

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

In the matter of:)	
)	Order No. R3-2008-0057
Tract 1990, LLC.)	Stipulated Administrative
)	Civil Liability Order
)	(PROPOSED)
)	

INTRODUCTION:

This Stipulated Administrative Civil Liability Order (hereafter "Stipulated Order") is entered into by and between the Executive Officer of the Central Coast Water Quality Control Board, Central Coast Region ("Central Coast Water Board"), and Tract 1990, LLC ("Tract 1990") (Collectively "Parties") and is presented to the Central Coast Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

THE CENTRAL COAST WATER BOARD EXECUTIVE OFFICER ALLEGES:

1. Tract 1990 is the owner of an approximately 255-acre, two-phase construction project known as Heritage Loop Road Improvements (Site), located west of Nacimiento Lake Drive, about ten miles west of Paso Robles, in San Luis Obispo County. The project plans include approximately 250 single family residences, and the disturbance of approximately 71 acres. The Site generally consists of rolling hills with natural drainage ways, with terrain slope varying from relatively flat to very steep. Soils generally consist of silty sands, with bedrock approximately 3.5 feet below the ground surface. Planned construction activities included large-scale grading and excavation.
2. State Water Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (Permit), as amended, prescribes waste discharge requirements regulating storm water discharges associated with construction activity for sites disturbing one acre or more in accordance with the Clean Water Act (United States Code, Title 33, Chapter 26) and the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000 et seq.).
3. On October 12, 2004, Ken Stokes, Tract 1990 vice president, signed a Notice of Intent to comply with the Permit. The Notice of Intent states that construction would begin on October 15, 2004.

4. The Notice of Intent identifies Tract 1990 as the owner and the developer/contractor. The Notice of Intent specifies the Site contact person as Greg Blackburn, Construction Manager.
5. Storm water runoff from the Site flows into unnamed, blue-line creeks that are tributaries to Lake Nacimiento, located approximately one mile from the Site. The creeks flow during rain events that produce surface runoff. Sediment deposited in dry or low-flow creek beds can be transported to downstream waterbodies such as the Lake by subsequent rain events.
6. Lake Nacimiento is a water of the United States, and creeks tributary to the Lake are also waters of the United States.
7. During the 2005–2006 rainy season, Tract 1990 discharged tens of thousands of cubic yards of fill sediment to multiple unnamed, blue-line creeks, for the purpose of building roads for a new residential community Tract 1990 is constructing. Over the course of three inspections (November 17, 2005, December 5, 2005, and January 12, 2006), Central Coast Water Board staff also found a variety of conditions in violation of the Permit. Each inspection showed progressively worsening evidence of sediment discharges to unnamed, blue-line creeks from Tract 1990's Site, including sediment discharges from dewatering during inspections, and sediment covering creek beds receiving those discharges. Tract 1990 did not install erosion and sediment controls in a timely or effective manner, as required by the Permit, resulting in erosion and sediment transport to creeks. Some site locations experienced repeated or chronic problems. Tract 1990 did not construct sediment controls according to the design specifications in the site Storm Water Pollution Prevention Plan (SWPPP), and did not develop and implement its SWPPP according to other Permit requirements.
8. Violations of the Permit (including failure to develop and implement an adequate SWPPP) subject Tract 1990 to liability under California Water Code Section 13385(a)(2). Discharging dredge or fill material without a permit under Clean Water Act Section 404 (which requires a water quality certification or waiver of such certification under Clean Water Act Section 401) violates Clean Water Act Section 301. Violations of Clean Water Act Section 301 subject Tract 1990 to liability under California Water Code Section 13385(a)(5).
9. *Creating or Threatening to Create Pollution or Nuisance and Violating Receiving Water Limits Due to Sediment Discharges.* Discharges of sediment-laden storm water and sediment to waters of the United States violated Discharge Prohibition A.3 of the Permit, which states,

Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

Pursuant to California Water Code Section 13050, "pollution" includes an alteration of water quality to a degree that unreasonably affects beneficial uses (CWC 13050(l)). "Nuisance" means "anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons ...; and (3) Occurs during, or as a result of, the treatment or disposal of wastes." (CWC 13050(m))

Receiving Water Limitation B.1 of the Permit states,

Storm water discharges ... to any surface or ground water shall not adversely impact ... the environment.

Chapter 3, Section II.A.2.a of the Water Quality Control Plan, Central Coast Region (Basin Plan) includes the following general water quality objectives that apply to all inland surface waters:

Settleable Material

Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses. ...

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

- a. **November 17, 2005 (Staff Inspection)** – Tract 1990 deposited sediment in an unnamed, blue-line creek immediately west of the Holly Drive fill prism (soil fill constructed to support a roadway) near its intersection with Heritage Loop Road. Sediment-laden storm water was actively discharged directly to the unnamed creek from three pipes that emerged at the base of the fill slope. These pipe outlets conveyed runoff from the construction area east of the fill and discharged to the creek. Sediment deposits to the creek resulted from two areas of the Site: 1) eroding soils east of the road fill; and 2) eroding portions of the fill, which was largely unprotected against erosion and sediment transport. Evidence of the discharges showed two sections of creek bed covered by sediment

approximately one to two inches deep, with each section covering approximately ten linear feet of creek bed.

- b. **December 5, 2005 (Staff Inspection)** – As on November 17, 2005, sediment-laden stormwater was actively discharged directly to an unnamed creek from three pipes that emerge at the base of the fill slope at the Holly Drive fill prism near the intersection with Heritage Loop Road. The sediment in the creek covered approximately 30 to 40 linear feet of creek bed, with sediment approximately one to three inches deep. This evidence indicated more sediment was in the creek in comparison to the November 17, 2005 inspection, and therefore that additional sediment discharges occurred with worsening impacts to the creek.

