

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906**

**ADMINISTRATIVE CIVIL LIABILITY  
ORDER NO. R3-2005-0067**

Waste Discharger Identification No. 3 44C330064

**Issued to:**

**City of Santa Cruz, Department of Parks and Recreation  
De Laveaga Golf Course, Santa Cruz  
Santa Cruz County**

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

1. The City of Santa Cruz Parks and Recreation Department (Discharger) owns and operates the 108.5-acre De Laveaga Golf Course (Site), located at 401 Upper Park Road in Santa Cruz, Santa Cruz County.
2. On August 19, 1999, the State Water Resources Control Board (State Board) adopted *Order No. 99-08-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002* (Permit). 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.), the Permit, as amended, serves as waste discharge requirements regulating storm water discharges associated with construction activity of sites disturbing one acre or more.
3. On May 27, 2003, Mr. Steve Hammack, Superintendent of Parks, signed the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003* on behalf of the City of Santa Cruz. This document identifies significant impacts relating to construction activities at the Site and mitigation measures that would be incorporated into the project design, or as conditions of approval, to ensure potential significant environmental impacts would not be significant. Mitigation Measure #3 of the document specifically addresses mitigation for potential erosion, sedimentation, and water quality impacts to adjacent drainages due to grading and construction.
4. On July 22, 2003, the Santa Cruz City Council adopted a resolution adopting the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003*.
5. On September 16, 2004, Mr. Hammack signed a Notice of Intent (NOI) to comply with the Permit on behalf of the City of Santa Cruz.
6. The Permit requires the Discharger 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."
7. On December 8, 2004 and January 12, 2005 Central Coast Water Board staff inspected the Site and determined the Discharger was in violation of Permit requirements. One week before the

December inspection, Central Coast Water Board staff informed the Discharger of the exact date of staff's planned inspection. Based on observations of Site conditions, discussions with Site personnel, and information later submitted by the City, the period of violation is at least from September 20, 2004 through April 4, 2005, a total of one hundred ninety-seven (197) days.

8. Violations that occurred during this period include the following:

- a. **Storm Water Pollution Prevention Plan** (*Permit item C.2*) – The Discharger must develop and implement a SWPPP in accordance with Permit 'Section A'.

September 20, 2004 to April 4, 2005 – The SWPPP does not comply with Permit 'Section A'. Until January 14, 2005 the SWPPP was not signed. (Other deficiencies are included in following sections.) Failure to develop a SWPPP in accordance with Permit 'Section A' is a violation of Permit item C.2.

December 8, 2004 – Staff briefly reviewed the Site's SWPPP at the end of the inspection. The SWPPP (dated August 2004) was not signed, did not document amendments, and did not document personnel training. Additionally, the Site map identified locations for various BMPs, but those BMPs were not fully implemented on site. Failure to develop a SWPPP in accordance with Permit 'Section A' and failure to implement the SWPPP are violations of Permit item C.2.

January 12, 2005 – The Site's SWPPP was not reviewed during the inspection, however, at the time of inspection, Mr. Hicks said the site map had not been revised to reflect their decision to use fewer fiber rolls than prescribed in the SWPPP. The SWPPP was not signed until January 14, 2005. Failure to develop a SWPPP in

accordance with Permit 'Section A' and failure to implement the SWPPP are violations of Permit item C.2.

- b. **Pollutants** (*Permit item C.2 and 'Section A' item 1.c*) – The Discharger must implement measures to reduce or eliminate pollutants in storm water discharges.

The Site's August 2004 SWPPP (Section III.B. Practices to Minimize Contact with Storm Water, item 1) specifies:

“During rainy periods, the Contractor will store materials in covered areas and within secondary containment (such as earthen dikes, horse troughs or spill blanket, with surrounding berms.) All chemicals stored on the site will be stored in a lockable storage shed, in their original container, and well labeled.”

December 8, 2004 – Central Coast Water Board staff observed and photographed gasoline containers exposed to rain and runoff in the contractor's staging/storage yard, outside a storage shed. Failure to implement measures to reduce or eliminate pollutants and failure to implement the SWPPP are violations of Permit item C.2 and 'Section A' item 1.c.

January 12, 2005 – Central Coast Water Board staff observed and photographed a variety of chemical containers and batteries exposed to rain and runoff in the contractor's staging/storage yard, outside a storage shed. Failure to implement measures to reduce or eliminate pollutants and failure to implement the SWPPP are violations of Permit item C.2 and 'Section A' item 1.c.

