

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 01-046

WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR:
SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA

GALE RANCH PROJECT, DOUGHERTY VALLEY, CONTRA COSTA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. Shapell Industries of Northern California (hereinafter the Discharger) proposes to construct the Gale Ranch Project (hereinafter Project), a master planned residential community of 4,614 homes and associated amenities on a 2,021-acre site in the western half of Dougherty Valley in Contra Costa County. The Project is located northeast of the intersection of Interstates 580 and 680 in the City of San Ramon, as shown on the attached map, Attachment A.

Site & Project Description

2. The Project was designed in accordance with the Dougherty Valley Specific Plan (DVSP), which was approved by the Contra Costa County Board of Supervisors in 1992, and modified in 1996. The DVSP provides for a master planned development, and a preservation plan for the Dougherty Valley. The Windemere development (permitted by Order No. 99-060 in 1999) is being constructed in the eastern portion of the Valley, and the Project will be situated in the western half of the Valley.
3. The Project will be constructed in phases as described below in Finding 22, and will involve grading of a total of about 1,178 acres of land. The Project consists of the following elements:
 - a. Construction of 4,614 homes on approximately 656 acres, including 1,154 affordable housing units;
 - b. Construction of two elementary schools and one middle school on 35 acres, a number of public parks on 113 acres, and commercial shopping areas and office space on 30 acres;
 - c. Construction of a portion of two major roadways, Dougherty Valley Road and Bollinger Canyon Road, on about 124 acres;
 - d. Construction of infrastructure (sanitary sewer pipelines, storm sewer pipelines, potable and reclaimed water lines, secondary streets, etc.) that are required to service the homes, commercial and public facilities;
 - e. Preservation of approximately 1,063 acres of open space lands on the Project site. The dedicated area will include 916 acres of unimproved open space, and 147 acres of

enhanced and restored creek corridor. The open space and mitigation areas will be offered for dedication to the West Branch Geologic Hazard Abatement District (hereinafter GHAD) under the City of San Ramon. The GHAD will accept the dedication for mitigation areas after the Notice of Mitigation Completion has been accepted by the Executive Officer;

- f. Construction of a 7.2 acre subregional flood control detention basin; and,
 - g. Development of pedestrian trails across the Project site.
4. The Project site consists of a series of rolling hills and north-south trending ridgelines bordered on the east by the Main Branch of Alamo Creek (hereinafter Alamo Creek), and bisected through the middle of the site by the West Branch of Alamo Creek (hereinafter West Branch). The West Branch joins Alamo Creek within the southern portion of the Project site. In addition to these currently perennial creeks, the Project site contains approximately 5.5 acres (53,925 linear feet) of intermittent and ephemeral tributary creeks with headwaters on the site. Elevations range from 925 feet along the site's western ridgeline to 475 feet along the Alamo Creek corridor.
 5. The project site has been used for cattle grazing and dry-land farming since the early 1800s. Vegetation consists almost entirely of non-native grassland, with small stands of valley oak riparian woodland, willow riparian woodland, and individual valley oak trees. The intermittent tributary creeks do not currently support significant riparian vegetation. The condition of Alamo Creek, and to a lesser extent the West Branch and some tributary creeks, has deteriorated due to past and present land management practices both on site, and offsite in the upper watersheds for the creeks. Alamo Creek is generally deeply incised, with collapsing vertical to near-vertical banks ranging from 10 to 20 feet above the channel bottom. The channel is not considered to be stable, and is characterized by a series of major knick points that have been exacerbated by the erosion process, resulting in abrupt drops in channel bottom elevation. The West Branch is significantly more stable than Alamo Creek, with more limited incision.
 6. There are approximately 21.8 acres of jurisdictional waters of the United States, including wetlands, on the Project site, including 16.3 miles (85,885 linear feet) of creeks and tributaries. This acreage includes twelve constructed stock ponds, and 64 perennial and ephemeral seeps that support small areas of seasonal wetlands. The quantity and nature of seeps in any given year likely depends on rainfall amounts. The number of seeps has varied since observations were first made in 1987, when only 11 seeps were noted. The majority of the site drains into the Alamo Creek system that flows into the Arroyo de la Laguna, which is tributary to Alameda Creek and San Francisco Bay. The southwestern portion of the site contains three small creeks that are tributaries of South San Ramon Creek, which also flows into the Arroyo de la Laguna. These three small creeks will not be impacted by the project.
 7. The Project will result in the direct placement of fill into or other direct disturbance of 5.0 acres of waters of the State, including wetlands, within the watershed for Alamo Creek and

the West Branch. Additionally, the Project would temporarily impact 10 freshwater ponds (3.8 acres) during pond enhancement. The Project's direct fill impacts are as follows:

- a. Perennial creek (0.9 acres);
 - b. 20,830 linear feet of freshwater seasonal/ephemeral tributary creeks with associated seasonal wetlands (2.3 acres);
 - c. 8,140 linear feet of freshwater seasonal/ephemeral tributary creeks (0.2 acres)
 - d. 1 acre of freshwater seeps (21 seeps) and other seasonal wetlands; and,
 - e. 2 stock ponds (0.5 acres).
8. Waters on the Project site serve as habitat for the federally-listed threatened California Red-Legged Frog (*Rana aurora draytonii*, hereinafter CRLF). The Project will result in the fill of approximately 0.5 acre of CRLF breeding and rearing habitat and 4.5 acres of potential CRLF habitat, and may directly impact CRLF through risk of incidental take during construction, and disturbance of habitat due to placement of fill. Indirect impacts to the CRLF will occur after Project construction through the creation of barriers to CRLF movement, and the reduction in the ability of red-legged frogs to recolonize areas subjected to localized extinctions.
9. The United States Fish & Wildlife Service (Service) has issued a Biological Opinion for the Project, dated September 25, 2000. Since the Biological Opinion was issued, critical habitat for the CRLF has been designated, and the Army Corp of Engineers (Corps) has requested the Service to modify the opinion to reflect the recent designation of the limits of the CRLF critical habitat.
10. The proposed roads, parking, and homes will indirectly impact beneficial uses through the discharge of urban runoff pollutants (e.g., oil and grease, heavy metals, pathogens, nutrients, pesticides, etc.).
11. To mitigate for its permanent fill of waters as described in Finding 6, the Discharger will implement a Mitigation and Monitoring Plan (MMP) that addresses wetland and endangered species impacts for the Project. The major mitigation approaches include creation of seasonal wetlands, seasonal tributaries, and backwater channels, implementation of a floodplain restoration plan for the West Branch, creation of new ponds for CRLF habitat and rehabilitation of existing ponds, and restoration and enhancement of Alamo Creek and the West Branch. In addition, seasonal tributaries will be preserved at two offsite locations. One offsite location is the 408-acre Dyer parcel, located east of Livermore to the north of Interstate 580. The second parcel is the 320-acre Elworthy property, located on a portion of Highland Ridge in southern Contra Costa County. Both offsite parcels will be dedicated to the East Bay Regional Parks District (EBRPD). Successful implementation of the OSMPs on open space both on and off site is also essential for mitigation of impacts. Attachment B to this Order provides a summary of impacts and mitigation by phase. The following specific components are included in the MMP:

- a. Create a minimum of 4.8 acres of freshwater seasonal wetlands;
 - b. Create a minimum of 0.4 acres (at least 2 ponds) of freshwater seasonal ponds;
 - c. Create 5.8 acres (at least 7,870 linear feet) of backwater channels with freshwater seasonal wetlands, in conjunction with restoration of the West Branch floodplain;
 - d. Create 0.9 acre (at least 11,025 linear feet) of seasonal/ephemeral creek;
 - e. Restore 4.8 acres (at least 13,600 linear feet) of Alamo Creek;
 - f. Enhance 5.5 acres (at least 13,430 linear feet) of the West Branch of Alamo Creek;
 - g. Enhance a minimum of 21,843 linear feet (3.0 acres) of freshwater seasonal creeks/headwaters creeks on-site, by fencing most avoided intermittent/ephemeral tributary creeks, and implementation of a grazing management plan in open space areas;
 - h. Enhance 3.8 acres of freshwater ponds (10 ponds) through implementation of a combination of the following measures: fencing; reconstruction of existing eroded earthen dams; establishing vegetation along the banks; and provision of spillways;
 - i. Implement a bullfrog eradication program in Alamo Creek, the West Branch, and open space areas;
 - j. Placement of a conservation easement over, and dedicate approximately 1,063 acres of undeveloped open space and mitigation areas to the GHAD. An Open Space Management Plan (hereinafter OSMP) will be implemented by the GHAD. The proposed beneficiary for the conservation easement is the California Department of Fish & Game. A qualified Natural Lands Manager will manage the open space and mitigation areas with funding provided by tax assessments for the GHAD and the Dougherty Valley County Service Area M-29 (CSA M-29);
 - k. Preservation and dedication to EBRPD, of the Dyer Parcel (408 acres), and funding of the development and implementation of an OSMP for the property. The Dyer parcel has been acquired by the Discharger. CRLF habitat on site will be enhanced by construction of two new freshwater ponds, enhancement of an existing pond, and fencing of a tributary to Altamont Creek;
 - l. Acquire for preservation and dedication to EBRPD, the Elworthy property (320 acres), and fund development and implementation of a OSMP for the property;
 - m. Construct and maintain fencing on the project site to protect creeks, wetlands and stock ponds from cattle grazing impacts;
 - n. Implementation of a grazing management plan on open space areas; and,
 - o. Monitor all mitigation creation features at prescribed intervals, until success is achieved in conformance with performance criteria included in the final MMP.
12. To mitigate for the Project's indirect impacts to water quality and beneficial uses of waters of the State, the Discharger will:
- a. Complete the development of and implement a post-construction Storm Water Management Plan (hereinafter SWMP) to address the Project's urban runoff impacts. This SWMP includes a system of water quality ponds and best management practice (BMP) swales to treat the majority of urban runoff from the site;
 - b. Construct an off-line stormwater detention basin (7.2 acres) that will maintain the magnitude of the 100-year flood in the West Branch at or below pre-project levels; and,

- c. Complete the development of management guidelines for minimization of chemical applications on parks, and landscaping in common residential areas. This plan is to be provided to the City of San Ramon for review and comment prior to submittal to the Executive Officer for final consideration. This plan is intended for use in the long-term management of the parks and landscaping in common residential areas.
13. As of the date of adoption of this Order, the Discharger a number of draft documents to avoid, minimize, and mitigate Project impacts. The Revised MMP and draft SWMP are conceptually acceptable. Detailed review to ensure completeness of the Revised MMP and draft SWMP will be necessary prior to submittal of the final documents. The Discharger has submitted the following draft and revised plans:
 - a. Revised MMP, Gale Ranch Project (LSA, April 2, 2001), including Creek Corridor Exhibits showing details of mitigation plans in the creek corridors, and a Mitigation Phasing Plan dated February 1, 2001;
 - b. Draft Gale Ranch Open Space Management Plan (Wildlands, Inc., January 10, 2001), including a draft Grazing Management Plan;
 - c. Draft OSMP for the Dyer property;
 - d. Draft SWMP for implementation of post-project best management practices for stormwater (Balance Hydrologics, March 2001);
 - e. Conceptual construction-stage Storm Water Pollution Prevention Plan (SWPPP) (submitted as Appendix F of the April 24, 2000 Response to Comments); and,
 - f. A Plan of Control for the Gale Ranch Site GHAD (July 15, 1997).
14. This Order requires the Discharger to submit, acceptable to the Executive Officer, for the items listed in Finding 13, final copies, final designs, and/or other final information, including additional information as described in this Order and the accompanying Staff Report.
15. The Discharger initially applied to the Board for Water Quality Certification under Section 401 of the Clean Water Act on May 28, 1999. On November 24, 1999, the Corps issued a Public Notice for a proposed Individual Permit for the Project (Corps File No. 24143S) pursuant to Section 404 of the Clean Water Act. The Corps has not yet issued an individual permit for the proposed Project. The Discharger's application was denied without prejudice pursuant to Section 3836 of Title 23 of the California Code of Regulations (23 CCR §3836) on November 22, 2000, because the Board was unable to consider the application prior to the expiration of the one-year federal period for certification. The Discharger reapplied for Water Quality Certification on March 15, 2001.

Regulatory Authority

16. The Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC) and 23 CCR §3857, in addition to issuing certification pursuant to 23 CCR §3859. The Board considers WDRs necessary to

adequately address impacts and mitigation to beneficial uses of waters of the State from this Project, to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the Project and its construction.