Tract 1990 discharged sediment to a different unnamed, blue-line creek located near Heritage Loop Road station 42+50 (these and other station numbers throughout refer to Tract 1990's roadside location markers). The section of the creek adjacent to Tract 1990's storm drain outlet was filled with sandy sediment. The storm drain outlet pipe was partially filled with sediment. The flow path below the outlet leading to the creek lacked vegetation in comparison to the immediately surrounding area, further indicating either sediment deposition on the slope or erosion of the slope.

Sediment discharges also occurred to a different unnamed, blue-line creek adjacent to Tract 1990's storm drain outlet pipe located near Heritage Loop Road station 6+87. Evidence of the discharge was shown in the pipe's outlet to the creek, which was partially filled with sediment.

- c. **December 18, 2005** – Tract 1990 reported that sediment and road base material was discharged to an unnamed, blue-line creek at Heritage Loop Road station 31+50. Stormwater runoff flowed over the Heritage Loop Road shoulder, undermining the roadside silt fence, and discharging sediment to the unnamed, blue-line creek below. Tract 1990 submitted the report on May 16, 2006.
- d. **December 31, 2005, through January 2, 2006** – Tract 1990 reported multiple discharges of sediment for this rain event. Tract 1990 submitted the noncompliance reports on May 16, 2006. On January 12, 2006, staff inspected and documented the discharges at some of the same locations later identified in Tract 1990's May 16th report.
- i. Tract 1990 reported that sediment and road base material were discharged to an unnamed, blue-line creek at Heritage Loop Road station 59+50, between Sand Harbor Court and Timberline Drive.

- ii. Tract 1990 reported that sediment was discharged to an unnamed, blue-line creek between stations 10+00 and 16+00 on Holly Drive. Runoff from graded housing lots ran over straw wattle sediment controls and eroded the surface of the fill beneath erosion control blankets. Large amounts of sediment collected in the silt fence at the toe of the slope, eventually overwhelmed the fencing, and then flowed to an unnamed, blue-line creek adjacent to this location.

Staff inspected the Site ten days later on January 12, 2006. The creeks downstream of this Holly Drive location were filled with sandy sediment consistent with the scale of this discharge. In comparison to staff's previous two inspections on November 17, 2005, and December 5, 2005, the creeks showed evidence of much greater sediment discharges from the Site. The sediment covered approximately one linear mile of creek bed with sediment approximately five to eight inches deep, extending to the creek's outlet to Lake Nacimiento.

- iii. Tract 1990 reported that sediment was discharged to an unnamed, blue-line creek at Holly Drive station 3+75, located near the intersection with Heritage Loop Road. Tract 1990 reported the erosion of the fill slope and discharge of sediment to the unnamed creek below the toe of the slope.

In addition to the inspections conducted on November 17, 2005, and December 5, 2005 (see allegations above), staff also inspected the Holly Drive fill prism at station 3+75 on January 12, 2006. This location exhibited evidence of greater sediment discharges in comparison to the earlier inspections. The gap between the southern edge of the fill slope's erosion control blanket and the silt fence (first observed during staff's December 5, 2005 inspection) was still present, with worsened erosion evident. Erosion indicated that stormwater runoff flowed along the gap and under the upper slope's erosion control blanket, cut across the terrace below, then undercut the lower slope's blanket before being discharged to the unnamed, blue-line creek. Tract 1990's report further documents this erosion, reporting that stormwater was allowed to undercut the erosion control blanket and transport sediment to the unnamed creek.

- e. **January 12, 2006** – Tract 1990 reported discharging sediment from a sediment basin to an unnamed creek via a storm drain near Delaney Place. Tract 1990 submitted the report on May 16, 2006.

Staff inspected this location on January 12, 2006. Employees of Tract 1990 pumped sediment-laden storm water from a sediment basin to an unnamed, blue-line creek adjacent to Delaney Place, in violation of the

SWPPP (which requires basin discharge of clarified water via engineered, gravity-drained basin outlets) and the Permit SWPPP Requirements (which prohibit sediment-laden storm water discharges without filtration or equivalent treatment).

- f. **February 27, 2006** – Tract 1990 reported the discharge of sediment at Heritage Loop Road station 60+00. The fill slope eroded and discharged sediment to an unnamed creek between Delaney Place and Edgewood Court. Tract 1990 submitted the report on March 10, 2006.
- g. **April 23, 2006, through April 26, 2006** – Tract 1990 reported discharging sediment from stations 15+00 through 20+00 on Holly Drive to an adjacent unnamed, blue-line creek. The fill slope eroded, allowing the accumulation of sediment along the silt fencing at the toe of the slope. The sediment overwhelmed the silt fence, causing the transport of sediment to the immediately adjacent, unnamed creek. Tract 1990 submitted the report on May 16, 2006.

Tract 1990's storm water discharges caused or threatened to cause pollution because sediment adversely impacts the beneficial uses of Wildlife Habitat [WILD], Cold & Warm Fresh Water Habitats [COLD & WARM], and Spawning, Reproduction, and/or Early Development [SPWN], which apply to Lake Nacimiento according to the Central Coast Water Board's Basin Plan. Furthermore, the Department of Fish & Game's Natural Resources Damage Assessment (January 5, 2006) states, "[the creeks] support aquatic life including but not necessarily limited to Pacific tree frogs and aquatic insects. The streams also provide surface water utilized for drinking by local wildlife such as deer, bobcat, mountain lion, black bear, and other mammals." The Wildlife Habitat beneficial use is therefore also an existing use of the creeks tributary to the Lake.

These beneficial uses were adversely impacted by the sediment discharges documented in staff's three inspections and multiple noncompliance reports that Tract 1990 submitted. These noncompliance determinations showed a progressive accumulation of sediment due to anthropogenic discharges of sediment associated with construction activities. Covering creek beds or lake bottoms with sediment also covers these habitats, and therefore adversely impacts the waters' beneficial uses.

