

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)	
)	
City Ventures Homebuilding LLC)	Order No. R1-2024-0042
Fox Hollow Site)	
1615 Fulton Road)	Settlement Agreement and
Santa Rosa, CA)	Stipulation for Entry of Order; Order
)	
Administrative Civil Liability)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the North Coast Regional Water Quality Control Board (Regional Water Board) Prosecution Team (Prosecution Team) and City Ventures Homebuilding LLC (Discharger) (collectively, the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of the Fox Hollow Site, which was a residential development project located at 1615 Fulton Road in Santa Rosa, Sonoma County, California (Site). The Site was on a 22.31-acre parcel and included 135 single-family homes, eight duplexes, associated infrastructure, access roads, and landscaping. The Site was enrolled for coverage under State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System General Permit to Discharge Storm Water Associated with Construction Activity No. CAS000002 (Construction General Permit), which authorizes discharges of stormwater and authorized non-stormwater associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations, and prohibitions in the permit. Site construction is complete and coverage under the Construction General Permit was terminated on February 17, 2022.

2. As part of the stormwater conveyance design, the Discharger built two stormwater outfalls that discharged Site runoff into Peterson Creek. There are wetlands on and off site that also drain to Peterson Creek. A portion of the Site drains to the south to an existing public storm drain located in Alegra Street, which discharges to Forestview Creek, a tributary to Peterson Creek. Peterson Creek is a tributary to Santa Rosa Creek, which flows into the Laguna de Santa Rosa, and ultimately flows into the

Russian River. The Russian River is a water of the state and United States and identified as impaired on the Clean Water Act section 303(d) list for sediment and temperature.

3. Between October 14, 2016 and February 26, 2019, Regional Water Board staff inspected the Site twelve times and observed conditions which staff allege constitute discharge and non-discharge violations of the Construction General Permit. These alleged violations are summarized below and described in detail in Attachment A.

4. For Violation 1, the Prosecution Team alleges that the Discharger violated Construction General Permit Prohibition III.B by discharging unauthorized construction-related stormwater into Peterson Creek between October 14, 2016 and March 24, 2017, and on February 13 and 26, 2019 for a total of 58 days. The Prosecution Team alleges that discharges from the Site primarily consisted of sediment-laden storm water, but also exhibited extremely high pH levels, measuring a daily average pH of 12.2 on January 8, 2018. The Prosecution Team further alleges that bonded fiber matrix was discharged from the Site into receiving waters when a multi-day rain event occurred shortly after the Discharger applied bonded fiber matrix to the Site.

5. For Violation 2, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment D, Section D.2, by failing to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots on the Site from November 3, 2016 through January 4, 2017, for a total of 63 days.

6. For Violation 3, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment D, Section E.1. by failing to establish and maintain effective perimeter controls around the Site and failing to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges between October 14, 2016 and December 23, 2016, for a total of 7 days.

7. For Violation 4, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment D, Section E.2. by failing to design on-site ponds used as sediment basins in accordance with sediment basin design guidance in the California Stormwater Quality Association's Construction BMP (Best Management Practice) Handbook on December 15 and 23, 2016, and again on February 13 and 26, 2019, for a total of 4 days.

8. For Violation 5, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment D, Section E.3 by failing to implement erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for active construction areas between October 14, 2016 and November 3, 2016, for a total of 21 days.

9. For Violation 6, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment D, Section F, by failing to effectively manage

all run-on, all runoff within the Site, and all runoff that discharged off the Site on November 3, November 20, December 15, and December 23, 2016, for a total of 4 days.

10. For Violation 7, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment F, Section C.6, by failing to install an advanced treatment system (ATS) designed to capture and treat (within a 72-hour period) a volume equivalent to the runoff from a 10-year, 24-hour storm event using a watershed coefficient of 1.0 on February 13 and 26, 2019 for a total of 2 days.

11. The Prosecution Team alleges that these acts constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).

12. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

13. The State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy's penalty methodology incorporates the factors required to be considered when imposing administrative civil liability. These factors are set forth in detail in Attachment A, which is incorporated herein by reference.

14. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability against the Discharger in the amount of \$833,316. Payment of \$417,316 is due to the State Water Pollution Cleanup and Abatement Account following the Regional Water Board executing this Stipulated Order. The remaining \$416,000 in liability shall be suspended upon completion of a Supplemental Environmental Project (SEP), which is described in Paragraph 17 below. The reduction in the administrative civil liability amount from the amount calculated using the penalty methodology in the Enforcement Policy is appropriate given the risks of litigation inherent in proceeding to a contested evidentiary hearing.

