report and only addresses these areas as pertinent to compliance with the CAO, the Water Quality Control Plan for the North Coast Region (Basin Plan) and the Porter Cologne Water Quality Control Act. This report should not be interpreted to constitute recommendations in regard to the entire scope of work that may be necessary to comply with the CAO and abate the ongoing discharge and potential for discharge from the Green property.

California Environmental Protection Agency

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Background Information

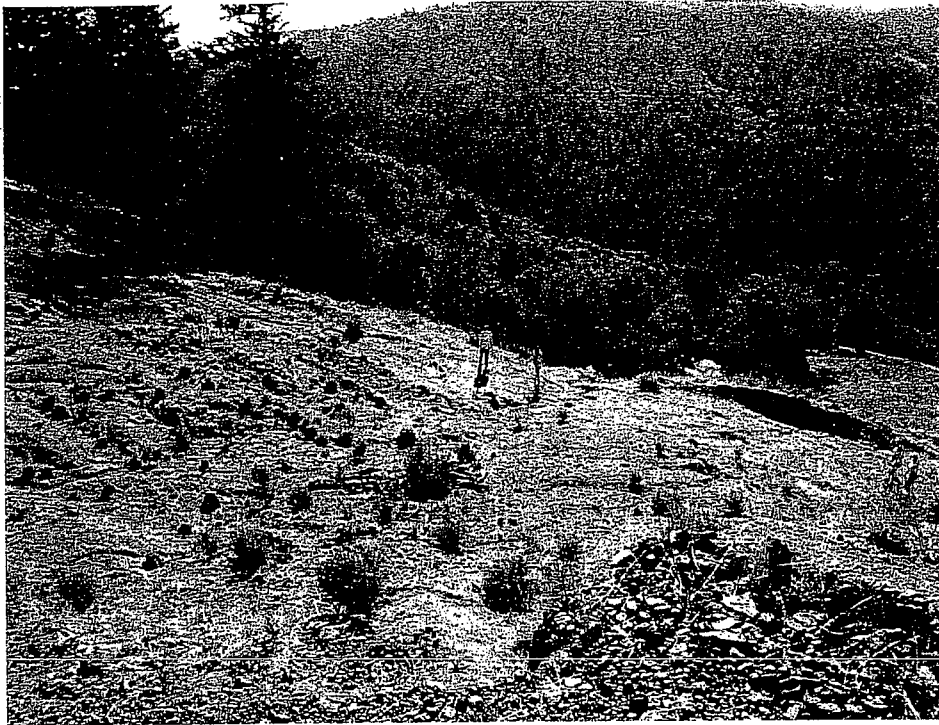
The Green Property at 22341 Tomki Road near Willits has been subject to ongoing enforcement by the Regional Board since December 3, 2002 when Clean-Up and Abatement Order No. R1-2002-0103 (CAO) was issued by Executive Officer Susan Warner. Due to failure to comply with the CAO, two Administrative Civil Liability Complaints (Complaint No. R1-2004-0045 and R1-2004-0105) were issued by the Regional Board resulting in an Administrative Civil Liability Order No. R1-2004-0084. To date, the CAO has not been complied with and sediment discharge is likely ongoing from the Green Property during rainfall events generating overland flow.

Civil liability was assessed through a settlement in the amount of 150,000.00, I believe that 18,000.00 of this is outstanding.

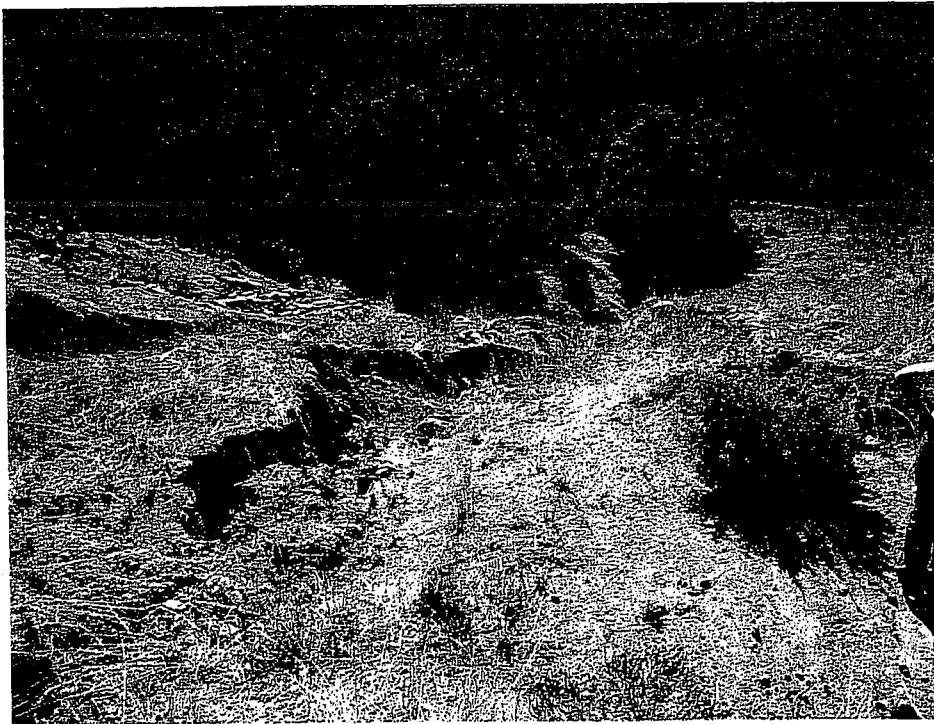
Mrs. Green indicated during the inspection that they do not have enough money to do all the work they need to do to abate the discharge of sediment.