Tract 1990's sediment-laden storm water discharges caused or threatened to create nuisance conditions because the discharges filled portions of creeks and the Lake with sediment and thereby obstructed the free use of the creeks and affected the entire community. These factors also demonstrate that the storm water discharges adversely impacted the environment in receiving waters in unnamed, blue-line creeks and Lake Nacimiento.

Therefore, Tract 1990 violated Permit Discharge Prohibition A.3 and Receiving Water Limitation B.1 for at least 23 days during the rainy season. Staff conservatively estimated the days of discharge to include: nine days from November 9, 2005 (first day of substantial rain), through November 17, 2005 (active discharge to creek at Holly Drive fill prism during staff's first inspection, therefore staff assumes discharge was continuous since 11/9/05 rain event); four days from December 2, 2005 (second substantial rain event), through December 5, 2005 (active discharge to creek at Holly Drive fill prism during staff's second inspection, therefore staff assumes discharge was continuous since 12/2/05); December 18, 2005 (Tract 1990 reported discharge during rain event); three days from December 31, 2005, through January 2, 2006 (Tract 1990 reported discharge during rain event); December 12, 2006 (basin discharge during staff's third inspection); February 27, 2006 (Tract 1990 reported discharge during rain event); and four days from April 23, 2006, through April 26, 2006 (Tract 1990 reported discharge during rain event).

10. Allegations 11 and 12 below describe Tract 1990's failure to develop and/or implement its SWPPP in relation to discharges from an onsite basin. The allegations are related because Tract 1990 constructed a sediment basin to allow sediment to settle out of captured stormwater before the stormwater was discharged from the Site. Then, after it was evident that the basin was not providing adequate settling, Tract 1990 elected to dewater (pump) the stored water from the basin to a creek. A sediment/desilting basin is a control measure most commonly associated with *stormwater*, while dewatering is more commonly associated with *non-stormwater* (e.g., groundwater that may have filled an excavated trench).

The two circumstances (using a sediment basin to clarify stormwater, and dewatering stored water) invoke different requirements of the Permit. Tract 1990's actions require the application of Permit requirements for both circumstances, and for the same number of days (104). California Water Code Section 13385(c)(1) authorizes civil liability for up to \$10,000 for each day each violation occurs. For Allegations 11 and 12, this could warrant civil liability for two violations multiplied by 104 days (or 208 days of violation). However, because of the close relation of the violations, the 104 days of violation cited in Allegations 11 and 12 are the same days. Therefore, the recommended and maximum liability amounts account for these days only once.

11. *SWPPP Violations: Improper Construction and Implementation of Sediment/Desilting Basin.* Tract 1990 violated Permit Special Provision C.2 because it did not implement sediment basin Best Management Practices according to its Storm Water Pollution Prevention Plan (SWPPP). Therefore,

Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.1 and A.8.

Permit Special Provisions for Construction Activity C.2 states,

All dischargers shall develop and implement a SWPPP in accordance with Section A: *Storm Water Pollution Prevention Plan*. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT (Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology) performance standard.

Permit SWPPP Requirement A.1(c) states,

A SWPPP shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit. ...The SWPPP shall be developed to ... identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction. (Emphasis added)

Permit SWPPP Requirement A.8 states,

The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. (Emphasis added)

Tract 1990's SWPPP, Section 500.3.5, *Sediment Control*, states,

The following sediment control BMP consideration checklist indicates the BMPs that shall be implemented to control sediment on the construction site. ...The BMP working details that will be adhered to are found in Attachment Q of this SWPPP. (Emphasis added)

The SWPPP then identifies sediment/desilting basins as a project-specific minimum requirement (BMP No. SC-2).

SWPPP Attachment Q, BMP No. SC-2, defines the design standards and requirements for sediment/desilting basins to be implemented at the Site, requiring Tract 1990 to maximize the distance between a basin's inlet and

outlet, and specifying the design of outlet structures. Both of these criteria promote the slow, controlled discharge of clarified water, and Tract 1990 did not implement either for the sedimentation/desilting basin. In addition, the SWPPP requires Tract 1990 to install designed basins before the rainy season and before construction activities commence.

January 12, 2006 Inspection: Tract 1990 constructed and operated a sediment/desilting basin without the outlet structures specified in the SWPPP.

Tract 1990 failed to implement the SWPPP's sediment/desilting basin specifications by failing to construct the passive, gravity-drained outlet structures specified in the SWPPP. Tract 1990 also did not comply with the SWPPP's requirement to construct the specified basins before the rainy season (starts Oct 1st each year). Therefore, Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.1 and A.8 for at least 104 days during the rainy season, from October 1, 2005 (the beginning of the rainy season), through January 12, 2006 (the date of staff's third inspection).

Staff confirmed the minimum duration of the basin's placement from Tract 1990's May 16, 2006 noncompliance report, and from the January 10, 2006 Cal/EPA Complaint Form, where staff noted the failure of the storm water to settle despite approximately two weeks of settling time. With respect to the violation's extent back to October 1, 2005, either the basin was not in place before the rainy season as required by the SWPPP, or it was in place but not constructed according to the SWPPP. Either circumstance supports October 1, 2005, as the beginning date of the violation.

12. *SWPPP Violations: Illegal Dewatering.* Tract 1990 failed to develop and implement a SWPPP according to Permit Special Provision C.3 because it had dewatering discharges without appropriate BMPs, and it did not describe the dewatering in its SWPPP. Therefore, Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.3, and Permit SWPPP Requirement A.9.

Finding 10 of the Permit defines "non-storm water" to include dewatering.

Permit Special Provisions for Construction Activity C.3 states,

Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water

discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9 of the SWPPP requirements.