- c. **Erosion Control** (*Permit item C.2 and 'Section A' item 6*) – The Discharger must implement an effective

combination of erosion and sediment control on all disturbed areas during the rainy season.

The Site's August 2004 SWPPP (Section III.B. Practices to Minimize Contact with Storm Water, item 1) specifies:

"Erosion and sediment transport control mechanisms will be put in place prior to the onset of the first major winter storms to avoid discharge from the construction sites into the drainage ways."

The SWPPP (Section IV.B. Control Practices to Prevent a Net Increase of Sediment Load in Storm Water Discharges, items 1 and 2) specifies:

"1. The soils exposed during grading operations will typically be seeded as soon as each area is finished (ESC10). Temporary sedimentation measures such as silt fences, sand bags, and fiber rolls (ESC50, ESC52, SC8) will be installed along the limits of grading to prevent increased sediment load to drainage areas, where appropriate to the small construction envelopes.

"2. The graded slopes on the project are to be gentle in nature – an overall design maximum at 4:1, with some variation up to 3:1 – and all disturbed areas to be seeded..."

The SWPPP includes a matrix named "SWPPP Best Management Practices Matrix, Erosion, Sediment and Dust Control for Given Sites." The matrix also prescribes BMP number ESC10 (Seeding and Planting) for protecting slopes and channels. The SWPPP fact sheet for this BMP specifies Seeding and Planting is:

"Appropriate for site stabilization both during construction and post-construction."

September 20, 2004 to April 4, 2005 –

The SWPPP is not clear as to whether or not it prescribes erosion control ESC10 (Planting and Seeding) for use after grading completion or after construction completion. If ESC10 is not prescribed as a temporary erosion control measure to be implemented after grading, the SWPPP is deficient, and failure to develop an adequate SWPPP is a violation of Permit item C.2 and 'Section A' item 6. (If ESC10 is prescribed for use as a temporary erosion control measure, then the Discharger failed to implement the SWPPP, which is a violation of Permit item C.2 and 'Section A' item 6 as described below.)

December 8, 2004 – There were large areas of exposed soil with no erosion controls. Lack of erosion controls contributed to silt fence failure at Greens Complex 18, Greens Complex 5, and various tees. Disturbed areas had no erosion controls covering erodible soil. The Discharger's failure to implement an effective combination of erosion and sediment controls on all disturbed areas during the rainy season and failure to implement the SWPPP are violations of Permit item C.2 and 'Section A' item 6.

January 12, 2005 – Disturbed areas had no erosion controls covering erodible soil. The Discharger's failure to implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season and failure to implement the SWPPP are violations of Permit item C.2 and 'Section A' item 6.

- d. **Sediment Control** (*Permit item C.2 and 'Section A' item 8*) – The Permit requires sediment controls at appropriate locations along the site perimeter and at all operational storm

drain inlets. Effective filtration devices, barriers, and settling devices shall be selected, installed, and maintained properly. Sediment controls are required at all times during the rainy season.

The Site's August 2004 SWPPP (Section III.B Practices to Minimize Contact with Storm Water, item 1) specifies:

“Erosion and sediment transport control mechanisms will be put in place prior to the onset of the first major winter storms to avoid discharge from the construction sites into the drainage ways.”

The SWPPP includes a matrix named “SWPPP Best Management Practices Matrix, Erosion, Sediment and Dust Control for Given Sites” (this page of SWPPP is not numbered). The matrix prescribes the following BMPs: ESC50 (Silt Fence) and SC5 (Fiber Rolls), for protecting slopes and channels. The SWPPP fact sheets for these BMPs specify appropriate BMP installation and maintenance. The ESC50 (Silt Fence) fact sheet maintenance requirements include: silt fence inspection weekly and after each rainfall, silt fence repair wherever fence is damaged, and sediment removal when sediment reaches 1/3 the fence height. The fact sheet also specifies the following silt fence limitation:

“Do not use in streams, channels, or anywhere flow has concentrated.”

The SWPPP map (identified in Section II.B. Site Map) specified where silt fence and fiber rolls are required.

December 8, 2004 – In various areas throughout the site, sediment controls, when present, were not effectively filtering sediment:

- There were several discharges of sediment-laden water from failing silt fences along the Site perimeter. Failure was partly attributable to the significant sediment load from erodible slopes (without erosion controls), improperly installed or unmaintained silt fencing, and concentrated pipe discharges on the upstream side of silt fences.
- The drain in Greens Complex 18 had no sediment controls.
- Stockpiles in the clubhouse parking lot had no erosion or sediment controls, and sediment-laden runoff from the parking lot was discharging off-site.
- Sediment from Tee Complex 1 buried the curb and a paved golf cart path directly adjacent to the main street.
- Sediment controls were not installed in full accordance with the SWPPP map.
- The onsite pond is an existing feature, and was not designed as a sediment basin. The pond contained sediment-laden water from the Site and was discharging without sediment controls.