General Description

The Green Property under inspection is located in Section(s) 7, 8, and 9 of Township 18 North, Range 12 West. Jon and Deann Green own approximately 500+ acres of land. The CAO was issued to Jon and Deann Green for discharges resulting from clearing and grading approximately 60-65 acres of land. The Green Property drains downhill to Tomki through Scott Creek and unnamed tributaries. Tomki Creek and Scott Creek are in the Eel River Planning watershed. The Eel River and its tributaries is a federal Clean Water Act 303(d) impaired water body listed for sediment and temperature. Additionally, the Eel River and its tributaries provides habitat for steelhead trout, Coho salmon, and chinook salmon in the Southern Oregon Northern California Coast Evolutionarily Significant Unit, as defined by the US Endangered Species Act, and referred to in the Recovery Strategy for California Coho Salmon developed by the California Department of Fish and Game.



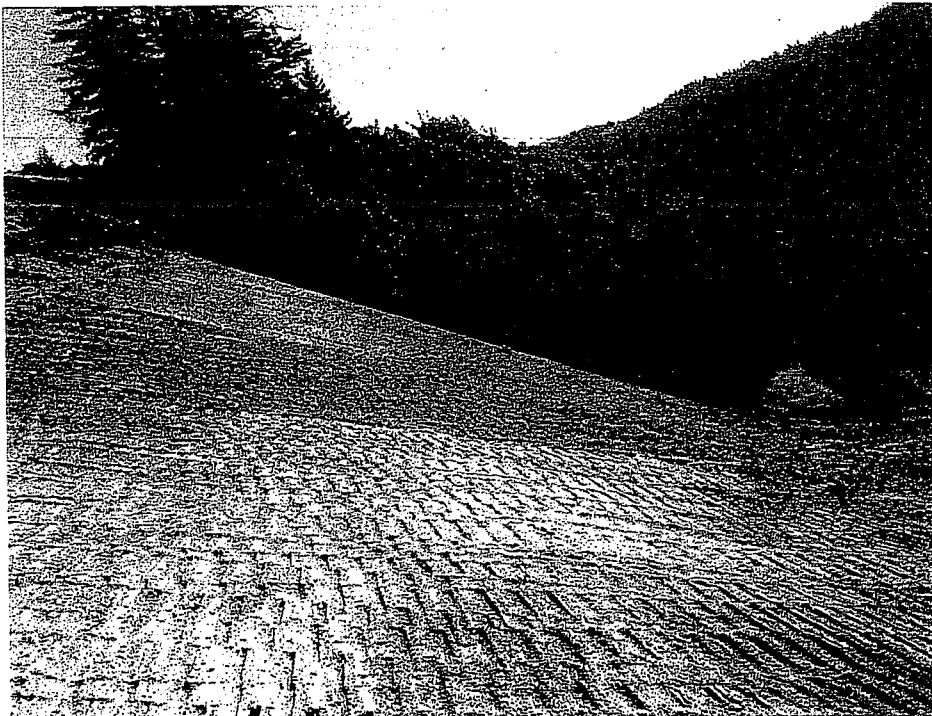
10/17/2008 Site 8 failure surface mid portion of slide materials



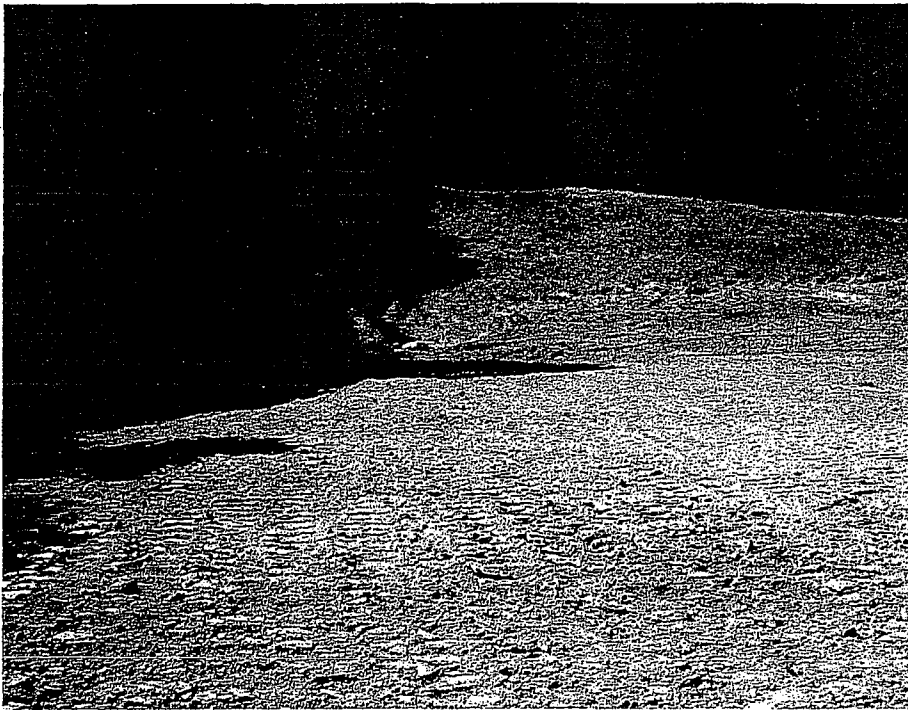
10/17/08 Lower end of Site 8 slide with surface erosion present delivering to watercourse below



9/25/2009 Site 8 reconstructed by filling in slide body and sloping to a 2:1 slope



9/25/2009 Site 8 overview of slide body reconstructed with earthen materials at 2:1 slope