Permit SWPPP Requirement A.9 states,

[The SWPPP shall] Describe all non-storm water discharges to receiving waters that are proposed for the construction project. Non-storm water discharges should be eliminated or reduced to the extent feasible. Include the locations of such discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. Onetime discharges shall be monitored during the time that such discharges are occurring. A qualified person should be assigned the responsibility for ensuring that no materials other than storm water are discharged in quantities which will have an adverse effect on receiving waters or storm drain systems (consistent with BAT/BCT), and the name and contact number of that person should be included in the SWPPP document.

Discharging sediment-laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited.

Tract 1990's SWPPP does not describe or provide BMPs for the dewatering discharge. SWPPP page 500-8, Section 500.3.8, *Non-Storm Water Management BMPs*, indicates that Tract 1990 will not use dewatering operations because the site does not require them.

At a minimum, BMPs were necessary to prevent the dewatering discharge from causing or contributing to a violation of a water quality objective, as required by the above prohibition. Tract 1990 dewatered the basin by pumping unfiltered, untreated, sediment-laden water to a storm drain inlet, resulting in the sediment-laden dewatering discharge documented above in Allegation 9.e. As described in Allegation 9, discharging sediment-laden water caused or contributed to the exceedance of Basin Plan objectives for settleable material and sediment (Chapter 3 Section II.A.2.a), and impaired Wildlife Habitat, Warm Fresh Water Habitat, and Spawning, Reproduction, and/or Early Development beneficial uses. The SWPPP does not describe the location of these dewatering discharges, does not include BMPs to control pollutants, and does not require filtration or the equivalent to prevent the

exceedance of the settleable material and sediment objectives that resulted from the discharge. The SWPPP therefore fails to comply with the requirements of Permit Special Provisions for Construction Activity C.3 and SWPPP Requirement A.9. Therefore, Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.3, and Permit SWPPP Requirement A.9 for at least 104 days during the rainy season, from October 1, 2005 (the recognized beginning of the rainy season), through January 12, 2006 (the date of staff's third inspection).

Even if the dewatering discharges could be considered stormwater discharges rather than non-stormwater discharges, Tract 1990 failed to implement its SWPPP during the above period for stormwater discharges from sediment basins, since the SWPPP provides for discharging from the sediment basins through the specified outfall structures as stated in Allegation 11, not pumping to the creek. As described in Allegation 11, this failure to implement the SWPPP therefore violates Permit Special Provision for Construction Activity C.2.

Furthermore, with regard to this potential for considering the dewatering discharge as stormwater, by pumping inadequately settled water directly to the storm drain and the creek, Tract 1990 failed to implement controls to meet the BAT/BCT standard, in violation of Special Provision C.2. This method of dewatering (particularly when used during dry weather, as Tract 1990 did here) does not comply with the BAT/BCT requirements of Permit SWPPP Requirements Section A.8, regarding sediment basins, which includes basin design specifications and further states:

Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. [Emphasis added]

A sediment basin shall have a means for dewatering within 7 calendar days following a storm event. ...

Pumping a basin's contents to a storm drain and creek without filtration or settling is not an appropriate means of dewatering. Tract 1990 did not meet the BAT/BCT standard because it did not install the specified basin (per the Permit and the SWPPP), did not provide a means for dewatering according to those design specifications, and did not provide effective filtration and settling devices (as evidenced on January 12, 2006, by the unsettled condition of the water in the basin, the absence of filtration between the basin and the creek

discharge, the sediment-laden condition of the discharge to the creek, and the sediment loading observed in the creek).

The Permit further supports this allegation in the Fact Sheet, *Description of General Permit Conditions, Effluent Limitations*, where it states that dewatering discharges are allowed provided they are not relied upon to clean up failed or inadequate construction BMPs designed to keep materials on the site. The sediment basin was an inadequate construction BMP designed to keep sediment on the site. The basin failed to perform, and Tract 1990 utilized dewatering to remove the water and sediment contrary to the Fact Sheet statement.

Thus, even if the dewatering discharges could be considered stormwater discharges, rather than non-stormwater discharges, Tract 1990 failed to implement the SWPPP and BAT/BCT during the entire 104-day period from October 1, 2005, through January 12, 2006 (the same period described in Allegation 11, and above in this allegation). As noted in Allegation 10, these 104 days were counted only once to determine the maximum and recommended civil liability for Allegation No. 11 and No. 12.

13. *SWPPP Violations: Failure to Develop BMP Implementation Schedules.* Tract 1990 failed to develop and implement a SWPPP according to Permit SWPPP Requirements A.6 and A.8 as evidenced by its failure to include Best Management Practice (BMP) implementation schedules in the SWPPP. Therefore, Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.6 and A.8.

Permit SWPPP Requirement A.6 states,

The SWPPP shall include a description of the erosion control practices, including a time schedule, to be implemented during construction to minimize erosion on disturbed areas of a construction site. (Emphasis added)

Permit SWPPP Requirement A.8 states,

A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP.

Tract 1990's SWPPP, Section 500.3.4, specifies the use of BMP No. SS-1, *Scheduling* (SWPPP Attachment Q) as a project-specific minimum requirement regarding the implementation of detailed erosion and sediment control schedules. However, the SWPPP did not include a schedule.

The same SWPPP section states,

This project will implement the following practices for effective temporary and final [erosion control] during construction: ...3) Implement temporary [erosion control] measures at regular intervals throughout the defined rainy season to achieve and maintain the contract's disturbed soil area requirements. When the project's Special Provisions require it, temporary soil stabilization will be implemented 20 days prior to the defined rainy season.

However, the SWPPP does not include the "contract disturbed soil area requirements" or the "Special Provisions" referred to above. Furthermore, the general reference to "regular intervals" does not constitute the required implementation schedules. The references may be missing because of the SWPPP's apparent basis on a Cal/Trans SWPPP.

