



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

Arnold Schwarzenegger
Governor

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

April 8, 2009

CERTIFIED MAIL 7008 1140 0003 4708 6038
RETURN RECEIPT REQUESTED

Chris Locke, Esq. (on behalf of Gilbane Building Co. and DeSilva Gates)
Farella Braun & Martell LLP
Attorneys at Law
Russ Building
235 Montgomery Street
San Francisco, CA 94104

**SETTLEMENT AGREEMENT AND STIPULATION FOR ORDER AND RELEASE
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2008-0030; GILROY UNIFIED
SCHOOL DISTRICT, GILROY, SANTA CLARA COUNTY, WDID# 3 43 C 349 742**

Dear Mr. Locke:

Please find attached *Settlement Agreement, Stipulation for Order and Release Administrative Civil Liability Complaint No. R3-2008-0030, and Order No. R3-2008-0030 On Stipulation and Settlement Agreement*. In accordance with the Order, Gilbane Building Company and DeSilva Gates Construction LP must pay \$170,000 to the State Water Resources Control Board within 60 days of receiving this notice.

Payment shall be made in the form of one or more checks totaling the amount of \$170,000, payable to the *State Water Resources Control Board Pollution Cleanup and Abatement Account*. The check(s) shall indicate on it the number of this Order. The original check(s) shall be mailed to the State Water Resources Control Board, Department of Administrative Services, P.O. Box 1888, Sacramento, CA 95812-1999, with copies sent to: Michael Thomas, Assistant Executive Officer, Central Coast Water Board, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, and David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

If you have questions, please contact **Todd Stanley at (805) 542-4769, or tstanley@waterboards.ca.gov**, Harvey Packard at (805) 542-4639, or Central Coast Water Board attorney, Frances McChesney, at (916) 341-5174.

Sincerely,


Roger W. Briggs
Executive Officer

- Enclosure: 1. Settlement Agreement, Stipulation for Order and Release Administrative Civil Liability Complaint No. R3-2008-0030
2. Order No. R3-2008-0030 On Stipulation and Settlement Agreement

California Environmental Protection Agency

Cc: Michael Thomas (via email)
Assistant Executive Officer
Central Coast Water Board

David M. Boyers (via email)
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Frances McChesney (via email)
Senior Staff Counsel
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828

Albert A. Erkel, Jr., Esq.
Garcia Calderon Ruiz
50 West San Fernando Street, Suite 330
San Jose, CA 95113

Enrique Palacios
Deputy Superintendent
Gilroy Unified School District
7810 Arroyo Circle
Gilroy, CA 95020

Denise Choquette, Esq.
Senior Legal Counsel
Gilbane Building Company
7 Jackson Walkway
Providence, RI 02903

Michael Willcoxon, Esq.
General Counsel
DeSilva Gates Construction L.P.
11555 Dublin Blvd., Suite 201
Dublin, CA 94568

S:\Enforcement\ACLs\Gilroy USD Christopher HS\Finals\Gilroy USD Settlement and Stipulated ACL Order trans
ltr.doc



SETTLEMENT AGREEMENT, STIPULATION FOR ORDER AND RELEASE
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2008-0030

In the matter of:)
)
Gilroy Unified School District;) Settlement Agreement, Stipulation for
Complaint No. R3-2008-0030) Order and Release
For Administrative Civil)
Liability)

This Settlement Agreement, Stipulation for Order and Release ("Agreement") is made by and between the Assistant Executive Officer and Prosecution Team ("Prosecution Team") of the Regional Water Quality Control Board, Central Coast Region ("Central Coast Water Board"), the Gilroy Unified School District ("School District"), Gilbane Building Company ("Gilbane"), and DeSilva Gates Construction L.P. ("DeSilva Gates") (collectively referred to as "Parties").

The Parties enter into this Agreement because it is their collective desire to settle the violations alleged in Administrative Civil Liability Complaint No. R3-2008-0030 ("Complaint") in order to avoid the expense and uncertainty inherent in an administrative enforcement proceeding and potential litigation, and with no admission of liability or the validity of the claims, allegations, alleged violations or causes of action that are the subject of the Complaint.