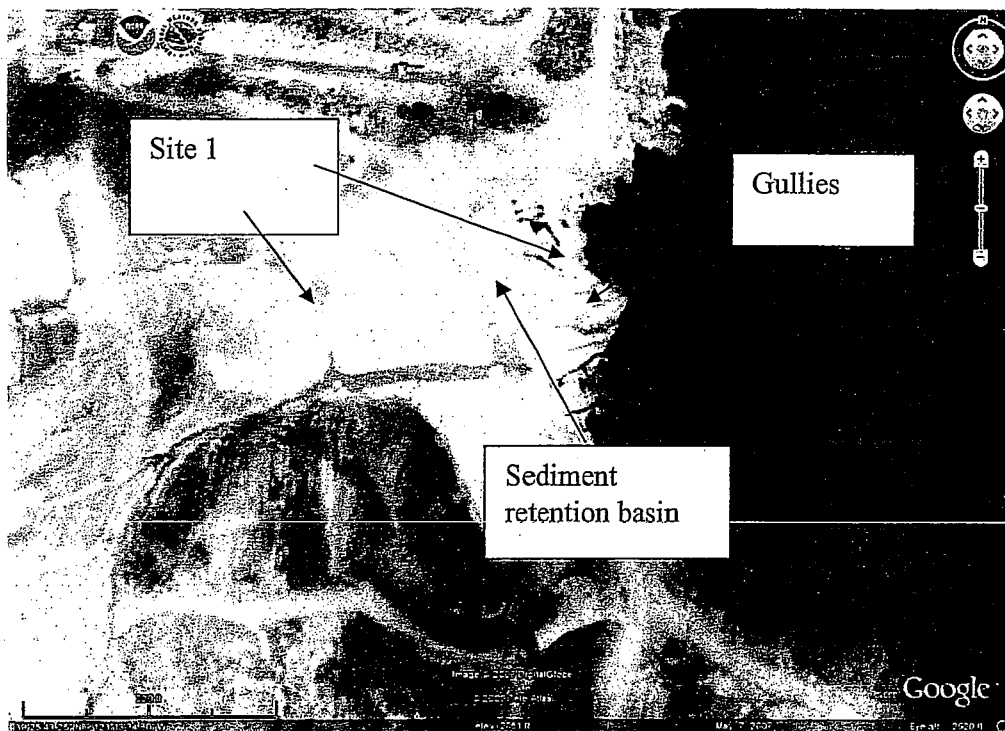
9/25/2009 Site 8 reconstructed slope above a watercourse this area corresponds roughly to where the erosion channels were photographed on 10/17/2008

The approach of reconstructing the Site 8 slide with engineered fills may be appropriate in this instance. However, it should be noted that this area when overburdened with fill previously suffered mass failure and erosion. The location of the reconstruction is a concern, as I do not know if the reconstruction is back to native ground or is placing fills back into an unstable feature that has already failed once. Reconstruction on the fill or slope failure would extend the surface area of the original pad above. The progress report designs required that the fills be laid back to a 2:1 slope from the original edge of the excavation and construction. Starting on the slide mass does not appear to moving fill back but rather extending fill out. It should be further noted that the approach of creating a planar even slope will require that the entire planar slope be reconstructed and that overland flow from above be routed away from the planar slopes, prior to the onset of winter rains. Concentrated surface flows over these fills are likely to result in rill and gully erosion, and discharge of sediment to the watercourse below. No construction was occurring during the inspection.

Site 1

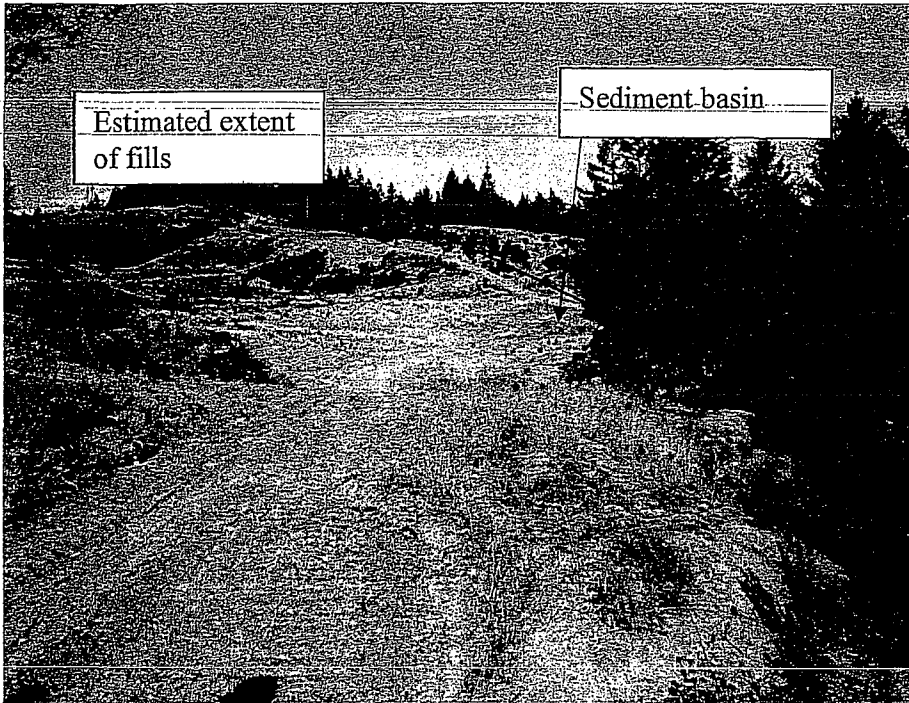
Site 1 represents a large area of fill placement and grading within a drainage basin. Due to the significant amount of material that has been placed in a natural drainage there is the potential for fill failure. However, this site has remained in place through the December 31/January 1 2005/2006 rainfall year in which at Howard Forest rain gauge 33 inches of rain fell in the month of December 2005 with 9.5 inches of rain on 12/30/2005, which was approximately a 20 -25 year event for surface runoff.