Lack of effective sediment controls and failure to implement and maintain sediment controls in accordance with the SWPPP are violations of Permit item C.2 and ‘Section A’ item 8.

January 12, 2005 – Although some work had been done to maintain, repair, replace, and/or install sediment controls since the last inspection, there were still sediment controls in need of maintenance, repair, and/or replacement.

- Throughout the site, silt fences were improperly installed, damaged, and intentionally bypassed with pipes. In

Greens Complex 5, the purpose of the pipes was reportedly to direct runoff to turf areas and use turf as a bioswale. However, the flow was concentrated through the pipes and the turf was on a slope just above the discharge point at Greens Complex 5. Evidence showed the sediment-laden water had reached the discharge point. Sandbags at the discharge point had sediment on them, and there was sediment in the canyon just below the discharge point. In other areas on Site where pipes had been placed through or under silt fences, riprap was placed below pipe discharges to dissipate discharge, but there were no sediment controls or turf. Placing pipes through or under silt fencing does not remove sediment from runoff and is not a design or practice that is endorsed anywhere in the SWPPP.

- The drain at Greens Complex 18 was not adequately protected; filter fabric covering the drain had a hole in it. At least two drain inlets in other areas were not protected.
- Fiber rolls were placed above the curb along Tee Complex 1, but the fiber rolls were deteriorating and in need of replacement. Fiber rolls placed on slopes in two areas were not effective, as evidenced by rills on slopes. Fiber rolls in Greens Complex 18 were not installed properly, as they were not installed in accordance with SWPPP fact sheet SC5 (Fiber Rolls).
- According to Mr. Hicks, the SWPPP map had not yet been revised. Sediment controls were not installed in full accordance with the SWPPP map.
- The onsite pond was receiving sediment-laden water from construction areas and there were no sediment controls at the pond to

remove sediment before discharge. The pond was discharging sediment-laden water during the inspection.

Lack of effective sediment controls and failure to implement and maintain sediment controls in accordance with the SWPPP are violations of Permit item C.2 and 'Section A' item 8.

e. **Non-Storm Water Management**

(Permit item C.2 and 'Section A' item 9) – Non-storm water discharges should be eliminated or reduced to the extent feasible. Unavoidable non-storm water discharges and associated BMPs must be described in the SWPPP. The SWPPP must include the location of non-storm water discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. One-time discharges must be monitored during the time that such discharges are occurring. The SWPPP must list a person responsible for ensuring no materials other than storm water are discharged in quantities that will have an adverse effect on receiving waters or storm drain systems. Discharge of sediment-laden water that will cause or contribute to an exceedance of the Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain is prohibited without filtration or equivalent treatment.

The SWPPP specifies discharges of "unpolluted groundwater and other discharges from excavated dewatering" are allowed, and specifies "BMP's require Contractor to avoid or minimize the use of water that may result in a discharge."

September 20, 2004 to April 4, 2005 -

The SWPPP fails to clarify that discharge of sediment-laden water that will cause or contribute to an exceedance of Basin Plan standards from a dewatering site or sediment basin into any receiving water or storm drain is prohibited without filtration or

equivalent treatment; therefore the SWPPP is deficient. The SWPPP also fails to require monitoring of non-storm water discharges, and fails to list a person responsible for ensuring no materials other than storm water are discharged in quantities that will adversely affect receiving waters or storm drain systems; therefore the SWPPP is deficient. Failure to have an adequate SWPPP is a violation of Permit item C.2 and 'Section A' item 9.

December 8, 2004 – Sediment-laden water was discharging from the onsite pond without treatment. Failure to ensure sediment-laden water is treated to meet Basin Plan requirements before discharge is a violation of Permit item C.2 and 'Section A' item 9.

January 12, 2005 – Sediment-laden water (from dewatering) was being pumped from the clubhouse parking lot landscaped area without filtration and without monitoring of the discharge area. Sediment-laden water was discharging from the on-site pond without treatment. Failure to ensure sediment-laden water is treated to meet Basin Plan requirements before discharge is a violation of Permit item C.2 and 'Section A' item 9.