17. State authority to regulate the discharge, and threatened discharge of waste to Waters of the State, including surface water, groundwater, and wetlands was granted to the State Water Resources Control Board in the Porter-Cologne Water Quality Act (Act). Water Quality Control Plans implement the Act by designating the beneficial uses to be protected, and the water quality objectives reasonably required for that purpose.
18. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the CWC, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). The State Water Resources Control Board and the Office of Administrative Law approved this updated and consolidated revised Basin Plan on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. The Project, and this Order are in compliance with the Basin Plan.
19. The wetlands, seasonal creeks, and other waters on the Project site are located in the South Bay Basin, and are adjacent to or tributary to Alamo Creek. The Basin Plan does not explicitly identify beneficial uses for these waters. However, the Basin Plan states that “[t]he beneficial uses of any specifically identified water body generally apply to all of its tributaries.” Alamo Creek is tributary to Arroyo de la Laguna, Alameda Creek, and the San Francisco Bay. Beneficial uses identified in the Basin Plan for Alameda Creek are as follows: agricultural supply, cold freshwater habitat, ground water recharge, fish migration, water contact recreation, non-contact water recreation, fish spawning, warm freshwater habitat, and wildlife habitat.
20. Waters on the Project site are known to provide habitat for rare and endangered species, including proposed critical habitat for the federally listed threatened CRLF. In addition, waters on the site also provide for ground water infiltration, modification of the hydrograph for associated downstream flows, and for the transport of sediment and nutrients downstream.
21. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.

22. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values....” Senate Concurrent Resolution No. 28 states that “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.” Section 13142.5 of the CWC requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.” Providing that the MMP is implemented successfully, the Project will be in compliance with the California Wetlands Conservation Policy.

Additional Findings

23. The Discharger proposes to complete the Project, including its associated fills, over a period of approximately 15 to 21 years. Phase 1 of the Project, the Country Club at Gale Ranch, was previously permitted, is currently in final stages of construction, and is not part of this Order. Phases 2, 3, and 4 are subject to the requirements of this Order, and grading is anticipated to begin in May 2001. Once all permits are issued, there will be a minimum of two years of mass grading (2001-2003), and at least seven years of infrastructure and housing for Phase 2 (2002-2009). Grading for Phase 3 is expected to begin in 2007 or 2008, and will take six to eight years to build out (2007-2015). Phase 4 infrastructure and housing would not be expected to start until after 2012. These dates are estimated time frames, and will change if agency permitting is delayed, or other factors, including the economic climate, slow or accelerate the construction process.
24. Mitigation construction will occur in Phase 2, 3, and 4 described above. A Phasing Plan for mitigation construction, dated February 1, 2001, describes the mitigation features that will be constructed with each phase of development.
25. The permanent impact of the proposed fill on waters was identified as a potentially significant impact in the Dougherty Valley Environmental Impact Report (November 1992, State Clearinghouse No. 91053014, hereinafter EIR) and the Draft Subsequent Environmental Impact Report for the Dougherty Valley General Plan Amendment and Specific Plan Amendments (November 1996, State Clearinghouse No. 96013003, hereinafter SEIR) certified for the Project by Contra Costa County.
26. Discharges of storm water associated with construction activity will occur. The EIR and SEIR certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The 1992 and 1996 EIR documents determined that the project impacts would be considered less-than-significant after mitigation. This Order regulates the discharge of dredged and fill material to surface waters. The Discharger is responsible for obtaining appropriate permits for these stormwater discharges, including complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements. This includes complying with the requirements of State Water Resources Control Board Water Quality

Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter General Permit). Because the Project will disturb 5 acres or more of land during construction, it must be covered under the General Permit. The General Permit requires preparation of a Storm Water Pollution Prevention Plan (SWPPP) prior to the start of construction. The Regional Board is authorized to require submittal of the SWPPP for its review. Pursuant to the requirements of the General Permit, should a parcel or parcels of land be conveyed to other parties (e.g., other builders, the local school district, etc.) while still under construction, that parcel or parcels must be covered separately under the General Permit, regardless of size, if the Discharger terminates coverage for that parcel or parcels.