As is evident in the pictures below surface erosion has eroded fill slopes significantly. It is likely that this site represents active chronic sediment discharge during rainfall events capable of generating overland flow on an annual basis.

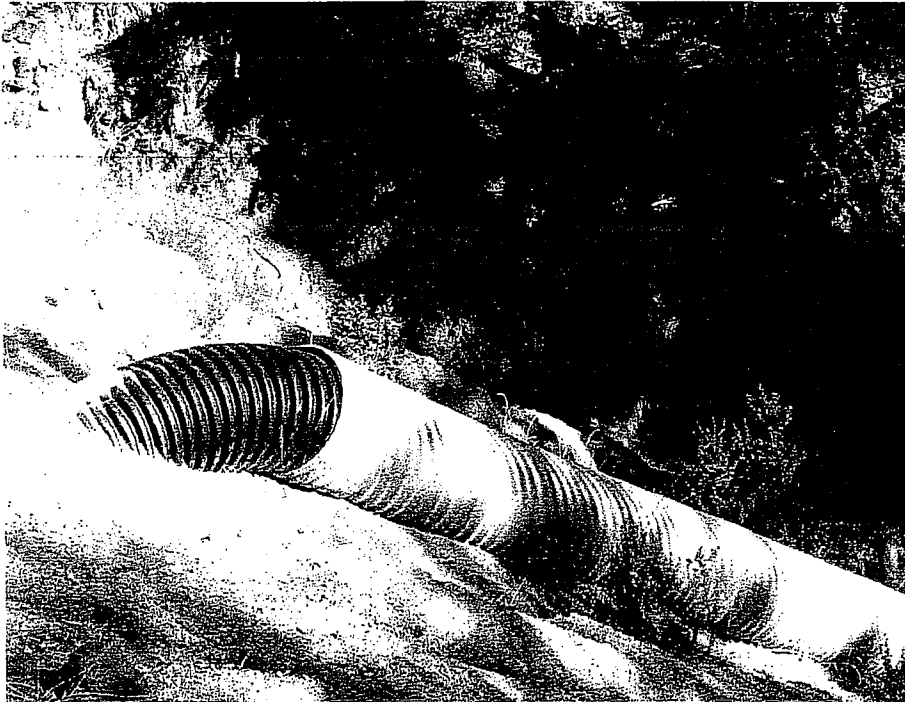


Site 1 Google Earth aerial photo: Site 1 is a valley that has been filled with earthen materials. Note the gully erosion at the outlet and the sediment retention basin that is on fill materials. The arrows with the Site 1 identification box above identify the estimated extent of fill placement.

Following are a series of photos from two different inspection dates that illustrate the extent of Site 1 and the erosion that has occurred within the last year.



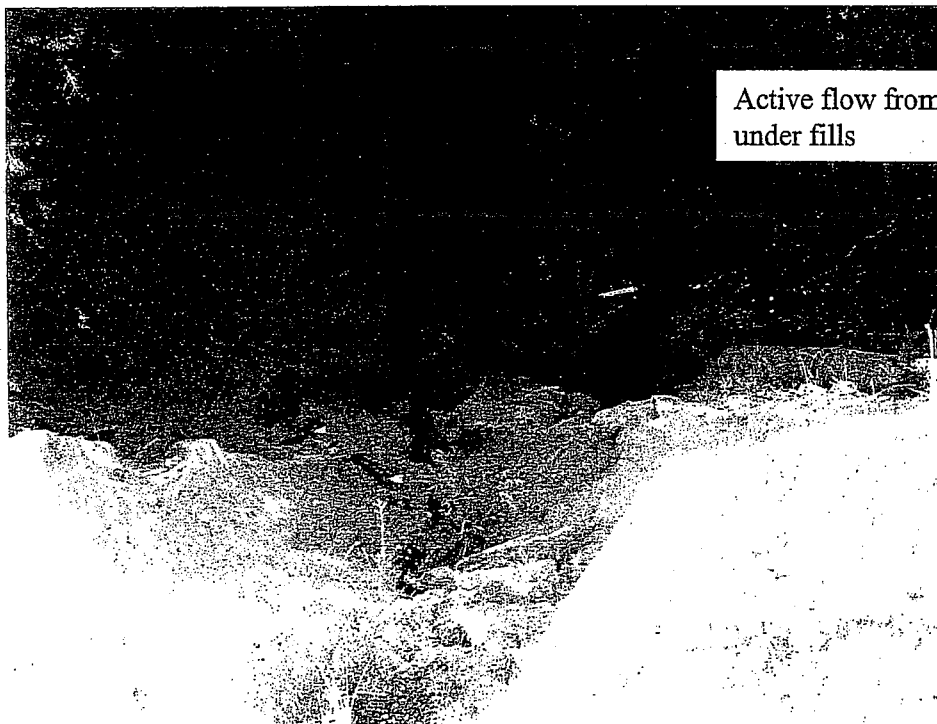
10/17/2008 Overview of Site 1 approaching from the South



10/17/2008 Site 1 Culvert from sediment basin. Note the erosion of the fill slopes and the adjacent banks beyond where fill materials were placed against native ground creating an artificial drainage pattern.



10/17/2008 gully erosion at Site 1



Active flow from
under fills

9/25/2009 Site 1 close up of base of Gully delivering to a Class II stream. Note the active flow of water from under the fills at the culvert outlet.

The progress report (PJC and PWA) identifies short term erosion control measures, and provides a plan to lay back the fill materials to a stable angle of repose (2:1 slope). This approach does not appear to address the long term stabilization of Site 1 to prevent chronic sediment discharge. In addition, short term erosion controls described in the progress report have not been maintained. Site 1 in regard to remediation required under CAO has been basically abandoned and continues to erode.