- f. **BMP Maintenance, Inspections, and Repair** (*Permit item C.2 and 'Section A' item 11*) – BMP inspection, maintenance, and repair are required as soon as possible (with respect to worker safety) after conclusion of each storm and after a problem is noted. Inspections are required before and after storms, and every 24 hours during an extended storm event. Inspection reports must contain the inspection date, weather information, description of inadequate BMPs, BMP observations, required corrective actions, and inspector's name, title, and signature.

The August 2004 SWPPP includes fact sheets for various BMPs prescribed in the SWPPP. Those fact sheets specify maintenance requirements for each of the various BMPs, as appropriate. The SWPPP (Section IV.B. Control Practices to Prevent a Net Increase of Sediment Load in Storm Water Discharges) specifies: "The selected BMP's will be implemented by the Contractor and maintained throughout construction." The SWPPP (Section XI. Monitoring Program, Reports, and Records) specifies:

"A. General: The General Contractor will provide a representative to perform weekly inspections of the installed Best Management Practice Improvements. The inspections will be documented in writing with the attached inspection form. Site inspections are also required before and after a storm event of 0.5" or greater.

"B. Site Inspections: On days before a predicted rainfall, a walk-through inspection will be conducted to check for any potential damage. The Contractor's Representative will direct the Contractor's Crew to immediately prevent such damage. Each BMP will be closely inspected within 24 hours after each rainfall of 0.5" or more. Each BMP will be checked for functionality and sediment accumulation. Contractor will check for evidence of excessive sedimentation and construction materials outside of the construction activity areas. A log of inspections will be kept with this report.

"SWPPP will be updated as needed to identify the Contractor and the Contractor's Representative responsible for

monitoring, inspection, and maintenance of the SWPPP.”...

September 20, 2004 to April 4, 2005 –

The SWPPP does not specify inspections are required before and after storms, and every 24 hours during an extended storm event; therefore the SWPPP is deficient. Inspection reports did not contain the minimum required information. Weather information (an estimate of beginning of storm event, duration of event, and time elapsed since last storm), and inspector’s title and signature were missing from the inspection forms. Failure to have an adequate SWPPP and failure to adequately document inspections are violations of Permit item C.2 and ‘Section A’ item 11.

December 8, 2004 – It was raining during the inspection. Sediment controls were failing in various locations, and discharging sediment-laden water. Central Coast Water Board staff did not see any maintenance person or maintenance crew repairing control measures or responding to sediment control failures. Central Coast Water Board staff also saw no evidence (such as footprints, tire tracks, repair materials, repair equipment, etc.) to indicate a maintenance crew was repairing or maintaining controls during the inspection. Additionally, Site personnel did not indicate there were any maintenance crews repairing BMPs during the inspection. However, Mr. Hicks assured staff the problem areas would be addressed, but did not specify when. Failure to inspect, maintain, and repair BMPs as soon as possible (with respect to worker safety) and failure to implement the SWPPP are violations of Permit item C.2 and ‘Section A’ item 11.

January 12, 2005 – It was not raining during the inspection, and according to the Site contact, there had been

approximately one inch of rain over the previous two days. Sediment controls were in need of repair or maintenance in various locations. Early in the inspection as Mr. Hicks escorted staff in his truck to active construction areas, Mr. Hicks pointed out a BMP maintenance person. However, at no time during the inspection did staff observe the maintenance person working with BMPs or carrying any BMPs or tools. At some times during the inspection, Mr. Hicks was on his cell phone or radio describing problem areas after Central Coast Water Board staff pointed them out. However, staff did not observe any evidence that repairs were underway during her inspection. The SWPPP did not specify that inspections are required before and after storms, and every 24 hours during an extended storm event; therefore the SWPPP is deficient. Failure to inspect, maintain, and repair BMPs as soon as possible (with respect to worker safety) and failure to implement the SWPPP are violations of Permit item C.2 and ‘Section A’ item 11.

- g. **Training** (*Permit item C.2 and ‘Section A’ item 12*) – Site BMP installation, inspection, maintenance, and repair are the responsibility of trained Site personnel. Training must be documented in the SWPPP.

The August 2004 SWPPP (Section IX. Training) specifies:

“Contractor will be responsible for employees and subcontractors training...”

However, the SWPPP does not document personnel that have been trained.