Tract 1990's SWPPP did not include the required erosion and sediment control implementation schedules. In response to staff's March 7, 2006 Notice of Violation, on March 21, 2006, Tract 1990 added an erosion and sediment control implementation schedule covering March 27, 2006, through October 15, 2006. Therefore, Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.6 and A.8 for at least 172 days during the rainy season, from October 1, 2005 (the commonly recognized beginning of the rain season), through March 21, 2006 (the date of the time schedule in the SWPPP).

14. *Failure to Implement Effective BMPs According to SWPPP.* Tract 1990 failed to implement a SWPPP in accordance with Permit SWPPP Requirements A.6 and A.8, as evidenced by its failure to implement an effective combination of erosion and sediment controls during the rainy season, and therefore Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.6 and A.8.

Permit SWPPP Requirements A.6 and A.8 state,

At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

The rainy season is commonly acknowledged as October 1st through April 15th for the purposes of planning, although the Permit's requirements apply year-round.

- a. **November 17, 2005 Inspection:** Tract 1990 failed to apply erosion and sediment controls at and near the Holly Drive fill prism near its intersection with Heritage Loop Road. The fill's two slopes, the intermediary terrace between them, the Holly Drive Road surface above the fill slopes, and the areas immediately east and southeast draining toward the fill prism were not protected by an effective combination of erosion and sediment controls.

Runoff from the unprotected Holly Drive roadway eroded a channel from the middle of the roadway surface to the roadside silt fence, allowing runoff and sediment to then flow along the silt fence and down the unprotected edge of the slope.

Tract 1990 was just beginning to install erosion control blankets on the fill slopes at this location. Erosion and sediment controls were not implemented and therefore could not have been effective during the previous six weeks of the rainy season.

Tract 1990 did not comply with Permit SWPPP Requirements A.6 and A.8, as evidenced by its failure to implement an effective combination of erosion and sediment controls required in the SWPPP. The silt fence across the toe of the lower fill slope was not combined with up-slope erosion and sediment controls applicable to large-scale disturbed areas.

- b. **December 5, 2005 Inspection:** Erosion and sediment controls at the Holly Drive fill prism near its intersection with Heritage Loop Road were incomplete and therefore not implemented effectively. Tract 1990 installed erosion control blankets on the sloped surfaces of the Holly Drive "terraced" fill on or after the November 17, 2005 inspection. The southern, downhill edge of the upper fill slope, however, was left unprotected and eroded during the December 2, 2005 rain event. A gap of approximately several feet between the edge of the blanket and a line of silt fence, and the absence of effective erosion and sediment controls on the disturbed surfaces on top of and east of the fill, allowed stormwater to erode the slope's unprotected edge.

Runoff from the unprotected Holly Drive roadway further eroded a channel from the middle of the road to the roadside silt fence, again allowing runoff and sediment to then flow along the silt fence and down the unprotected edge of the slope. This roadway erosion occurred at the same location as the erosion cited in the above allegation for the November 17, 2005 inspection (14.a). The eroded channel was wider and deeper, with greater amounts of sediment discharged along the silt fence, down the slope, and across the slope's terrace. Further erosion occurred along this flow path.

The runoff then undermined the straw wattle installed across the top of the lower slope, before reaching the unnamed, blue-line creek below.

Tract 1990 did not comply with Permit SWPPP Requirements A.6 and A.8, as evidenced by its failure to implement its SWPPP erosion and sediment controls in an effective combination. As in the above allegation for November 17, 2005, the areas above the fill slope lacked erosion and sediment controls. This allowed for the erosion of those surfaces and the uncontrolled discharge of stormwater to the unprotected gap on the edge of the fill slope below. The upper fill slope's erosion control blanket did not cover the entire disturbed area of the slope, so that gap again eroded, in addition to the terraced area and lower fill slope below.

- c. **January 12, 2006 Inspection:** Erosion and sediment controls at the Holly Drive fill prism near its intersection with Heritage Loop Road remained incomplete and ineffective. Holly Drive roadway areas above the fill slopes showed multiple eroded channels, which conveyed stormwater to the top edge of the fill slope. The gap between the southern, downhill edge of the fill slope's erosion control blanket and the adjacent silt fence, as referenced above for the December 5, 2005 inspection, was still unprotected. Higher levels of erosion occurred on this section of the upper fill slope, the terraced area below it, and the lower fill slope in comparison to staff's observations on December 5, 2005.

Substantial erosion also occurred at the Delaney Place cul-de-sac, eroding large channels and undermining silt fencing before discharging sediment offsite towards an immediately adjacent unnamed, blue-line creek.

- d. **February 27, 2006, and April 23 – April 26, 2006 Tract 1990 Non-Compliance Reports:** The erosion of fill slopes and failure of downslope sediment controls indicates Tract 1990 failed to implement an effective combination of erosion and sediment controls during the rainy season.

Permit SWPPP Requirements A.6 and A.8 require that Tract 1990's SWPPP provide for the implementation of an effective combination of erosion and sediment controls for all disturbed surfaces during the rainy season. Permit Special Provisions for Construction Activity C.2 then requires Tract 1990 to implement the SWPPP provisions. Tract 1990's SWPPP states that the project will incorporate the minimum erosion and sediment control requirements, and requires the implementation of specified practices (SWPPP Sections 500.3.4 and 500.3.5). Each of the above allegations (14.a through 14.d) indicates Tract 1990's failure to implement an effective combination of erosion and sediment controls pursuant to the SWPPP on all disturbed areas during the rainy season.

The areas discussed above represent Site areas Tract 1990 disturbed, and each date was within the rainy season.

Tract 1990 was in violation of Permit Special Provisions for Construction Activity C.2, and Permit SWPPP Requirements A.6 and A.8 for at least 208 days during the rainy season. For the November 17, 2005 inspection, where BMPs were not installed on the Holly Drive fill prism or on the disturbed areas above the fill, 48 days of violation are based on the absence of BMPs from October 1, 2005 (the beginning of the rainy season and the day by which Tract 1990 must apply erosion and sediment controls to all disturbed areas), through November 17, 2005 (the day of staff's first inspection), and the conservative assumption that the unstabilized fill slopes and surrounding disturbed areas were in place since October 1st.