Site 1 requires stabilization and the perched fill materials should be pulled back and slope reduced to a stable angle of repose. Surface drainage should be established in manner to ensure all exposed surfaces are out sloped and the original drainage configuration is restored to the extent possible. This will likely require a substantial amount of excavation and construction to reduce the continued chronic inputs of sediment to an impaired watershed. A plan should be developed to accomplish this work by a qualified professional experienced in erosion control and watershed restoration techniques. The plan should include maps and identify fill volumes that require removal, spoil disposal locations, and slope angles as well as drainage pathways. Preferably the site should be surveyed when developing the plan to ensure that fill volumes are estimated, to ensure adequate consideration for spoil disposal, and adequate design considerations are developed to abate the discharge of sediment from the site. The plan should also be part of a Construction Storm Water Permit, Storm Water Pollution Prevention Plan.

New Road

The area identified as a new road in this report is not part of the existing CAO Order No. R1-2002-0103.

The new road actively discharged sediment to an unnamed tributary to Scott Creek, to Scott Creek and Tomki Creek during last years winter, as during winter rains swales and watercourses filled with road base failed. The new road is mid slope on a steep slope that leads directly to an unnamed drainage below, which in turn flows to Scott Creek. The road has caused these steep slopes to destabilize resulting in fill failures that resemble debris torrents. These failures resulted in direct discharge to waters of the state and in one location a debris dam in the stream below. It appears these sites were recently re-filled and are likely to fail again with the advent of soil saturation and overland flow. This road requires immediate attention in order to prevent further delivery of sediment to waters of the state during this coming winter period. A licensed Professional Geologist experienced in road construction and erosion control should be retained to develop a comprehensive erosion control plan to assess road stability; slope stability; cut-bank stability; fill stability; identify for removal all unstable soils; develop an erosion control to abate the discharge of sediment from the road; including immediate steps necessary to remove unstable fills and install adequate erosion controls prior to the onset of winter period wet weather.

Following are a series of photos of the discharge that occurred during last years winter rains and the existing unstable road fills.

The stream photos below are taken of the unnamed tributary to Scott Creek directly below the end of New Road construction on the Green Property. This series of photos is provided to demonstrate the sediment discharge that occurred during last winter from the new road John Green constructed.



3/26/2008 sediment deposition in unnamed tributary to Scott Creek.



3/26/2008 sediment deposition in unnamed tributary to Scott Creek



9/25/2009 northeast side of cleared area on new road constructed at the head of a Class III watercourse.



9/25/2009 southwest side of cleared area fills are perched above the head of a class III watercourse and tension cracks are visible in the perched fills.



9/25/2009 Lower road segment overview of mid slope road construction. The extent of side cast fill material is likely relative to the extent of grass growing, as the grass appears to be an annual rye often used for erosion control.



9/25/2009 road fill in a watercourse crossing on the new road, with no constructed water conveyance facility.



9/25/2009 fill failure below the watercourse crossing displayed previously. This failure extends to the watercourse below.



9/25/2009 debris slide chute originating from road fill failure during the 08/09 winter period. This fill failure failed as did the adjacent slope increasing delivery. This failure appears to have dammed the unnamed tributary to Scott Creek below.



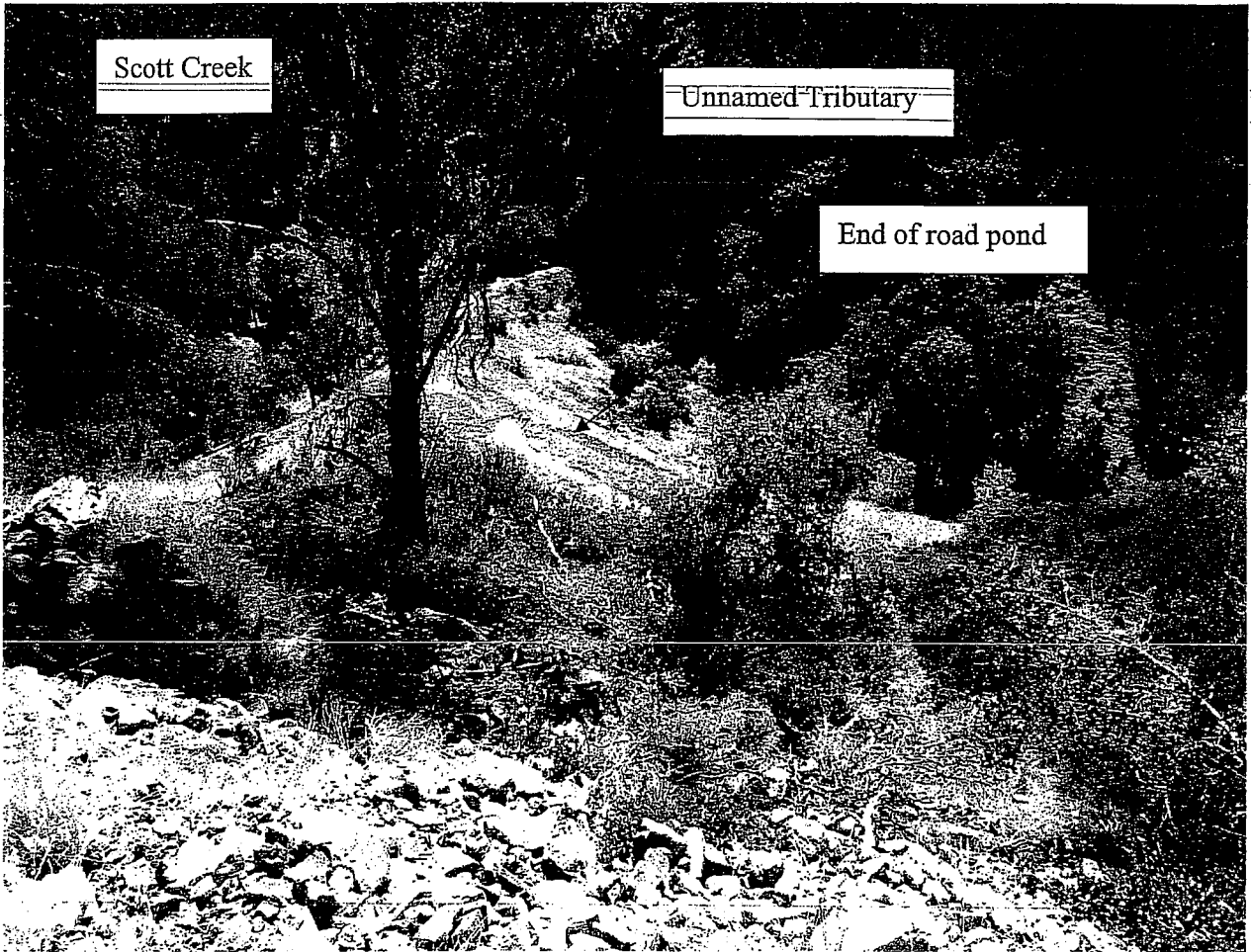
9/25/2009 Close up of delivery point to stream of the failure in the previous photo