September 20, 2004 to April 4, 2005 –

The August 2004 SWPPP did not specify who was responsible for Site BMP inspections and did not document personnel training. The January 14, 2005 revised SWPPP specifies “Miles

Hicks” is responsible for regular BMP inspections. The revised SWPPP specified “Stephen Halsey, Landscape Architect” is responsible for “training employees about BMPs affecting their job,” but did not document personnel training. Failure to document personnel training in the SWPPP is a violation of Permit item C.2 and ‘Section A’ item 12.

September 20, 2004 to October 5, 2004

– The NOI indicates construction began on September 20, 2004; however, documents submitted by the Discharger on April 5, 2005, state that Mr. Hicks was first trained in “storm water management, erosion and sedimentation control measures” on October 6, 2004. For the period of September 20, 2004 to October 5, 2004 the Discharger failed to have qualified (trained) individuals responsible for BMP installation, inspection, maintenance, and repair, which is a violation of Permit item C.2 and ‘Section A’ item 12.

**h. Proper Operation and Maintenance**

*(Permit item C.6 and ‘Section C’ item 5)* – At all times the discharger must properly operate and maintain facilities, treatment systems, and control systems that are installed or used by the discharger to achieve compliance with Permit conditions and SWPPP requirements.

The August 2004 SWPPP specified erosion and sediment control BMPs and included fact sheets for BMPs, which specified appropriate applications, installation, limitations, and maintenance.

December 8, 2004 – Sediment controls were not effective. Sediment-laden water was discharging from various locations due to lack of erosion controls and ineffective sediment controls. Failure to properly operate and maintain treatment and control systems at all times and failure to

implement the SWPPP are violations of Permit item C.6 and ‘Section C’ item 5.

January 12, 2005 – In many areas, sediment controls needed maintenance or repair, or were improperly installed. Effectiveness of silt fences in filtering runoff was also compromised due to pipes intentionally placed through or under silt fencing. Failure to properly operate and maintain treatment and control systems, and failure to implement the SWPPP are violations of Permit item C.6 and ‘Section C’ item 5.

- i. **Duty to Provide Information** *(Permit item C.2 and ‘Section A’ item 15, and Permit item C.6 and ‘Section C’ item 7)* – The Discharger is required to provide the Central Coast Water Board with a copy of the SWPPP upon request. The Discharger is required to provide to the Central Coast Water Board any information requested to determine Permit compliance, including copies of records the Permit requires Dischargers to keep.

January 27, 2005 to April 4, 2005 – In a Notice of Violation dated December 21, 2004, Central Coast Water Board staff requested a copy of the Discharger’s SWPPP, Monitoring and Reporting Program, Inspection Records, and Corrective Action and Cleanup Efforts. The Discharger submitted an incomplete SWPPP (pages were missing), and failed to submit the Monitoring and Reporting Program. Staff contacted the Discharger in late March 2005 and learned that the Discharger intentionally submitted only amended portions of the SWPPP. However, the Notice of Violation required a copy of the “updated SWPPP and amendments.” Failure to submit a copy of the SWPPP is a violation of Permit item C.6 and ‘Section C’ item 7.



- j. **Signatory Requirements** (*Permit item C.6 and 'Section C' item 9.a and 9.b*) – All SWPPPs must be signed by a principal executive officer, ranking elected official, or duly authorized representative (for a municipality).

September 20, 2004 to January 13, 2005 – The August 2004 SWPPP was not signed by a principal executive officer, ranking elected official, or duly authorized representative (for a municipality). Failure to have an appropriately signed SWPPP is a violation of Permit item C.6 and 'Section C' item 9.a and 9.b.

- 9. During the December 8, 2004 and January 12, 2005 inspections, Central Coast Water Board staff discussed violations with Site personnel, and followed up with Notice of Violation letters (dated December 21, 2004 and March 14, 2005). Both letters were mailed to the owner contact person (Mr. Steve Hammack), the Site contact person (Mr. Miles Hicks), and the developer/contractor contact person (Mr. Scott Momm) listed in the NOI. The second letter was sent via Certified Mail.
- 10. California Water Code Section 13385 states that any person who violates waste discharge requirements shall be civilly liable. The Central Coast Water Board may impose administrative civil liability not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
- 11. The Discharger was in violation of the Permit for at least one hundred ninety-seven (197) days, from September 20, 2004 to April 4, 2005.
- 12. Pursuant to California Water Code Section 13385, the Central Coast Water Board may impose a maximum civil liability of one million nine hundred seventy thousand dollars (\$1,970,000).
- 13. As required by California Water Code Section 13385, the Central Coast Water

Board considered the following factors in determining the recommended liability:

**VIOLATIONS**

- a. Nature, Circumstances, Extent, and Gravity - The Executive Officer issued a Complaint to address the Discharger's failure to comply with Permit requirements.

