

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Coast Unified School District (CUSD) and the Central Coast Regional Water Quality Control Board (Central Coast Water Board). CUSD and the Central Coast Water Board are each described herein as “Party” and collectively as “Parties.”

RECITALS

1. State Water Resources Control Board Order No. 99-08-DWQ establishes the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit).
2. On March 12, 2004, CUSD filed a Notice of Intent for the Cambria Elementary School construction site (Site) with the State Water Resources Control Board, for permit coverage pursuant to the Permit.
3. Regional Board Administrative Civil Liability Complaint No. R3-2005-0012 (Complaint) alleges that CUSD violated provisions of the Permit, for which the Central Coast Water Board may impose civil liability pursuant to Section 13385 of the Water Code. CUSD denies these allegations.
4. Without any admission of liability, CUSD agrees to: 1) place certain funds specified below in a fund, with those funds to be held in trust and used for one or more approved supplemental environmental projects; and 2) pay a certain sum specified below for Central Coast Water Board staff costs.
5. The Parties desire to settle all disputes between them relating to the Site occurring on or before the effective date of this Settlement Agreement (the “Dispute”). This Settlement

Agreement has been negotiated in good faith and CUSD enters into it without any admission of liability or adjudication of any issue of law or fact.

6. The California Administrative Procedures Act in Government Code §11415.60 provides that an agency, including the Central Coast Water Board, may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Section 11415.60 also states that the settlement may not be contrary to statute or regulation, except the settlement may include sanctions the agency would otherwise lack power to impose.

AGREEMENT

NOW THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement, and for other valuable consideration, and intending to be bound by this Agreement, CUSD and the Central Coast Water Board agree as follows:

1. Recitals: Each of the Recitals set forth above is true and is hereby specifically incorporated into the Settlement Agreement.
2. CUSD Payment: Following the Central Coast Water Board's adoption of the stipulated order attached to this Settlement Agreement as Exhibit A (Stipulated Order), and incorporated herein by this reference, CUSD shall pay Central Coast Water Board staff costs of Eight Thousand Five Hundred and Fifty Dollars (\$8,550). The warrant shall be made payable to the State Water Resources Control Board and delivered to the Central Coast Water Board office in San Luis Obispo, attention Jennifer Bitting, within thirty (30) days after the effective date of this Settlement Agreement; provided, however, that if the Stipulated Order is adopted at the Water Board July 2005 meeting, the Executive Officer shall not take any action pursuant to Section 13328 of the Water Code if CUSD makes such payment prior to September 6, 2005 and

that a failure to pay before September 5, 2005 shall not be a breach of this Settlement Agreement.

3. Supplemental Environmental Projects: CUSD shall deposit Two Hundred and Ninety One Thousand, Four Hundred and Fifty Dollars (\$291,450) into a San Luis Obispo County Community Foundation fund (Fund) by warrant made payable to the San Luis Obispo County Community Foundation (Foundation) within forty-five (45) days after the effective date of this Settlement Agreement or within forty-five days after the Executive Officer and the Foundation execute the agreement described in Paragraph 5 of the Stipulated Order, whichever is later. The Executive Officer may extend this date, pursuant to Paragraph 6 of the Stipulated Order. The funds will be held in trust and disbursed as described in the Stipulated Order to pay for one or more “Supplemental Environmental Projects” pursuant to the State Water Resources Control Board’s Water Quality Enforcement Policy. The currently approved Supplemental Environmental Projects are, in the following priority, and briefly:

a. Fish Barrier Removal Project at Ferasci Road – the existing concrete structure with culverts and a marginally functional fish passage device would be modified or replaced to promote increased passage of migrating steelhead trout to their native spawning grounds;

b. Santa Rosa Creek Watershed Enhancement Plan – this project would characterize the quality of water and fisheries habitats of Santa Rosa Creek and make recommendations for the repair of damaged areas and the protection of existing high quality areas. Fisheries survey information, water quality testing and basic hydrologic functioning will be researched for the Santa Rosa Creek Basin and the results used to determine actions to assure the quality of water and habitat areas;

c. Bank Stabilization Project at East Ranch – this project would improve riparian habitats of Santa Rosa Creek through removal of non-native plants and planting of native riparian species, weed management and replanting plans and implementation including weed management priorities and methods. It would also stabilize the stream banks of the Santa Rosa Creek through a hydraulic survey, analysis and restoration plan.