27. Discharges of storm water associated with the post-construction operation and maintenance of the Project will occur following its completion. The EIR and SEIR certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact.
28. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency (in this case, Contra Costa County) to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. The Board finds, after review of the Project's environmental documents described in Finding 25, together with the record before the Board, including any public comments, that all environmental impacts of the proposed activities subject to the Board's review have been identified, and with compliance with the conditions of this Order, will be mitigated to a level of insignificance.
29. Because of the Project's proximity to sensitive resources, including special status species habitat, and potential to discharge materials that could significantly impact those resources, this Order requires the Discharger to submit a Storm Water Pollution Prevention Plan or Plans (SWPPPs) for the Project, acceptable to the Executive Officer, prepared pursuant to the provisions of the General Permit.
30. Discharges of uncontaminated ground water encountered during construction may be required. This Order considers such discharges covered by the General Permit, contingent on submittal of a discharge plan acceptable to the Executive Officer.
31. As a part of the Board's consideration of appropriate mitigation measures for the Project's post-construction/operation-stage direct, indirect, and cumulative impacts to water quality and beneficial uses of waters of the State, this Order requires the Discharger to submit a final SWMP, acceptable to the Executive Officer, including appropriate design measures and storm water treatment controls to minimize and mitigate those impacts. These impacts include potential impacts resulting from the discharge of pollutants associated with operation and maintenance of the proposed roads, parking, and homes, including hydromodification impacts (i.e., the changes in runoff volume and/or timing resulting from increases in impervious surfaces and changes in drainage of the site). Creek outfalls for the

water quality ponds and flood control detention basin have the potential to impact the creek channel by causing erosion at the discharge locations. The SWMP shall include, at a minimum, the presently proposed water quality ponds, as designed to achieve 2 - 4 days of residence time for runoff flows, and additional measures, as necessary to provide appropriate treatment for a minimum of 85% of average annual runoff from contributing areas of the Project site. The SWMP will also include the implementation of BMPs within the development, as specified in the conceptual SWMP. The final SWMP shall also include a long-term maintenance plan for the detention basin, water quality ponds, and creek outfalls.

32. The draft SWMP, described in Finding 13.d, does not include specific locations and designs for water quality ponds to be constructed for portions of Phase 3 and Phase 4. However, site drawings included with the application have conceptually located the proposed ponds for these phases. The draft SWMP also does not include proposed lot-scale, neighborhood specific, or school/park/commercial area BMPs for Phases 3 and 4. These features will be developed as more detailed designs for these phases are established.
33. The proposed water quality ponds are intended to function as urban runoff treatment systems. Therefore, pursuant to Board Resolution Number 94-102, "Policy on the use of constructed wetlands for urban runoff pollution control," the water quality ponds are, as proposed, not considered Waters of the United States requiring water quality certification pursuant to Section 401 of the Clean Water Act for maintenance and other work completed in them.
34. The City of San Ramon will be responsible for long-term management and maintenance of the West Branch detention basin, all water quality ponds and BMP swales constructed for treatment of stormwater runoff, and all stormwater outfalls. The City will assume responsibility only after the facilities have been constructed per plan and specification and accepted as a "public facility" by Contra Costa County.
35. The Discharger has agreed to provide proof of financial assurances adequate to ensure the construction, success, and preservation in perpetuity of the proposed mitigation and other measures. The estimated cost for mitigation installation and monitoring through achievement of success is about \$8.8 million. The Discharger has proposed to post a bond for this amount to provide assurance that the mitigation plan will be implemented. Funding for the long-term management of the open space and mitigation areas shall be provided through tax assessments for the GHAD and CSA M-29. The Discharger has also agreed to provide assurance of this funding mechanism.
36. The Discharger has agreed to provide funding to support third party oversight and review of MMP implementation. The amount of this funding will be up to \$30,000 on an annual basis, and the money will be used by the Board to contract with a qualified consultant who will provide for review of construction and mitigation implementation, regular review of mitigation monitoring reports, and site visits as necessary and appropriate to ensure that adequate efforts are being made to ensure success of mitigation areas. This oversight shall

be provided until the project is complete, and success criteria for all mitigation have been met to the satisfaction of the Executive Officer.