The Discharger violated Permit requirements, the Federal Clean Water Act, and the California Water Code by having an inadequate SWPPP, not adequately reducing or eliminating pollutants in storm water, not implementing erosion controls, not implementing effective sediment controls, discharging sediment-laden water and not monitoring a non-storm water discharge, not adequately documenting Site inspections, not properly operating and maintaining controls at all times, not providing information required by Central Coast Water Board, and not having a signed SWPPP on Site.

The Discharger said "five inches of rain fell that day [December 8, 2004] following a series of previous rain storms." Rainfall data from California Irrigation Management Information System, Department of Water Resources, for the monitoring station at De Laveaga Golf Course (Station #104) are presented below.

**De Laveaga Golf Course,  
Santa Cruz**

<b>Date</b>	<b>Precipitation (inches)</b>
Dec. 6, 2004	0.05
Dec. 7, 2004	1.47
Dec. 8, 2004	3.56
Dec. 9, 2004	0.04

While the storm may have been an unusually extended or heavy rain event, failure of sediment controls and resulting discharges are partly

attributable to the lack of erosion controls on Site. Additionally, observed sediment control failures were also partly attributable to improper installation, need of maintenance, and improper placement and design of sediment controls. The Permit does not exempt non-compliance during heavy or extended rain events. The only possible exception regards BMP maintenance:

“All corrective maintenance shall be performed as soon as possible after the conclusion of each storm depending upon worker safety.”

Self-monitoring and voluntary compliance with Permit requirements are important aspects of the Storm Water Program. Non-compliance with Permit requirements is a serious violation.

Arana Gulch and Branciforte Creek are habitat for “threatened” steelhead trout. Beneficial uses of Branciforte Creek that may be adversely affected by sediment discharge include:

- agricultural supply
- cold fresh water habitat
- commercial and sport fishing
- ground water recharge
- migration of aquatic organisms
- municipal and domestic supply
- non-contact water recreation
- spawning, reproduction, and/or early development
- water contact recreation
- wildlife habitat

Additionally, Branciforte Creek is tributary to Carbonera Creek, which is impaired due to sedimentation/siltation. Discharge of sediment-laden water may adversely affect steelhead trout, impact beneficial uses of Branciforte Creek, and contribute to existing impairment of Carbonera Creek. The Basin Plan’s general sediment objective states:

“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.”

The above factors do not support liability less than the maximum. The issue of unmaintained BMPs (during the December 8, 2004 inspection) due to potentially unsafe working conditions may warrant consideration of liability that is less than the maximum.

- b. Cleanup or Abatement – In general, sediment-laden storm water and sediment are not susceptible to cleanup because they often move rapidly downstream to other receiving waters, and/or disperse over extensive areas. Sediment is the main constituent of concern, and is not easily cleaned up after discharge. This consideration does not warrant liability that is less than the maximum.
- c. Toxicity – There is evidence of sediment-laden water discharged to the canyons/tributaries that flow to Arana Gulch and Branciforte Creek, which are habitat to “threatened” steelhead trout. Branciforte Creek is also listed as a “cold freshwater habitat.” *The Water Boards’ Communications Guidelines, January 2005*, defines toxic pollutants as:

“Those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism can, on the basis of information available, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions or physical deformation in such organism or their offspring. The quantities and

exposures necessary to cause these effects can vary widely.”

Sediment can cause the following problems for cold-water fish (such as Chinook, Coho, and Steelhead)<sup>1</sup>:

- Spawning (September through April): Siltation of gravels results in smothered eggs or easily washed away nests.
- Rearing (year-round): Sedimentation results in loss of escape cover and pool depth. Turbid water reduces feeding efficiency.
- Overwintering (December through April): Sediment fills pools; deep pools protect fish from high stream flows.
- Juvenile Fish Ocean Migration (March through June): Turbid stream flows interfere with fish’s ability to see, and stop or reduce feeding and growth.

This consideration does not warrant liability that is less than the maximum.