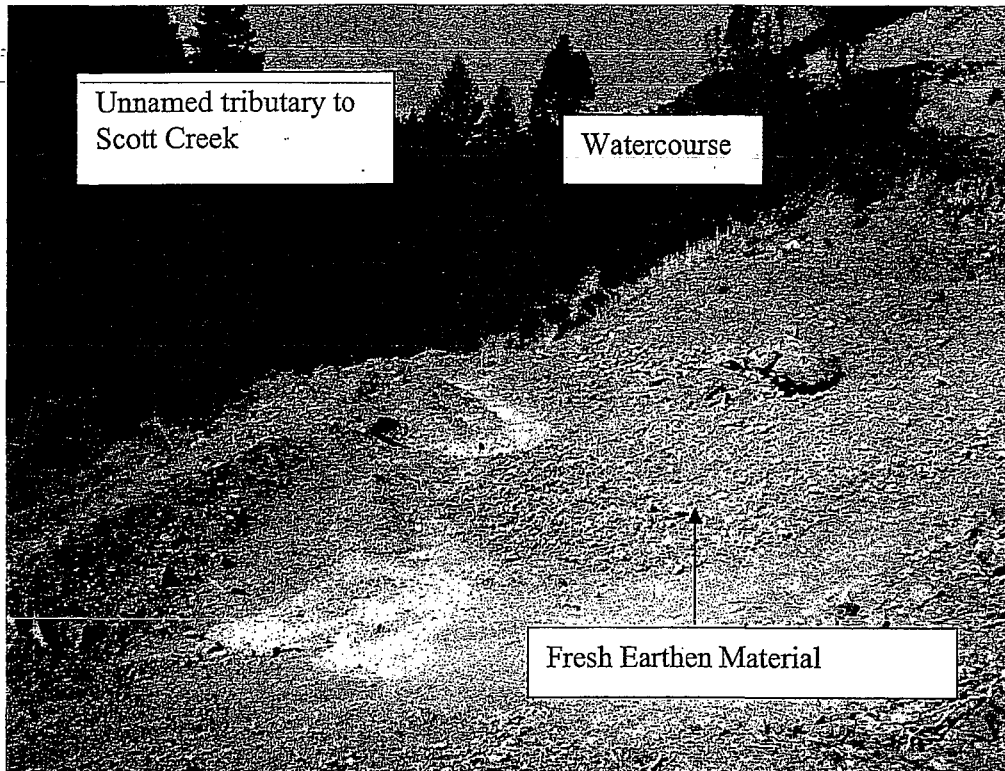
9/25/2009 Closer view of debris and earthen material lodged in the stream below the road fill failure.



9/25/2009 This photo is taken at the top of the previous road fill failure and shows the side slope failure integrating into the debris chute. The side slope failure may in part be due to side cast of earthen debris during road construction.



9/25/2009 the new road extends down slope to the confluence of the unnamed tributary and Scott Creek. At the end of the road an intermittent pond or basin appears to be under construction.



9/25/2009 end of the new road with the pond or water retaining basin, note the fresh earthen material deposited in right side of photo.

Conclusion and Recommendations

It is evident that discharges from the new road has resulted in multiple violations of Basin Plan Action Plan for Logging, Construction, and Associated Activities Prohibition #1 and #2. Site 8 and Site 1 represent ongoing violations of CAO Order No. R1-2002-0103. In addition, the land owner has constructed another road on his property for the stated reason of fire access. Unless significant treatment is implemented along sections of the new road, active and potential violations of the Basin Plan will continue. It appears that past enforcement actions have not adequately remedied the ongoing problems on the Green Property, as John and Deann Green continue to construct roads that are not in compliance with applicable laws and regulations.

The contents of this report are not a complete record of the entire project area. Only the areas reviewed that were of concern are addressed.