d. Forest Management Project – this Project would address watershed management issues in the lower Santa Rosa Creek watershed basin through managing forested components to increase water quality and quantity and lessen impacts of flooding, erosion and siltation. It would affect aquatic species dependent upon clean water and gravels, address non-point and point source pollution from urban runoff from drainage areas emptying into Santa Rosa Creek, and manage fuel loads to prevent catastrophic fires that could create erosion and siltation issues in the lower watershed basin.

If, for whatever reason, the Central Coast Water Board desires at any time to use some or all of the deposited funds on a project that is not listed here, it shall first obtain CUSD's written approval for the use of funds on that project. The Central Coast Water Board shall require any grantee, trustee or other entity providing an annual accounting report regarding the use of the deposited funds to provide a copy of any such report to CUSD. The Central Coast Water Board will provide such reports if the grantee, trustee, or other entity fails to do so. Nothing in this Settlement Agreement or the Stipulated Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.

4. Failure to Comply with Order: If CUSD fails to make the payment required by Paragraph 2 or Paragraph 3 in accordance with the terms of the Stipulated Order, the Central Coast Water Board Executive Officer may pursue enforcement of this Settlement Agreement or may enforce the Stipulated Order in accordance with the Porter-Cologne Water Quality Control Act (Cal. Wat. Code sect. 13000 et seq.).

5. Conditions Precedent: This Settlement Agreement is expressly conditioned upon, and shall not become effective in whole or in part, until after all of the following have occurred:

a. CUSD's Board of Trustees has approved and executed this Settlement Agreement;

b. The thirty (30) day period for public comment on the Settlement Agreement and Stipulated Order, in the exact form attached hereto as Exhibit A, required by the Clean Water Act and the State Water Resources Control Board's Water Quality Enforcement Policy has expired;

c. The Executive Officer of the Central Coast Water Board has approved and executed this Settlement Agreement.

d. Central Coast Water Board staff proposes to the Central Coast Water Board that it approve or ratify the Settlement Agreement and adopt the Stipulated Order in the exact form attached hereto as Exhibit A;

e. The Central Coast Water Board has adopted an Administrative Civil Liability Order in the exact form as the Stipulated Order attached as Exhibit A, authorized the Executive Officer to execute it, the Executive Officer has executed it, and notice of such adoption and execution has been provided to CUSD in writing.

6. Release: Central Coast Water Board agrees that CUSD's timely performance of the payment obligations set forth in Paragraphs 2 and 3 above shall constitute full and complete satisfaction of any and all potential CUSD liability for the Dispute. Central Coast Water Board agrees not to be a party to, cooperate or participate in except as required by law, any claim, suit, counterclaim, third party complaint or proceeding against CUSD by a public entity, agency or officer which is based upon or concerns the Dispute. Central Coast Water Board further agrees that neither the Stipulated Order nor the payments shall be referred to or utilized by the Central Coast Water Board as any kind of prior violation for liability or civil penalty purposes in any future proceedings. This covenant not to sue shall not prevent Central Coast Water Board from carrying out responsibilities required by law, including compliance with subpoenas and the Public Records Act, California Government Code section 6250 et. seq. Upon timely performance of the payment obligations set forth in Paragraphs 2 and 3 herein, the Central Coast Water Board releases and forever discharges CUSD and its respective officers, Board of Trustees, members of its Board of Trustees, employees, agents, attorneys, representatives, successors and assigns from any and all claims, demands, controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees, civil penalties, civil liability and damages of whatever character, nature or kind, in law or in equity, whether fixed or contingent, whether apparent or concealed, whether or not known, suspected or claimed, that are based upon or concern the Dispute. This release is made notwithstanding section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

7. Central Coast Water Board's Reservation of Rights: This Settlement Agreement relates only to the Site. The Central Coast Water Board and its Executive Officer reserve all rights to take enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders, for past, ongoing or future violations of the Permit at or related to any other CUSD construction site, for violations that occur at the Site after the effective date of this Settlement Agreement, or for violations that relate to any waste discharge requirements other than the Permit.