For the December 5, 2005 inspection, where BMPs were installed in some disturbed areas but not in effective combinations, the days of violation are November 18, 2005, through December 5, 2005, based on the rationale that since no effective combination of erosion and sediment controls were observed at this location on November 17th, Tract 1990 could not have implemented an effective combination of erosion and sediment controls until some date after December 5, 2005. Therefore, for the December 5, 2005 inspection, 18 days of violation comprise November 18, 2005 (the day after staff observed Tract 1990 beginning to apply erosion controls to the Holly Drive fill prism), through December 5, 2005 (the date of staff's second inspection). November 17, 2005, was not included here because it is already counted as a day of violation for the earlier portion of this allegation associated with the November 17th staff inspection.

For the January 12, 2006 inspection, the edge of the Holly Drive fill prism remained unprotected, and the disturbed area above the fill slope continued to show that Tract 1990 did not apply an effective combination of erosion and sediment controls, as previously observed on December 5, 2005. Therefore, 38 days of violation comprise December 6, 2005, through January 12, 2006 (the date of staff's third inspection). Similarly, December 5, 2005, was not included here because it is already counted as a day of violation for the earlier portion of this allegation associated with the December 5, 2005 staff inspection.

Tract 1990's non-compliance reports for February 27, 2006, and April 23 – April 26, 2006, extend the period of non-compliance through April 26, 2006. Therefore, another 104 days of violation comprise January 13, 2006, through April 26, 2006.

15. Clean Water Act Section 301 prohibits discharging pollutants without a National Pollutant Discharge Elimination System (NPDES) Permit or Clean Water Act (CWA) Section 404 Permit.

CWA Section 401(a)(1) requires every applicant for a federal permit (e.g., a CWA Section 404 Permit) for an activity that may result in a discharge of pollutants to a water of the United States, to obtain State Water Quality Certification that the proposed activity will comply with State water quality standards, or a waiver from obtaining such certification. Nothing in the Construction Storm Water General Permit authorizes such discharge activities.

Tract 1990 placed large fill prisms (soil fill constructed to support a roadway or other structures) directly in seven creeks tributary to Lake Nacimiento. Tract 1990's consultants indicated that creek filling activities occurred between October 2004 and November 2005, provided engineering drawings describing the length of each creek section covered with fill sediment, and reported using a bulldozer (among other heavy equipment) to place fill in creeks. Based upon this data, staff estimates that, at a minimum, it required 166 passes with a bulldozer (assuming use of an eleven-foot wide blade) to cover the creek lengths to their natural high water depths. Each bulldozer pass represents a single action resulting in the filling of a creek section (discharge event), therefore a minimum of 166 violations occurred (each discharge event = one violation) that are subject to the maximum liability of \$10,000 per day per violation. In addition to filling these creek sections to their high water depths (generally one to four feet), Tract 1990 deposited sediment approximately 40 to 50 feet higher than that level to complete roadway construction. Therefore, staff's above estimate of the number of discharge events is much smaller than the number that would result if staff included the sediment above the high water depths in each creek.

Tract 1990 discharged pollutants to waters of the United States, without a NPDES Permit or CWA Section 404 Permit, as follows (creek designations and lengths according to Tract 1990's engineering drawings):

- a. Tract 1990 discharged fill sediment to Drainage B, Tributary B1, covering 370 linear feet of creek (Holly Drive fill prism near station 2+50, and near the intersection with Heritage Loop Road). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 34 discharge events occurred. The terms "Tributary" and "Reach" refer to particular sections of unnamed waters of the United States, according to Tract 1990's technical maps and plans.
- b. Tract 1990 discharged fill sediment to Drainage B, Reach R6, covering 310 linear feet of creek (Holly Drive fill prism near station 3+75, and near

the intersection with Heritage Loop Road). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 28 discharge events occurred.

- c. Tract 1990 discharged fill sediment to Drainage C, Reach R1, covering 347 linear feet of creek (Heritage Loop Road fill prism near station 66+50). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 32 discharge events occurred.
- d. Tract 1990 discharged fill sediment to Drainage D, Reaches R2 and R2A, covering 190 linear feet of creek (Heritage Loop Road fill prism near station 60+00). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 17 discharge events occurred.
- e. Tract 1990 discharged fill sediment to Drainage D, Reach R3, covering 205 linear feet of creek (Heritage Loop Road fill prism near station 60+00). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 19 discharge events occurred.
- f. Tract 1990 discharged fill sediment to Drainage D, Reach R5, covering 74 linear feet of creek (Heritage Loop Road fill prism near station 60+00). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 7 discharge events occurred.
- g. Tract 1990 discharged fill sediment to Drainage E, Reach R2, covering 322 linear feet of creek (Heritage Loop Road fill prism near station 44+00). Assuming Tract 1990 pushed the sediment into the creek from the side using an eleven-foot wide blade, approximately 29 discharge events occurred.

Tract 1990 therefore violated Clean Water Act Section 301 a minimum of 166 times from October 2004 through November 2005. This date range is based on oral and written statements by Tract 1990's consultants. Tract 1990 applied for CWA Section 401 Certification on May 23, 2006. Central Coast Water Board staff issued a certification only for activities scheduled after Tract 1990's application; therefore, that certification did not include the discharges described in 15.a through 15.g above. The discharged material remains in place in waters of the United States.

- 16. Central Coast Water Board staff discussed violations with Site personnel during inspections on November 17, 2005, December 5, 2005, and January

12, 2006, and documented violations in a Notice of Violation letter dated March 7, 2006. Staff mailed the Notice of Violation to Tract 1990 (by certified mail) and Site personnel.