#### VIOLATOR

- d. Ability to Pay – Central Coast Water Board staff does not have any information regarding the Discharger’s ability to pay the maximum, recommended, or minimum liability.
- e. Ability to Continue Business – Central Coast Water Board staff does not have any information regarding the Discharger’s ability to continue operating and maintaining the golf course.
- f. Voluntary Cleanup Efforts – The Discharger included a list of “Cleanup

Efforts and Corrective Actions” in their January submittal. Since the Permit requires dischargers to take corrective action, a discharger’s efforts are not considered ‘voluntary’ unless they exceed Permit requirements. The Discharger’s efforts did not bring the Site into compliance with Permit requirements and did not exceed Permit requirements. This consideration does not warrant liability that is less than the maximum.

- g. History of Violations – Staff is not aware of any historic violations prior to enrollment in the Permit in September 2004.
- h. Degree of Culpability – There were no erosion or sediment controls on Site during Ms. Bern’s October 5, 2004 inspection. During Ms. Gonzalez’s December 8, 2004 inspection, the Site had ineffective sediment controls and no erosion controls. Central Coast Water Board staff contacted the Discharger before the October 5, 2004 and December 8, 2004 inspections to announce staff’s intent to inspect the Site. The Discharger had sufficient time to bring the Site into compliance before staff’s December 8, 2004 inspection.

Additionally, since Central Coast Water Board staff spent time discussing violations with the Site contact during the December 8, 2004 inspection, and since Central Coast Water Board staff identified violations in the December 21, 2004 Notice of Violation, the Discharger had sufficient time to bring the Site into compliance before staff’s January 12, 2005 inspection. At the January 21, 2005 inspection, Mr. von Langen did not meet with the Site contact, but observed a lack of erosion controls and was concerned about receiving water quality.

The Discharger chose to grade the Site and construct during the rainy season

<sup>1</sup> Smith, Jerry J., *Winter Steelhead and Chinook and Coho Salmon Life Cycles and Habitat Requirements*. Department of Biological Sciences, San Jose State University.

without implementing any erosion controls, and without effective sediment controls.

The Permit and the Site's Mitigated Negative Declaration both require erosion and sediment controls. The *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003* states:

“Mitigation Measure #3: Implement erosion control measures during and after construction to prevent inadvertent erosion and offsite transport of sediments into Arana Gulch, including but not limited to:

- “Install well-anchored silt fences and/or straw bales at the top of drainages adjacent to the following Holes/Fairways: 1, 3, 5, 8, 9, 10, 13, 17; adjacent to the retaining wall construction zone; the driving range; and the onsite pond in order to prevent any physical movement or placement of materials or equipment outside the construction area into drainages and waterways.
- “Limit ground disturbance and vegetation removal during construction to the minimum necessary to complete work on a given hole/fairway.
- “Complete work prior to the onset of the rainy season (generally November 1), if possible, and avoid grading during the rainy season (generally between November 1 and April 1).
- “If excavation activities extend beyond November 1, require implementation of all measures to prevent silt laden water from entering adjacent drainages, the onsite pond and Arana Gulch.

Require use of sediment/detention basins or similar protection to temporarily contain construction runoff and to prevent sediment-laden runoff from entering drainages. Install filter fabric at drain inlets.

- “Protect any disturbed areas during the rainy season with appropriate erosion control measures. Prior to November 1, disturbed soils at each site should undergo erosion control treatment consisting of temporary seeding, straw mulch or other measures pursuant to an approved erosion control plan.
- “Immediately revegetate disturbed areas with appropriate plant species.”

The Discharger signed the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003*, signed the Notice of Intent to comply with the Permit, knew of two of staff's planned inspections, chose to construct in the rainy season instead of the dry season, and had a list of information that should have been submitted to Central Coast Water Board staff; therefore, the Discharger is culpable for failure to comply with the Permit. The above information does not warrant liability that is less than the maximum.

Central Coast Water Board staff's delay in sending the second Notice of Violation letter (sent on March 14, 2005, 61 days after the January 12, 2005 inspection, and 48 days after receiving the Discharger's January 26, 2005 letter and documents) may warrant consideration of liability that is less than the maximum.

Central Coast Water Board staff did not observe any BMP maintenance or

repair efforts occurring during the January 12, 2005 inspection despite the fair weather conditions and despite inspecting all construction areas once with Mr. Hicks and revisiting some construction areas alone. However, the property is over one hundred acres and staff may not have seen the BMP maintenance person if he was working in areas other than those revisited by staff or if he was retrieving BMP materials from an offsite location (Mr. Hicks indicated BMP materials are not stored at the Site, but near by). This information may warrant consideration of liability that is less than the maximum.