15. The Parties have engaged in settlement negotiations and agree to settle the violations alleged herein without further administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption pursuant to Government Code section 11415.60. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

16. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **\$833,316** to resolve the alleged violations set forth above, subject to the payment and suspension provisions set forth below.

- a. No later than 30 days after the Regional Water Board or its delegee signs this Stipulated Order, the Discharger shall submit a check for **\$417,316**, made payable to the "State Water Pollution Cleanup and Abatement Account" and reference the Order number on page one of this Stipulated Order, to:

State Water Resources Control Board
Accounting Office
Attn: ACL PAYMENT
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the Regional Water Board (Jeremiah.Puget@waterboards.ca.gov) and State Water Board, Office of Enforcement (Susan.Ma@waterboards.ca.gov).

- b. The Parties agree that the remaining **\$416,000** (SEP Amount) of the administrative civil liability shall be paid to the Laguna de Santa Rosa Foundation (Laguna Foundation) for implementation of a SEP as follows:
 - i. The SEP Amount shall be paid to the Laguna Foundation for implementation of the Petersen Creek Vernal Pool Restoration Project, as described in Paragraph 17 below and in Attachment B, incorporated herein.
 - ii. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for \$416,000, made payable to "Laguna de Santa Rosa Foundation" and reference the order number on page one of this Stipulated Order, to:

Laguna de Santa Rosa Foundation
900 Sanford Road
Santa Rosa, CA 95401

The Discharger shall provide a copy of the check via email to the Regional Water Board (Jeremiah.Puget@waterboards.ca.gov) and State Water Board, Office of Enforcement (Susan.Ma@waterboards.ca.gov).

17. **Description of the SEP:** The Peterson Creek Vernal Pool Restoration Project aims to protect and restore habitat in the Peterson Creek Vernal Pool Complex, which spans two adjacent properties—the Fox Hollow West Preserve and Youth Community Park—for a total of 67 acres in the City of Santa Rosa. The Laguna Foundation will use grazing as the primary tool to manage and reduce invasive species, including installing grazing infrastructure, preparing the land for safe grazing, and developing grazing management guidelines. Other SEP actions include restoring Sonoma sunshine, an endangered species, and identifying existing Sonoma sunshine populations in Youth Community Park, a City of Santa Rosa-owned park. The SEP will be implemented over 36 months (3 years) during which the Laguna Foundation, on behalf of the Discharger, will provide quarterly reports and a final report documenting the completion of the SEP to the Regional Water Board. The complete SEP description, project milestones, budget, and reporting schedule are contained in Attachment B, incorporated herein by reference.

18. **SEP Interim Milestone:** The following time schedule for implementing the SEP includes an interim milestone that identifies the amount of liability that will be permanently suspended upon timely and successful completion of the milestone. This interim milestone has an identifiable and stand-alone environmental benefit as described in Attachment B. As noted below, the portion of the SEP Amount to be permanently suspended does not exceed the cost of completing the interim milestone.

Task/Milestone	Deadline for Completion	Portion of SEP Amount To Be Suspended
Managed Grazing (Tasks 1 and 2)	December 31, 2025	\$133,500
Invasive species management, Sonoma sunshine restoration, and conservation in Youth Community Park (Tasks 3, 4, and 5)	3 years from execution of this Stipulated Order (estimated September 2027)	\$282,500
SEP Total		\$416,000

19. **Representation of the Implementing Party:** As a material consideration for the Regional Water Board’s and Discharger’s acceptance of this Stipulated Order, the Laguna Foundation has represented to the Parties that it will utilize all funds provided to it by the Discharger to implement and complete the Peterson Creek Vernal Pool Restoration Project in its entirety and in accordance with Attachment B.

20. **Publicity Associated with the SEP:** Whenever the Discharger publicizes the SEP or the results of the SEP, it shall state in a prominent manner that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Regional Water Board.

21. **Certification of Expenditures:** Within 30 days of completing the SEP, the Discharger shall cause the Laguna Foundation, on the Discharger's behalf, to submit a certified statement by a responsible corporate official documenting the Laguna Foundation's expenditures during the implementation of the SEP. The expenditures may be external payment to outside vendors or contractors implementing the SEP. The official may rely upon and utilize normal company project tracking systems that capture employee time expenditures and external payments to outside vendors. The Discharger shall cause the Laguna Foundation, on behalf of the Discharger, to provide any additional information requested by the Regional Water Board that is reasonably necessary to verify the SEP expenditures.