8. Party Authorizations: Each Party represents and warrants to the other Party that the Party has taken, or has agreed to take, all action on its part necessary for the authorization, execution and delivery of the Settlement Agreement. Each person signing this Settlement Agreement represents and warrants that he or she has full authority to do so on behalf of the Party on whose behalf he or she has signed, and that that Party is thereby bound by the terms of this Settlement Agreement.

9. No Admissibility: The Parties agree that neither the fact of execution nor any of the terms of this Settlement Agreement or the Stipulated Order shall be admissible in any pending or future proceeding between the Parties, except in a proceeding to enforce the terms of the Settlement Agreement or the Stipulated Order.

10. Successors: This Settlement Agreement shall be binding upon and for the benefit of the Parties released herein, as well as their respective successors, devisees, trustees, receivers, executors, representatives and assigns, and each of them.

11. Notice: If any Party to this Settlement Agreement is required to, or elects to, give written notice, he, she or it shall do so in the manner set forth in this paragraph. Any written notice shall be sent by both facsimile transmission and first-class mail to each of the following representatives of the Parties. Notice shall be deemed to be given on the date received by

facsimile transmission, if such notice is given by facsimile transmission to all recipients between 9:00 a.m. and 5:00 p.m. on a weekday. If notice is given by facsimile transmission after 5:00 p.m. on a weekday or on a weekend day or a recognized holiday, the notice shall be deemed received on the next succeeding workday.

The persons who are authorized to receive notice are as follows:

For Coast Unified School District:

Dr. Pamela Martens
Superintendent
Coast Unified School District
2950 Santa Rosa Creek Road
Cambria, California 93428
Facsimile: (805) 927-4615

For Central Coast Regional Water Quality Control Board:

Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401
Facsimile: (805) 543-0397

12. Effective Date: The effective date of the Settlement Agreement is the first calendar date on which all conditions precedent are satisfied.

13. Governing Law: This Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

14. Counterparts: The Parties may execute and deliver this Settlement Agreement in any number of counterparts or copies, and each counterpart shall be deemed an original and taken together shall be considered to be the entire Settlement Agreement.

15. Entire Agreement: This Settlement Agreement, including the Stipulated Order attached as Exhibit "A," constitutes the entire agreement of the Parties with respect to the matters stated herein, and may not be modified, amended or waived except in a written instrument duly executed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement by their duly authorized representatives.

COAST UNIFIED SCHOOL DISTRICT

By: _____
Pamela Martens
Superintendent

Date Signed: _____

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

By: _____
Roger W. Briggs
Executive Officer

Date Signed: _____

EXHIBIT A

CALIFORNIA CENTRAL COAST WATER QUALITY CONTROL BOARD

**CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906**

ADMINISTRATIVE CIVIL LIABILITY

STIPULATED ORDER NO. R3-2005-0012

Issued to:

**Coast Unified School District
Cambria Elementary School
San Luis Obispo County**

The California Central Coast Water Quality Control Board, Central Coast Region (“Water Board”), finds:

1. Coast Unified School District (hereafter CUSD owns the Cambria Elementary School construction site at 3223 Main Street, Cambria, San Luis Obispo County (hereafter Site).
2. On March 12, 2004, CUSD filed with the State Water Resources Control Board a Notice of Intent to comply with the terms of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).
3. The Permit requires CUSD to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Permit Section A, and “implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.”
4. Water Board staff and Morro Group inspected the site on several occasions and documented multiple alleged violations, including discharge without appropriate Best Management Practices (BMPs), inadequate SWPPP, and ineffective and un-maintained BMPs.
5. On January 12, 2005, the Water Board’s Executive Officer issued Administrative Civil Liability Complaint No. R3-2005-0012 (Complaint) which alleges that CUSD violated provisions of the Permit while engaged in construction activities at the Site, for which the Water Board may impose civil liability pursuant to Section 13385 of the Water Code.
6. Both Water Board staff and Morro Group monitors observed additional alleged violations after the Complaint was issued. CUSD denies the allegations in paragraphs 4, 5 and 6.
7. Water Board staff and CUSD met numerous times to discuss settlement. A proposed Settlement Agreement, which is subject to a public comment period and Central Coast Water and CUSD Board approval was reached.
8. Water Board staff costs for investigating this alleged incident and follow-up (technical, legal, and administrative) were alleged to be approximately \$8,550, as set forth in the Settlement Agreement.
9. Based upon the terms of this Order and the signed Settlement Agreement, CUSD, without admission of liability, agrees to deposit Two Hundred and Ninety One

Thousand, Four Hundred and Fifty Dollars (\$291,450) into a San Luis Obispo County Community Foundation (Foundation) trust fund. The funds will be disbursed at the direction of the Water Board Executive Officer, and will be used as described below.

10. CUSD's satisfactory completion of its obligations under this Order will resolve all disputes between the Water Board and CUSD relating to the Site, that occurred on or before the Effective Date of the Settlement Agreement ("the Dispute").

11. Based upon the terms of this Order and the Settlement Agreement, CUSD, without any admission of liability or adjudication of any issue of law or fact, agrees to pay the sums specified below. This order is based upon CUSD's agreement and is for the purpose of enforcement of payment of the sums set forth herein by CUSD.

12. This action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.

IT IS HEREBY ORDERED, AS STIPULATED BETWEEN THE PARTIES:

1. CUSD, without admitting liability, shall pay Water Board staff costs of Eight Thousand Five Hundred and Fifty Dollars (\$8,550). The warrant shall be made payable to the State Water Resources Control Board and delivered to the Water Board within thirty days after the effective date of the Settlement Agreement; provided, however, that if this Order is adopted at the July 2005 Water Board meeting, the Executive Officer shall not take any action pursuant to Section 13328 of the Water Code if CUSD makes such payment prior to September 6, 2005 and that a failure to pay before September 5, 2005 shall not be a breach of the Settlement Agreement.
2. CUSD, without admitting liability, shall deposit Two Hundred and Ninety One Thousand, Four Hundred and Fifty Dollars (\$291,450) into a San Luis Obispo County Community Foundation ("Foundation") trust fund account (Fund) by warrant made payable to the San Luis Obispo County Community Foundation within forty-five days after the Executive Officer and the Foundation execute the agreement described in Paragraph 5 or, within forty-five days after the Settlement Agreement becomes final, whichever is later. The Executive Officer may extend this date pursuant to Paragraph 6. These funds shall be used towards completion of a Supplemental Environmental Project (SEP), the fish barrier removal project at Ferasci Road. If CUSD does not deposit the funds by the relevant date, the Water Board may proceed as set forth in the Settlement Agreement.
3. The Central Coast Water Board Executive Officer shall use the following milestones to evaluate the timely and successful completion of the fish barrier removal project at Ferasci Road. CUSD has no obligation to ensure that these milestones are met:
 - a. Intent to proceed with the project, and permission by all applicable property owners and the County, as appropriate, by January 7, 2006.
 - b. Compliance with all CEQA requirements by January 7, 2006.
 - c. Demonstration that sufficient additional funds have been acquired to complete the project by July 7, 2007.
 - d. Commencement of construction by August 7, 2008.
 - e. Completion of construction by December 7, 2008.