- i. Economic Benefit and Savings – The Discharger realized economic benefit by scheduling golf course grading and construction during the rainy season<sup>2</sup>, thereby allowing the golf course to stay open to customers during the dry season. Although that in itself is not a violation, the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003* specified construction should be completed prior to the rainy season to prevent inadvertent erosion and offsite transport of sediments. The Discharger implemented BMPs, but they were insufficient to prevent water quality impacts. If the project had been scheduled for completion before the rainy season, the threat to water quality would have been significantly lower. Completing construction before the rainy season may have been the only way to prevent erosion and offsite transport of sediments without implementing more costly BMPs (such as hydroseeding with bonded fiber matrix, constructing sedimentation basins, operating storm water filtration systems, etc.).

<sup>2</sup> The Permit does not define the dates on which the rainy season begins and ends. For purposes of the Permit, the Central Coast Water Board generally defines the rainy season as October 1 to April 30 of each year.

Water Board staff estimates the Discharger realized an economic benefit of up to one hundred thirty thousand, five hundred dollars (\$130,500) by constructing during the rainy season instead of the dry season. State Water Board staff prepared an economic benefit analysis (Staff Report Attachment 4) relying on Central Coast and State Water Board staff's estimates and assumptions, as presented in the analysis. The Discharger was provided a copy of the economic benefit analysis as an attachment to the April 13, 2005 Complaint cover letter. California Water Code Section 13385(e) requires the Central Coast Water Board to assess liability at least equal to "the economic benefits ... derived from the acts that constitute the violation."

#### OTHER MATTERS

- j. Staff Time – Central Coast Water Board staff spent time traveling to and inspecting the Site; preparing, reviewing, and revising enforcement documents; and responding to Discharger requests and correspondence. Estimated Central Coast Water Board staff costs (including technical staff, administrative staff, supervisors, and legal council) are fifteen thousand dollars (\$15,000).

$$(\$75/\text{hour} * 200 \text{ hours} = \$15,000)$$

Additionally, State Water Board staff spent nine hours preparing the economic benefit analysis and reviewing golf course revenue data. Estimated costs for State Water Board staff time total six hundred seventy-five dollars (\$675).

$$(\$75/\text{hour} * 9 \text{ hours} = \$675)$$

Total estimated staff costs are fifteen thousand six hundred seventy-five dollars (\$15,675).

14. Pursuant to California Water Code Section 13385, the Central Coast Water Board can impose civil liability up to ten thousand dollars per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least 197 days, from September 20, 2004 through April 4, 2005. Maximum liability that may be imposed is one million nine hundred seventy thousand dollars (\$1,970,000). The Discharger violated multiple provisions of the Permit during this period. The one million nine hundred seventy thousand dollars (\$1,970,000) maximum liability is a conservative estimate because it counts only one violation per day.
15. In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefits (if any) derived from the acts that constitute the violations. Central Coast Water Board staff estimates the Discharger's economic benefit to be up to one hundred thirty thousand, five hundred dollars (\$130,500). The proposed liability is greater than the maximum estimated economic benefit realized by the Discharger, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum penalty.
16. After consideration of the above-listed factors, the Executive Officer issued the Complaint in the amount of one hundred fifty thousand dollars (\$150,000), including staff costs. When the Complaint was issued, estimated staff costs were twelve thousand dollars (\$12,000), and did not include State Water Board staff time.

In the draft Order for the May 12-13, 2005 Water Board Meeting, total staff costs were estimated at twelve thousand six hundred dollars (\$12,600). From April 21, 2005 to June 13, 2005, Water Board staff and supervisors spent additional time responding to the Discharger's record review requests and requests for hearing continuance. Central Coast Water Board and State Water Board staff also spent time reviewing and inquiring about golf course revenue data. This Order has been revised to include additional staff costs as of June 1, 2005, for total estimated staff costs of fifteen thousand six hundred seventy-five dollars (\$15,675). Legal counsel also spent time on these matters, but the estimated staff costs do not include counsel's time.

17. The Central Coast Water Board has considered the administrative record, including all comments and testimony received.
18. This enforcement 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**, pursuant to California Water Code Section 13385, the City of Santa Cruz, Department of Parks and Recreation is assessed a total civil liability of one hundred fifty thousand dollars (\$150,000) to be delivered to the Central Coast Regional Water Quality Control Board at the letterhead address by August 8, 2005. The check is to be made payable to the State Water Resources Control Board.

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 Regional Water Quality Control Board on July [7 or] 8, 2005.

\_\_\_\_\_  
Roger W. Briggs, Executive Officer

\_\_\_\_\_  
Date

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Task: Storm Water Enforcement