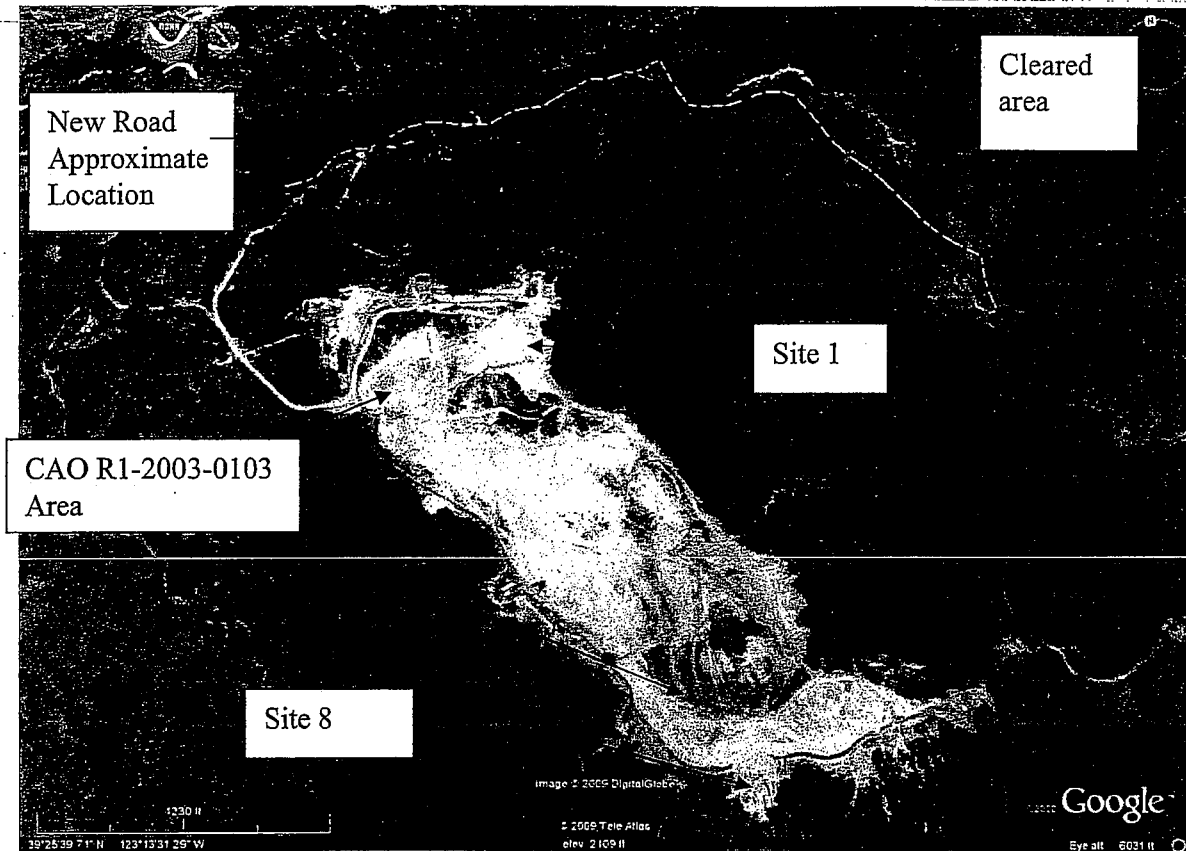
These recommendations and comments are provided pursuant to the statutory authority contained in the Porter-Cologne Water Quality Control Act (California Water Code (CWC) Section 13000 et seq.), and the Water Quality Control Plan for the North Coast Region (Basin Plan).

1. Site 8 and Site 1: Ensure that the Site 8 work is completed and adequately treated with erosion controls prior to the winter period. Have the design work in the progress report and the actual on-the-ground work reviewed by a Licensed Civil Engineer or Professional Geologist experienced in fill slope construction, watercourse restoration and erosion control. The professional retained should provide a report that discusses the work previously recommended in the PWA/PJC progress report "Winterization Plan and Recommended Emergency Erosion Control Measures" in contrast to changing conditions over time. The licensed professionals report and project plan should include detailed maps; design specifications for remediation of sediment discharge, and erosion control needs. The design standards provided in the progress report should additionally be compared to survey points used for the Site 8 work plan. The comparison should be done to determine if the reconstruction is in the right location or is on top of slide debris.
2. An assessment should be conducted on the new road. A Professional Geologist experienced in road construction and erosion control should be retained to develop a comprehensive erosion control plan that includes: an assessment of road stability, cut bank stability, fill stability, and erosion control to abate the discharge of sediment from the road. The plan should include, removal of all unstable soils, adequate road surfacing to prevent sediment discharge, design specifications for fill removal, spoil disposal placement, and erosion control before, during, and after construction. The report should include recommendations including immediate steps necessary to remove unstable fills and install adequate erosion controls prior to the onset of winter period wet weather.
3. The licensed professional retained by the discharger to comply with these recommendations should enroll the Green Property in the Construction Storm Water Program by submitting a Notice of Intent and develop a Storm Water Pollution Prevention Plan and monitoring program for sediment silt and turbidity to ensure erosion controls are effective and discharge is abated.

One specialist with adequate experience and licensing can be retained to complete the body of work specified above.

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Aerial Over View and Site Introduction



Green Property an overview from Google Earth. The sites reviewed are identified with arrows for further discussion in the body of this report.

Site Introduction and CAO No. R1-2002-0103 Compliance Concerns

In September of 2004, in response to CAO requirements the discharger contracted with Pacific Watershed Associates (PWA) and PJC and Associates (PJC) to develop short term erosion control measures for the 65 acres of land graded sometime prior to the initiation of enforcement action commencing with the June 12, 2001 inspection by CAL FIRE and Regional Water Board staff. The erosion control measures developed were based upon site review at that time.