THE UNDERSIGNED PARTIES EXECUTE THIS AGREEMENT WITH
REFERENCE TO AND IN CONTEMPLATION OF THE FOLLOWING FACTS:

1. On June 25, 2008, the Assistant Executive Officer of the Central Coast Water Board issued Administrative Civil Liability Complaint No. R3-2008-0030, which proposed to assess administrative civil liability against the School District for certain alleged violations of State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, *Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activity* (Permit).
2. A hearing to consider the Complaint was scheduled before the Central Coast Water Board on December 4-5, 2008. On November 13, 2008, the Executive Officer of the Central Coast Water Board granted designated party status to Gilbane and DeSilva Gates. On November 19, 2008, the Parties jointly requested that the hearing be taken off the Central Coast Water Board's December 4-5, 2008 agenda; the request was granted the same day.

In the matter of Gilroy Unified School District
Settlement Agreement, Stipulation for Order and Release

3. The Parties, through their respective representatives, have reached this Agreement, which includes a stipulation for issuance of the Order attached hereto as Attachment A.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

4. The Parties agree to support, advocate for, and promote approval of the proposed Order, Attachment A hereto.
5. The Parties covenant and agree that they will not contest the proposed Order, Attachment A hereto, before the Central Coast Water Board, or its delegee, the State Water Resources Control Board, or any court.
6. The Parties agree that the proposed Order shall not take effect until adopted by the Central Coast Water Board, or its delegee.
7. Gilbane and DeSilva Gates agree to pay, on behalf of themselves and the School District, the sum of \$170,000 to the State Water Resources Control Board, payable to the State Water Resources Control Board's Cleanup and Abatement Account, within 60 days of receiving written notice from the Central Coast Water Board that the proposed Order, Attachment A hereto, has been adopted by the Central Coast Water Board, or its delegee.
8. The payment under Paragraph 7, above, is subject to a reservation of rights by Gilbane and DeSilva Gates to seek contribution or reimbursement from the School District, but this reservation shall not relieve Gilbane and DeSilva Gates of the obligation to make the payment in accordance with Paragraph 7, above.
9. This Agreement is a final and binding resolution and settlement of all claims, allegations, alleged violations and/or causes of action that are the subject of the Complaint, or which could have been asserted by the Central Coast Water Board against the School District, Gilbane, or DeSilva Gates, or any of them, based on the specific facts alleged in the Complaint, as of the effective date of the proposed Order, Attachment A hereto, issued by the Central Coast Water Board, or its delegee, approving the Agreement. The provisions of this paragraph are expressly conditioned on the Parties' full satisfaction of all the obligations of the Agreement.
10. In consideration of the agreement of Gilbane and DeSilva Gates to pay, on behalf of themselves and the School District, the sum of \$170,000 as set forth in Paragraphs 7 and 8 above, and effective upon the Central

Coast Water Board's adoption of the Order, Attachment A hereto, the Central Coast Water Board releases and forever discharges the School District, Gilbane and DeSilva Gates, and each of their respective officers, directors, managers, employees, shareholders, parents, subsidiaries, affiliates, agents, attorneys, predecessors, successors, transferees, assigns, insurers and representatives from any and all claims, violations or causes of action, that the Central Coast Water Board has asserted or could have asserted against the School District, Gilbane, or DeSilva Gates, or any of them, based on the specific facts alleged in the Complaint.

11. This Agreement and the proposed Order will be circulated for public notice and comment prior to being presented to the Central Coast Water Board, or its delegee, for consideration and approval. If the Assistant Executive Officer receives significant new information that reasonably affects the propriety of presenting the proposed Order to the Central Coast Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Agreement void and decide not to present the proposed Order to the Central Coast Water Board, or its delegee. Gilbane, Desilva Gates, and the Gilroy Unified School District agree that they may not rescind or otherwise withdraw their approval of this Agreement. If the Assistant Executive Officer does not declare this Agreement void following the close of the public notice and comment period, and does not present the Agreement and proposed Order to the Central Coast Water Board, or its delegee, for consideration and approval by July 1, 2009, this Agreement shall be void.
12. In the event that this Agreement does not take effect because it is not approved by the Central Coast Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections based on settlement communications in this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Agreement, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Complaint in this matter; or 2) laches or delay or other equitable defenses