17. Tract 1990 was enrolled under the Permit and violated multiple requirements of the Permit and Clean Water Act Section 301 from approximately October 2004 through April 26, 2006.
18. With respect to the alleged violations described in paragraphs 1 through 17, above, the Executive Officer has considered the following factors described in California Water Code section 13385(e), as discussed below:

- a. **Nature, circumstances, extent, and gravity of the violations:** Tract 1990 violated Permit requirements, the federal Clean Water Act, and the California Water Code by discharging sediment to waters of the United States, failing to implement BMPs according to the SWPPP, failing to develop BMPs according to the Permit's SWPPP requirements, failing to implement an effective combination of erosion and sediment controls, and depositing tens of thousands of cubic yards of sediment to waters of the United States without a permit pursuant to Clean Water Act Section 301.

Each of staff's three inspections showed increasing amounts of sediment deposited in surface waters, with creek impacts confirmed more than a mile downstream and reaching Lake Nacimiento. The non-certified, extensive fill was deposited in locations that the Central Coast Water Board would not have approved if Tract 1990 had submitted an application before the discharge occurred.

- b. **Discharge susceptibility to cleanup or abatement:** In general, storm water-related discharges are not susceptible to complete cleanup because pollutants or contaminants in such discharges often move rapidly downstream to other receiving waters, and disperse over extensive areas. In this case, sediment discharges impacted multiple drainages to Lake Nacimiento, and the Lake itself. The extent of sediment dispersion was likely reduced by the natural confinement the Lake provides. However, staff's November 6, 2006 inspection of the lower reaches of the drainage and the Lake (prior to substantial rains for this season, so Lake at low-water level) indicated substantial sediment deposits remained in the creek, and were deposited around the inlet to the Lake. Given the evidence of deposited sediment in the creeks from Tract 1990's Site to the Lake, it is reasonable to conclude Tract 1990 contributed to the sediment discharges to the Lake and the associated impacts.

At the direction of Department of Fish and Game staff, Tract 1990 conducted some sediment removal efforts using crews with shovels and buckets to

remove sediment. These efforts were limited in scope, confined to the upper drainage sections closer to the Site. No comprehensive cleanup actions were taken by Tract 1990 to remove the sediment from the creeks or the Lake, so the sediment was left in place and subject to further transport in successive storm events. In staff's best professional judgement, some lower sections of the impacted drainages could not have been cleaned up without further damaging the creeks.

- c. **Discharge toxicity:** There is evidence of sediment-laden storm water runoff discharged to Lake Nacimiento and drainages thereto, the beneficial uses of which include Wildlife Habitat [WILD], Cold & Warm Fresh Water Habitats [COLD & WARM], and Spawning, Reproduction, and/or Early Development [SPWN].

Sediment deposition to creeks and lakes can adversely affect the above beneficial uses by causing impacts commonly associated with toxicity (such as mortality or inhibiting reproduction). The impacted creeks do not flow year-round, and so support some of these beneficial uses for part of the year while the Lake supports them year-round.

- d. **Ability to pay and effect on ability to continue business:** Tract 1990 is a real estate developments business that appears to have sufficient equity in land and property to pay the liability.
- e. **Violation history:** The Central Coast Water Board has not taken previous enforcement actions against Tract 1990 for this project.
- f. **Voluntary cleanup efforts:** Tract 1990 deployed a manual labor crew to remove some of the sediment discharged. These efforts were limited to drainage sections close to the Site, and did not include all areas impacted by sediment discharges from the Site. However, Tract 1990 performed the cleanup at the request of the Department of Fish and Game staff.
- g. **Degree of culpability:** As the permitted party and owner of the Site, Tract 1990 is responsible for Permit compliance. Tract 1990, having signed the Notice of Intent to Comply with the Permit, was aware of the Permit's general construction requirements, including the requirement for Clean Water Act Section 404 Permit coverage for any dredge or fill activities, the prohibition against causing or contributing pollution or nuisance to waters of the United States, the requirement that storm water discharges shall not adversely impact receiving waters, and the requirement to develop and implement effective erosion and sediment control BMPs according to a site-specific SWPPP.

Tract 1990 and Central Coast Water Board staff independently documented repeated noncompliance at two locations on Holly Drive (near the intersection with Heritage Loop Road and at the end of Holly Drive), and on Heritage Loop Road near Delaney Place. Staff discussed noncompliance with Tract 1990 at each inspection; however, staff observed progressively worsening discharges from the site to surface waters in each subsequent inspection. There is no evidence that any of the violations were intentionally caused.

- h. **Economic benefit or savings:** During the period of violation alleged in this Stipulated Order, Tract 1990 realized economic benefit or savings by discharging sediment to waters of the United States, failing to implement BMPs according to the SWPPP, failing to develop BMPs according to the Permit's SWPPP requirements, failing to implement an effective combination of erosion and sediment controls, and depositing tens of thousands of cubic yards of fill to waters of the United States without a permit pursuant to Clean Water Act Section 301. BMP-related sources of economic benefit include the costs of BMPs in unstabilized areas, costs of BMPs installed in insufficient quantities as required by Site conditions, maintenance cost savings realized from delays in BMP installations, savings in Tract 1990 staff (or sub-contracted personnel) time to implement BMPs, and savings realized by avoiding design and location changes related to fill activities. Tract 1990's economic benefit of violating the Permit and the Clean Water Act may have been reduced because it was ultimately required to install and maintain additional BMPs after the violation period addressed in this Stipulated Order.

