

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by Laurence A. Kluck and Luis G. Rivera, the Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (“Regional Water Board”) (collectively the “Parties”) with reference to the following facts:

- A. The Assistant Executive Officer issued Administrative Civil Liability Complaint (ACLC) R1-2007-0082 to Laurence A. Kluck on September 10, 2007, which proposed an administrative civil liability of \$128,000 for allegedly failing to properly enroll in *General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region*, Order No. R1-2004-0030; and for failing to obtain a *State Dredge and Fill permit* for the installation of culverts into the stream channel, which could serve as future residential roads for development of his property located at Fairway Lane Subdivision aka Mathews and Kluck Fairway Lane Construction Project intersecting Fairway Drive at Fairway Lane in Eureka, California in Humboldt County. Mr. Kluck denies that a State Dredge and Fill permit was required for his timber harvest activities. Parcel numbers of the subject properties are as follows: APN #'s 018-301-058, 018-301-059, 018-301-061, 018-301-062, 018-301-063, and 018-301-064.
- B. The Parties have conferred over the last year for the purpose of settling this matter and the allegation described herein. The Parties, through their respective representatives, have reached this settlement for the violations alleged in ACLC R1-2007-0082, which are described therein and in the attached Order. This settlement, and the Agreement made herein, shall not be treated as an admission of liability by either Party.
- C. The general terms of the settlement are that Mr. Kluck will pay \$10,000 to the *State Water Resources Control Board Cleanup and Abatement Account* in exchange for full release of all penalties arising out of the allegations in ACLC R1-2007-0082, and agrees that for any further development of his property that requires a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, he will include a description that includes all of the proposed work for development of the property not previously permitted by the U.S. Army Corps of Engineers and/or the Regional Water Board, and work completed in conjunction with the implementation of Timber Harvest Plan 1-07-014 HUM (hereafter referred to as “the THP”), including the installation of culverts into the stream channel which could serve as future residential roads for the development of the property, and will mitigate, as required by the U.S. Army Corps of Engineers and/or the Regional Water Board, in conjunction with the Regional Water Board’s section 401 Water Quality Certification, for all impacts to water quality associated with development of his property.
- D. The terms of this Agreement will be set forth in a proposed administrative civil liability order (ACLO) and subject to a thirty-day public comment period. Afterwards, it will be brought before the Regional Water Board members for

approval at the December 11, 2008 Regional Water Board hearing in Santa Rosa.

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

1. Mr. Kluck covenants and agrees that he or his agents will not contest or otherwise challenge before the Regional Water Board, the State Water Resources Control Board or any court the terms of this Agreement or ACLO that will be brought to the Regional Water Board, intending to implement the terms of this Agreement. Mr. Kluck agrees to apply for all permits contemplated within the scope of this Agreement. However, Mr. Kluck reserves the right to contest the denial of any permits so-applied for, as well as the scope or reasonableness of the terms of such permits. The Assistant Executive Officer likewise covenants and agrees that he will not contest or otherwise challenge before the Regional Water Board, the State Water Resources Control Board or any court the terms of this Agreement or the ACLO that is intended to implement the terms of this Agreement. If, however, the Assistant Executive Officer must exercise his authority to declare the Agreement to be null and void as the result of public comment on the proposed ACLO, as specifically detailed below, or the Regional Water Board members do not approve the proposed ACLO, then the Parties will not be bound by the terms of this provision of the Agreement.
2. Mr. Kluck agrees to pay \$10,000 to the State Water Resources Control Board Cleanup and Abatement Account within 10 days of receiving written notice from the Executive Officer that the ACLO is no longer subject to challenge pursuant to Water Code sections 13320 or 13330, or that all such challenges have been resolved.
3. Mr. Kluck agrees that before any additional development, construction, and/or grading occurs on his property that may affect wetlands, stream banks and channels, and/or riparian areas, he will contact the U.S. Army Corps of Engineers and the Regional Water Board to determine whether any permitting is required. For any work at his property that requires a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, Mr. Kluck agrees to include a description of the project that includes all of the proposed work for development of the property not previously permitted by the U.S. Army Corps of Engineers and the Regional Water Board, and work completed in conjunction with the implementation of the THP, including the installation of culverts into the stream channel, which could serve as future residential roads for the development of the property. Mr. Kluck understands that a section 404 Permit will also require a Clean Water Act section 401 permit from the Regional Water Board, which will require compliance with the California Environmental Quality Act and mitigation for impacts to waters of the State, including wetlands, stream banks and channels, and/or riparian areas. Mr. Kluck also agrees that even if the U.S. Army Corps of Engineers determines that it does not have jurisdiction over work that may occur in or

adjacent to wetlands, stream banks and channels, and/or riparian areas on the site, he will nonetheless contact the Regional Water Board before beginning any work that may affect wetlands, stream banks and channels, and/or riparian areas. The Parties recognize that there may be additional permitting required for activities on Mr. Kluck's property, and that this Agreement in no way limits or addresses any additional permitting that may be required by the Regional Water Board and/or other state, local, or federal agencies.

4. Within seven (7) days of execution of this Agreement by the Parties, the Assistant Executive Officer shall publish the availability of the proposed ACLO that implements the terms of this Agreement and accept public comment on the proposed terms of settlement for thirty days. If the Assistant Executive Officer receives significant new information during the public comment period that reasonably affects the propriety of entering into this Agreement, the Assistant Executive Officer may unilaterally declare this Agreement void. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Agreement, will be adequate. In the event procedural objections are raised prior to the ACLO becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
5. The proposed ACLO implementing the terms of this Agreement must be approved by the Regional Water Board members at a regularly scheduled board meeting. It is the intention of the Assistant Executive Officer to bring the draft ACLO before the Regional Water Board at the December 11, 2008 board meeting, scheduled to be held at the Regional Water Board's office in Santa Rosa.
6. In the event that the Regional Water Board does not approve the proposed ACLO at its regular meeting on December 11, 2008, Mr. Kluck shall have the right to a hearing on ACLC R1-2007-0082 at the March 2009 Regional Water Board meeting, if such meeting occurs, or the next scheduled meeting. The Parties also agree that, in the event that the Regional Water Board does not approve the proposed ACLO, the Parties waive any and all objections related to their attempt to settle this matter, including but not limited to, objections related to prejudice or bias of any of the board members or their advisors and any other objections that are premised in whole or in part on the fact that the board members and their advisors were exposed to some of the material facts and the parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting an evidentiary hearing on the merits of ACLC R1-2007-0082.
7. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.

8. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.
9. Each Party to this Agreement shall bear all attorneys' fees and costs arising from that Party's own counsel in connection with the matters referred to herein.
10. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.
11. This Agreement shall be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute an agreement.
12. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

For the Regional Water Board Assistant Executive Officer:

Date: _____ By: _____
 Luis G. Rivera,
 Assistant Executive Officer

Approved as to Form: _____
 Kimberly McFarlin Niemeyer
 Counsel to Assistant Executive Officer

For Laurence A. Kluck

Date: _____ By: _____
 Laurence A. Kluck

Approved as to Form: _____
 Timothy J. Wykle
 Counsel to Laurence A. Kluck