4. The Water Board Executive Officer shall direct the distribution of the funds. Notwithstanding any contractual agreements between the Foundation and any third party, the Executive Officer shall not authorize payment of any invoice unless the work being invoiced has been completed to the Executive Officer's satisfaction.
5. CUSD shall have no further obligations under this Order and the Settlement Agreement following deposit of the funds in the Foundation Fund and payment of the amount in Paragraph 1. However, the Executive Officer shall enter into an agreement with the Foundation that includes the following provisions. CUSD shall not be required to make the deposit described in Paragraph 2 until forty-five days after the Foundation agreement is fully executed or forty-five days after the effective date of the Settlement Agreement, whichever is later. The required provisions are:
 - a. The Foundation shall not enter into any grant or other contract for the foregoing project until the Executive Officer approves project specifications, milestones and reporting requirements consistent with this Order and the State Water Resources Control Board's Water Quality Enforcement Policy.
 - b. The Foundation shall not make progress or other payments to any Grantee until the Executive Officer provides written notice that all milestones associated with the payment have been completed to Executive Officer's satisfaction.
 - c. If any milestone is not completed to the satisfaction of the Executive Officer by the date of that milestone, and after reasonable efforts by the Water Board to get the project back on time, unless the Water Board or Executive Officer extends the time schedule pursuant to Paragraph 6, all funds remaining in the Fund shall be directed to the following projects, in this order of priority:
 - i. Santa Rosa Creek Watershed Enhancement Plan
 - ii. Bank Stabilization Project at East Ranch
 - iii. Forest Management Project
 - d. The Foundation shall not enter into any grant or other contract for the projects in Paragraph 5c until the Executive Officer approves project specifications, milestones and reporting requirements consistent with this Order and the State Water Resources Control Board Enforcement Policy. If any milestones for the Santa Rosa Creek Watershed Enhancement Plan are missed, and after reasonable efforts by the Water Board to get the project back on time, unless extended by the Executive Officer, the remaining funds shall be directed to the Bank Stabilization Project at East Ranch. If any milestones for the Bank Stabilization Project are missed, and after reasonable efforts by the Water Board to get the project back on time, unless extended by the Executive Officer, the remaining funds shall be directed to the Forest Management Project.
 - e. The Foundation shall provide the Executive Officer and CUSD with an annual accounting.
 - f. The Foundation shall pay any funds remaining in the Fund, as of July 7, 2020, to the State Water Resources Control Board's Cleanup and Abatement Account, unless the Executive Officer or the Central Coast Water Board extends this milestone pursuant to Paragraph 6.
 - g. The Foundation shall not enter into any grant or contract unless the Executive Officer or counsel for the Water Board approves the grant or contract as to form.
 - h. The Foundation may subtract its fees from the Fund containing the Two Hundred and Ninety One Thousand, Four Hundred and Fifty Dollars (\$291,450), which fees shall not exceed two per cent of the total.
 - i. Any Grant contract shall require that, prior to commencing construction, any Grantee must obtain the Executive Officer's approval of construction milestones.
 - j. Any Grant contract shall require that the Grantee must provide the Executive Officer and CUSD with an Annual Report describing the progress of the SEP. The Annual Report

shall include the tasks completed in the past year and describe the tasks that are planned for the year to come. The Annual Report shall be submitted on or before July 7 of each year until the funds are depleted or the project is complete.

- k. The Foundation or Grantee(s) shall provide the Water Board with a post-project accounting of expenditures.
 1. If, for whatever reason, the Water Board desires at any time to use some or all of the deposited funds on a project that is not listed here, it shall first obtain CUSD's written approval for the use of funds on that project. Should an agreement with the Foundation not be reached after reasonable effort, the Water Board may propose for CUSD's written approval another trustee to hold in trust the funds to be deposited.
6. The Water Board hereby reserves jurisdiction to extend all timelines set forth in this Order, which shall then extend the same timelines in the Settlement Agreement. The Water Board or the Executive Officer may extend the deadline for any milestone if the Water Board, or the Executive Officer, determines that the delay was beyond the reasonable control of the person(s) (e.g. Foundation or its Grantee(s) or contractors) responsible for meeting the milestone.
7. CUSD shall have no further obligations under this Order following deposit of the funds with the Foundation and payment of the amount in Paragraph 1. CUSD shall have no liability for any failure of the Foundation or its Grantee(s) or contractors to comply with the terms of this Order.
8. This Order shall not become final until the Central Coast Water Board has provided 30 days public notice in accordance with 40 CFR 123.27.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Quality Control Board on July 7, 2005.

Roger W. Briggs, Executive Officer

Date