During the period of violation addressed in this Stipulated Order, Tract 1990 did install some erosion and sediment controls at the construction site. Staff estimates that Tract 1990 deployed erosion and sediment controls sufficient for approximately 30 percent of the total area disturbed. Tract 1990 should have installed, at a minimum, an effective combination of erosion and sediment controls on all disturbed areas during the rainy season. The disturbed area of the construction site is approximately 71 acres. Based on a survey of consultants, it costs approximately \$2,000 to \$6,000 per acre to provide the minimum erosion and sediment control measures for construction sites depending on the soil type. Staff estimates the cost to provide minimum erosion and sediment controls for the disturbed areas of the site is \$2,000 per acre. Therefore, the estimated economic benefit for not stabilizing the remaining 70 percent of the construction site with an effective combination of erosion and sediment control measures is calculated by multiplying \$2,000 per acre by 70% of the disturbed area, or:

$$(71 \text{ acres}) \times (0.70) \times (\$2,000 \text{ per acre}) = \$99,400.$$

The total BMP-related economic benefit for the project is estimated at \$99,400.

- i. **Other matters as justice may require:** Central Coast Water Board staff spent time traveling to and inspecting the Site, and preparing and reviewing documents related to this enforcement action. Estimated staff costs (including Central Coast Water Board technical staff, administrative staff, supervisors, and legal counsel) are thirty-three thousand dollars (\$33,000).

$$\$75/\text{hour} \times 440 \text{ hours} = \$33,000$$

Maximum Liability – Pursuant to California Water Code Section 13385, the Central Coast Water Board can impose civil liability for up to ten thousand dollars (\$10,000) per day for each violation of waste discharge requirements and Clean Water Act Section 301. Waste discharge requirements include NPDES permits (California Water Code Section 13374). Tract 1990 was in violation of multiple requirements of the Permit from October 1, 2005, through April 26, 2006. Tract 1990 was in violation of Clean Water Act Section 301 from approximately October 2004 through November 2005. Per the above allegations, 673 violations are subject to the maximum civil liability of \$10,000 per day per violation. The maximum liability the Central Coast Water Board may impose on Tract 1990 is therefore **six million, seven hundred and thirty thousand dollars (\$6,730,000)**.

The following table summarizes the maximum liability for each allegation.

Allegation No.	Daily Violations	Max. Liability per Daily Violation	Max. Liability
9	23	\$10,000	\$230,000
11 and 12	104 (same days for both)	\$10,000	\$1,040,000
13	172	\$10,000	\$1,720,000
14	208	\$10,000	\$2,080,000
15	166	\$10,000	\$1,660,000
Total Maximum Liability			\$6,730,000

Minimum Liability – In accordance with California Water Code Section 13385, the minimum liability the Central Coast Water Board may impose is recovery of economic benefits (if any) derived from the violations.

THE CENTRAL COAST WATER BOARD EXECUTIVE OFFICER AND TRACT 1990, LLC HEREBY STIPULATE AS FOLLOWS:

- A. The Executive Officer of the Central Coast Water Board, on behalf of the Central Coast Water Board Prosecution Team, and Tract 1990, LLC

(collectively referred to as "The Parties") agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Central Coast Water Board for adoption. If the Executive Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Central Coast Water Board. Tract 1990 agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

- B. Upon adoption by the Central Coast Water Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted by the Central Coast Water Board based on the specific facts alleged in this Stipulated Order against Tract 1990 and its subsidiaries, corporate parents, affiliates, successors, heirs, assigns, and their officers, directors, partners, employees, representative agents, and attorneys, as of the effective date of this Stipulated Order.
- C. The Parties agree to support, advocate for, and promote the Stipulated Order before the Central Coast Water Board.
- D. The Parties covenant and agree that they will not contest the Stipulated Order before the Central Coast Water Board, the State Water Resources Control Board, or any court.
- E. Tract 1990 agrees to remit \$400,000 to the State Water Resources Control Board on or before December 31, 2008, as provided for in this Stipulated Order.
- F. Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulations. However, this Stipulated Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Stipulated Order may be used as evidence of a prior enforcement action in any future actions by the Central Coast Water Board against Tract 1990.
- G. Tract 1990 expressly denies any economic benefit or savings alleged in paragraph 18.h.
- H. The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are

raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

- I. In the event that this Stipulated Order does not take effect because it is not approved by the Central Coast Water Board, 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 related to their efforts to settle 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
- J. Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
- K. This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
- L. This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Coast Water Board.
- M. This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED


Roger Briggs
Executive Officer
On behalf of the Central Coast Water Board Prosecution Team

Date

Approved as to Form:

David Boyers, Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
Attorney for Central Coast Water Board Prosecution Team

Date



David Singelyn
Vice President
Tract 1990, LLC

07-22-2008

Date

Approved as to Form:

Thomas D. Green, Esq.
Adamski, Moroski, Madden & Green LLP
Attorney for Tract 1990

Date

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE CENTRAL COAST WATER BOARD FINDS THAT:

1. Issuance of this Stipulated 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 Stipulated Order, the Central Coast Water Board has considered all the factors prescribed in California Water Code section 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.

IT IS HEREBY ORDERED, pursuant to section 13385(c) of the California Water Code and section 11415.60 of the California Government Code that Tract 1990, LLC is assessed a civil liability of **\$400,000**, to be paid on or before December 31, 2008.

Of this amount, \$200,000 in civil liability is assessed for violations of California Water Code section 13385(a)(2), and, pursuant to section 13385(n)(1), shall be deposited into the State Water Pollution Cleanup and Abatement Account. The remaining \$200,000 in civil liability is assessed for violations of California Water Code section 13385(a)(5) and, pursuant to section 13385(n)(2)(A), shall be deposited into the Waste Discharge Permit Fund.

Tract 1990 is ordered to submit the payment in the form of two checks in the amount of \$200,000, one payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, and the other payable to the *State Water Resources Control Board Pollution Cleanup and Abatement Account*. Each check shall indicate on it the number of this Stipulated Order. Tract 1990 shall send the original signed checks to State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Roger Briggs, Executive Officer, Central Coast Water Quality Control Board, Central Coast Region, 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.

I, Roger Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Central Coast Water Quality Control Board on September 5, 2008.

Roger W. Briggs
Executive Officer

Date