based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

13. The Parties intend that the procedure adopted for the approval of the settlement by the Parties and review by the public, as reflected by the proposed Order and this Agreement, will be adequate. In the event objections are raised during the public comment period concerning the proposed Order, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or appropriate under the circumstances.
14. Neither this Agreement, nor the proposed Order, upon adoption by the Central Coast Water Board or its delegee, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of liability or the validity of any claim, allegation, cause of action, or the alleged violation of any law, rule or regulation.
15. Each Party executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
16. This Agreement shall not be construed against any Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.
17. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement, including the delivery of any documentation reasonably requested by the Central Coast Water Board to ensure that the terms of the Agreement are being complied with.
18. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All material modifications must be in writing and signed by the Parties.
19. This Agreement shall be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement.
20. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

21. Notices and correspondence concerning this Agreement shall be sent by overnight or certified mail to the following addresses, in addition to electronic mail. Any party may notify the other of a change of notice address by letter sent by overnight or certified mail.

For Gilbane and Desilva Gates:

Christopher Locke, Esq.
Farella Braun & Martell LLP
Russ Building, 17th Floor
235 Montgomery Street
San Francisco, CA 94104

For the Gilroy Unified School District

Albert A. Erkel, Jr., Esq.
Garcia Calderón Ruiz
625 Broadway, Suite 900
San Diego, CA 92101

For the Central Coast Water Board Prosecution Team:

Michael Thomas
Assistant Executive Officer
California Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

Central Coast Water Board
Prosecution Team:

By: 
Michael Thomas
Assistant Executive Officer

Dated: 1-12-09

Approved as to Form:


David Boyer
David Boyers, Esq.
Counsel to Central Coast Water Board

1/7/09
(date)

In the matter of Gilroy Unified School District
Settlement Agreement, Stipulation for Order and Release

Prosecution Team

Gilbane and Desilva Gates:

By: 
Name Andrew R. Faber
Title Sr. Vice President Regional Mgr.
Gilbane

Dated: 12/19/08

By: _____
Name
Title
DeSilva Gates

Dated: _____

Approved as to Form:

Chris Locke, Esq. (date)
Counsel to Gilbane and DeSilva Gates

Gilroy Unified School District:

By: _____
Name
Title

Approved as to Form:

Albert A. Erkel, Jr., Esq. (date)
Counsel to Gilroy Unified School District

In the matter of Gilroy Unified School District
Settlement Agreement, Stipulation for Order and Release

Prosecution Team

Gilbane and Desilva Gates:

By: _____

Name
Title
Gilbane

Dated: _____

By: Michael Willcoxson, General Counsel

Name MICHAEL WILLCOXON
Title General Counsel
DeSilva Gates

Dated: 12/29/08

Approved as to Form:

Chris Locke, Esq.
Counsel to Gilbane and DeSilva Gates

(date)

Gilroy Unified School District:

By: _____

Name
Title

Approved as to Form:

Albert A. Erkel, Jr., Esq.
Counsel to Gilroy Unified School District

(date)

In the matter of Gilroy Unified School District
Settlement Agreement, Stipulation for Order and Release

Prosecution Team

Gilbane and Desilva Gates:

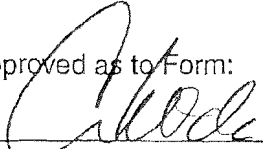
By: _____
Name
Title
Gilbane

Dated: _____

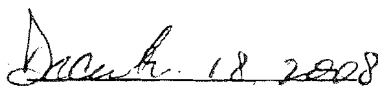
By: _____
Name
Title
DeSilva Gates

Dated: _____

Approved as to Form:



Chris Locke, Esq.
Counsel to Gilbane and DeSilva Gates



(date)

Gilroy Unified School District:

By: _____
Name
Title

Approved as to Form:

Albert A. Erkel, Jr., Esq.
Counsel to Gilroy Unified School District

(date)

Prosecution Team

Gilbane and Desilva Gates:

By: _____

Name
Title
Gilbane

Dated: _____

By: _____

Name
Title
DeSilva Gates

Dated: _____

Approved as to Form:

Chris Locke, Esq.
Counsel to Gilbane and DeSilva Gates

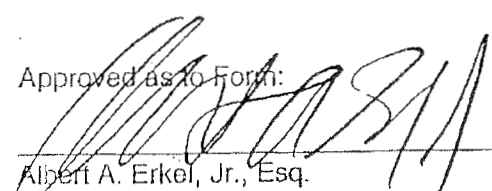
(date)

Gilroy Unified School District:

By:  _____

Name Enrique Palacios
Title Deputy Superintendent

Approved as to Form:



Albert A. Erkel, Jr., Esq.
Counsel to Gilroy Unified School District

12/18/09

(date)

In the matter of:)
)
Gilroy Unified School District;)
Complaint No. R3-2008-0030 For)
Administrative Civil Liability)
_____)

Order No R3-2008-0030
On Stipulation and Settlement Agreement

This Order on Stipulation and Settlement Agreement ("Order") is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R3-2008-0030, dated June 25, 2008 ("Complaint"). The Parties to this proceeding are the Assistant Executive Officer and Prosecution Team ("Prosecution Team") of the Regional Water Quality Control Board, Central Coast Region ("Central Coast Water Board"), the Gilroy Unified School District ("School District"), Gilbane Building Company ("Gilbane"), and DeSilva Gates Construction L.P. ("DeSilva Gates") (collectively referred to as "Parties")

The Central Coast Water Board has been presented with a proposed settlement of the claims alleged in the Complaint that has been developed during negotiations between the Parties' representatives. The proposed settlement represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability in the amount of \$170,000. The Parties' settlement agreement is attached hereto as Attachment 1. The Parties recommend that the Central Coast Water Board issue this Order to effectuate the Parties' proposed settlement.

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED IN THE COMPLAINT AND THE PARTIES' STIPULATION AND SETTLEMENT AGREEMENT, THE CENTRAL COAST WATER BOARD FINDS THAT:

1. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with sections 15061(b)(3) and 15321(a)(2) of Title 14 of the California code of Regulations.
2. In adopting this Order, the Central Coast Water Board has considered each of the factors prescribed in California Water Code section 13327 and 13385(e). The Central Coast Water Board's consideration of these factors is based upon information and comments provided by the Parties and by members of the public. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Central Coast Water Board in evaluating the claims and preparing the Complaint and related documents.
3. A notice of the proposed Settlement and Order was published in the Gilroy Dispatch on February 27, 2009, notifying the public of a 30-day review period and soliciting public comments on the terms of the settlement.
4. The proposed Settlement supports payment in the amount of \$170,000 for resolution of the claims made in the Complaint, and is in the public interest.
5. This Settlement and Order provide for the full and final resolution of each of the claims, allegations, alleged violations and/or causes of action that are the

subject of the Complaint, and is entered into by the Parties with no admission of liability or the validity of any such claim, allegation, alleged violation or cause of action.

IT IS HEREBY ORDERED, pursuant to section 13385(c) of the California Water Code and section 11415.60 of the California Government Code that:

6. The Settlement is hereby approved.
7. Within 60 days of receiving written notice that this Order has been issued, on behalf of themselves and the School District, Gilbane and DeSilva Gates shall pay a total of \$170,000 to the State Water Resources Control Board, in accordance with Paragraph 8, below.
8. Payment shall be made in the form of one or more checks totaling the amount of \$170,000, payable to the *State Water Resources Control Board Pollution Cleanup and Abatement Account*. The check(s) shall indicate on it the number of this Order. The original check(s) shall be mailed to the State Water Resources Control Board, Department of Administrative Services, P.O. Box 1888, Sacramento, CA 95812-1999, with copies sent to: Michael Thomas, Assistant Executive Officer, Central Coast Water Board, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, and David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.
9. The Complaint is hereby dismissed with prejudice, and the School District, Gilbane and DeSilva Gates, and each of them, are hereby released from further liability relating to the claims, allegations, alleged violations and causes of action that are the subject of the Complaint, as provided in the Settlement.

I, Roger Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, Central Coast Region, on 4-6, 2009.



Roger Briggs
Executive Officer