A progress report from these contractors was received on October 13, 2004 by the Regional Water Board. This progress report included a "Winterization Plan and Recommended Emergency Erosion Control Measures" (progress report). This progress report included mapping and identification of discrete sites. This mapping identification is used for consistency in this report. The progress report additionally identified erosion control and specific requirements for sites determined to represent a threat to water quality. To date, the majority of the scope of work recommended in this progress report

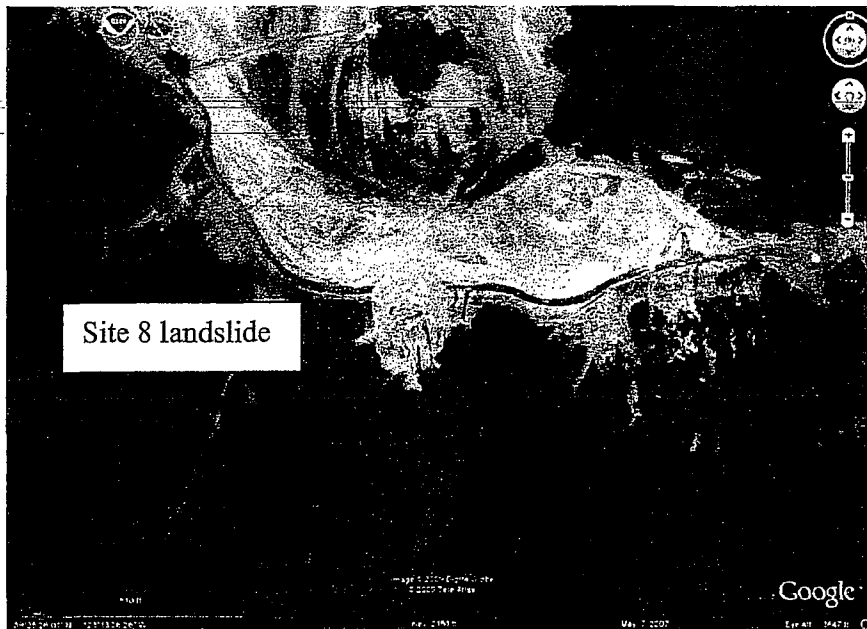
has not been implemented and erosion control construction best management practices are not maintained.

In approximately August of 2009 the discharger began implementing aspects of the "Winterization Plan and Recommended Emergency Erosion Control Measures". It is of note and importance to recognize that in the time between October 13, 2004 and September of 2009 the site likely has changed substantially from when the Winterization Plan and Recommended Emergency Erosion Control Measures were developed in 2004. The photo below provides evidence of the substantial change that occurred in regard to fill and slope failures. This degree of change should have been re-assessed by the licensed professionals responsible for developing the original erosion control plan and management measures prior to implementing a 4-5 year old plan. This type of re-inspection requirement is generally a standard protocol and should be carried out in this instance to ensure that the work 1) is conducted as defined in the "Winterization Plan and Recommended Emergency Erosion Control Measures" 2) results in abatement of sediment discharge as required under a clean up and abatement order.

It is also of note that the discharger has continued to move earth on his property by constructing a road on steep slopes that has caused debris flows to nearby streams. These road construction activities have resulted in further discharge to waters of the state in violation of the Water Quality Management Plan for the North Coast Region (Basin Plan).

To summarize, the major concerns addressed in this report are:

- Non compliance with CAO Order No. R1-2002-0103
- The discharger is implementing a plan developed for site stabilization prior to the onset of slope failures and erosion.
- Lack of erosion controls on exposed soils, prior to the onset of winter rains
- Further violations and delivery caused by additional road building
- The Green Property does not have a construction storm water permit



Site 8 (as numbered in 2004 progress report)

Site 8 is a large failure that has delivered a significant amount of sediment to waters of the state since site inception. On September 25, 2009, Site 8 was observed to be in the process of being refilled with earthen material. Regional Water Board staff have concerns over this activity in light of the past slope failure at this site.

The Progress report included designs and recommendations for Site 8, these designs detailed the removal of fill materials displaced onto the steep surrounding slopes. As is evident in the photo and discussion above, Site 8 has failed incorporating fill and possibly native slope materials into the failure plane. The reconstruction work currently under way appears to be implementing the repairs described in the progress report on the failed material rather than on the original ground as identified by the firms PJC and PWA in the progress report. By working off of the slide mass the discharger is not working back to native ground, but instead appears to be filling in the mass of the slope failure. This approach appears to be placing earthen material above the watercourse below. This is a concern in regard to implementation of Site 8 work described in the progress report, as there is no documentation of engineering review of the progress report erosion control plans after the failure of Site 8. The following series of photos characterizes previous observations of this site in contrast to the existing work that is being conducted. The photos are dated to provide a reference point in time.



10/17/2008 Upper extent of Site 8 failure

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December 29, 2009

VIA U.S. MAIL

California Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Re: Notice of Violation Dated December 2, 2009; Your File:
Jon and Deann Green Grading Project, Willits,
California

Dear Regional Board Representative:

This firm represents Jon and Deann Green in the above referenced matter. The purpose of this letter is to provide the California Regional Water Quality Control Board - North Coast Region ("Regional Board") with notice of the enclosed petition for review of the above referenced Notice of Violation. Of note, the petitioners therein are requesting that the petition be held in abeyance pending current discussions to be held in your office on January 25, 2010 and further actions by the petitioners and Regional Board thereafter.

This letter is also to serve as the formal request - pursuant to 23 Cal. Code of Reg. §2050(a)(10) - for you to prepare your record for the petitioned review.

Sincerely,



Matisse M. Knight

Enclosures
Petition for Review

PROOF OF SERVICE BY U.S. MAIL

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STATE OF CALIFORNIA)
)
COUNTY OF MENDOCINO)

I am employed in the County of Mendocino, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 444 North State Street, Ukiah, California.

On December 29, 2009, I served the document entitled **PETITION FOR REVIEW** on the interested parties by placing true and complete copies thereof, in sealed envelopes with first class postage thereon prepaid in full, in the U.S. mail at Ukiah, California, addressed as follows:

California Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on December 29, 2009, at Ukiah, California.


Gina Festa Vau