22. **Third Party Audit:** If requested by the Regional Water Board or its delegee, the Discharger, at its sole cost, shall submit an audit report prepared by an independent third party acceptable to the Regional Water Board or its delegee documenting the funds that the Discharger and/or the Laguna Foundation has or has not expended to implement the SEP. Such information shall be submitted to the Regional Water Board within three months of the date on which the Regional Water Board or its delegee requires the audit.

23. **Certification of Completion:** Within 30 days of completing the SEP, the Discharger shall cause the Laguna Foundation, on the Discharger's behalf, to submit a report under penalty of perjury to the Regional Water Board stating that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to verify SEP completion and costs incurred.

24. **Failure to Expend the SEP Amount on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board that it has spent the entire SEP Amount of \$416,000 on the SEP in accordance with the terms of this Stipulated Order, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP as an administrative civil liability to the State Water Pollution Cleanup and Abatement Account. The Prosecution Team shall issue a Notice of Violation and the Discharger shall pay the difference within 30 days of the notice issuance date consistent with the payment method in Paragraph 16. If the amount due cannot be agreed upon by the Parties, the Regional Water Board shall determine the amount of suspended liability owed via a Motion for Payment of Suspended Liability. The Regional Water Board may elect to add the reasonable costs of enforcement to the amount due to the State Water Board's Cleanup and Abatement Account. Payment of the assessed amount will satisfy the Discharger's obligation to implement the SEP.

25. **Failure to Complete the SEP:** If the SEP is not fully implemented by the completion date and an extension has not been granted, the Prosecution Team shall issue a "Notice of Failure to Complete SEP." The Discharger shall be liable to pay the

entire SEP Amount, or if shown by the Discharger, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Regional Water Board via a Motion for Payment of Suspended Liability. Unless the Regional Water Board determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the issuance date of the notice. Within 30 days of the Regional Water Board's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Paragraph 16. Payment of such amount shall satisfy the Discharger's obligation to implement the SEP.

26. Regional Water Board Acceptance of Completed SEP: Upon receipt of the Completion Report, the Regional Water Board shall determine whether the SEP was completed in accordance with the terms of this Stipulated Order. Upon such determination, the Regional Water Board shall provide the Discharger with a statement indicating that the SEP has been completed in satisfaction of the terms of this Stipulated Order and that any remaining suspended liability is permanently suspended (Satisfaction of Order). The issuance of the Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulated Order.

27. Regional Water Board Is Not Liable: The Regional Water Board members, staff, attorneys, or representatives shall not be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger or the Laguna Foundation, its directors, officer, employees, agents, representative, or contractors in carrying out activities pursuant to this Stipulated Order. Nor shall the Regional Water Board, its members or staff be held as parties to, or guarantors of, any contract entered into by the Discharger or the Laguna Foundation, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, including the SEP.

28. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in Attachment A may subject the Discharger to further enforcement, including additional administrative civil liability.

29. Public Notice: The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegee for adoption. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.

30. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Stipulated Order by the Regional Water Board and review of this order by the public is lawful and adequate. The Parties understand that the Regional Water Board, or its delegee, has the authority to require a public hearing to consider adoption of this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure for adoption of this Stipulated Order as necessary or advisable under the circumstances.

31. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from such Party's own counsel in connection with the matters set forth herein.

32. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

33. **Modification:** This Stipulated Order shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.

34. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

35. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

36. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition for review the Regional Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

37. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

38. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.

39. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf the Stipulated Order is executed.

40. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

41. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.

42. **Counterpart Signatures:** 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. Further, this Stipulated Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

43. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board, North Coast Region
Prosecution Team**

 Digitally signed by Claudia
E. Villacorta
Date: 2024.08.01 17:04:27


By: _____
Claudia Villacorta, Assistant Executive Officer

Date: _____

City Ventures Homebuilding LLC

By: 

Phil Kerr, President

Date: 08/01/2024

Attachment A: Administrative Civil Liability Penalty Methodology
Attachment B: Peterson Creek Vernal Pool Restoration SEP

**ORDER OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
NORTH COAST REGION**

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board staff in investigating the allegations or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.

By: _____
Valerie Quinto
Executive Officer

Date: August 6, 2024