37. Both the Contra Costa County Planning Agency and Department of Public Works have approval authority over a number of aspects of the Project, such as preliminary and final development plans, subdivision maps, site plans, etc. They also issue permits for grading and building, and review and approve any proposed work within the Alamo Creek and West Branch corridors. In order for the Discharger to install many of the mitigation features proposed for the Project, detailed plans for the work must be reviewed and approved by the County. The County's review is generally focused on flood control features, increased discharge of stormwater due to development related increases in impervious surfaces and resulting impacts on creek channels, stormwater BMP designs, and access for maintenance, erosion control, sediment transport, overall channel stability, and public safety issues.
38. The County's review and approval process is generally on a different time schedule than that taking place for issuance of this Order. The County has not completed its review of project plans, and will continue to review plans as they become more detailed at different stages during project implementation. It is possible that the County may request changes to the plans for mitigation work within the creek corridors (particularly the West Branch creek channel and associated backwater channels), stormwater BMPs, the flood control detention basin and associated diversion weir, and other aspects of the Project approved and required by this Order. These changes could affect the quality and nature of the MMP and/or SWMP that are included as part of the Project approved by this Order. Any changes pursuant to the County's review and approval process that are proposed for the Project that could have an impact on water quality and/or beneficial uses, or result in fill of waters of the State, must be reviewed by the Executive Officer to determine whether the proposed changes are acceptable, and whether additional mitigation will be required to compensate for direct and/or indirect impacts of the changes.
39. This Project is filed at the Board under file number 2118.03, and site number 02-07-C0302.
40. The Board has notified the City of San Ramon, Contra Costa County and interested agencies and persons of its intent to prescribe WDRs and Water Quality Certification for this discharge.
41. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that Shapell Industries of Northern California, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under CWC Sections 13263 and 13267:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The water body fill activities and mitigation construction subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).
5. The discharge of decant water from the Project's fill sites, and stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.
7. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.

B. Provisions

1. The Discharger shall comply with all Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Discharger shall submit copies of all necessary approvals and/or permits for the Project, including its associated mitigation, from applicable government agencies, including, but not limited to, the State Department of Fish and Game, U.S. Fish and Wildlife Service, City of San Ramon, Contra Costa County, and U.S. Army Corps of Engineers. Copies shall be submitted within 60 days after issuance of any permit or other approval.

Stormwater Provisions

3. Not later than August 1, 2001, the Discharger shall submit, acceptable to the Executive Officer, a final SWMP including appropriate design measures and storm water treatment controls to address the Project's urban runoff impacts to waters of the State. The final SWMP shall provide for the appropriate treatment of at least 85% percent of average

annual runoff from contributing developed areas of the site (i.e., areas within the development envelope, including impervious surfaces, landscaping, and all other appropriate areas) and shall include appropriate design details, planting plans, maintenance plans (including water quality pond outfalls), funding mechanism, and all other information, as appropriate, including the information described in Board Resolution Number 94-102. The final SWMP shall include the presently proposed water quality ponds for Phases 2 and 3, providing 2 - 4 days of treatment time for flows, and additional measures (including several BMP swales) as necessary to provide appropriate treatment for at least 85% percent of average annual runoff from contributing developed areas of the site as proposed in the draft SWMP. In addition, specific neighborhood level, commercial and school site BMPs are included in the draft SWMP, and shall be incorporated into the final SWMP.

4. The final SWMP shall define the responsible party for implementation of long-term maintenance and management of the water quality ponds, BMP swales, and stormwater outfalls. The final SWMP shall clearly define the entity responsible for maintenance and operation of the ponds and detention basin at different stages of the Project, and shall describe the mechanism for transfer of responsibility once construction is complete.
5. The final SWMP shall include a plan for proactive maintenance of any creek bank and/or bed erosion problems that occur as a result of the water quality pond outfalls and discharge of stormwater, or the diversion structure and/or outfall for the flood control detention basin. Proactive maintenance shall be included in this plan in order to minimize and avoid future need for any additional hardscape application to the creek bed and bank. This plan shall prescribe regular inspection of outfall locations for creek erosion problems, implementation of corrective actions prior to the onset of the following rainy season, and use of bioengineering, low impact techniques wherever possible for remedial measures. If the maintenance plan for the diversion structure cannot be developed in time for submittal with the final SWMP (due to delay in approval of diversion design by Contra Costa County Public Works Department), then a status report on the development of the maintenance plan shall be included in the final SWMP. The maintenance plan shall be submitted as soon as it is available, but no later than July 1, 2002.
6. The Discharger shall submit, at least 180 days prior to grading for Phase 4, proposed locations and designs for water quality ponds for the Phase 4 development. These ponds shall provide for the same level of capture and holding as described above for Phases 2 and 3. These ponds shall be located with adequate buffer between the structure and any creek or water features. Adequate buffer shall be provided to allow natural lateral movement of creeks (Alamo Creek, the West Branch, or any other tributary or created creek channel) in the vicinity of the ponds, and to minimize the future need for performance of creek stabilization work for protection of the water quality pond structure.
7. At least 180 days prior to grading for Phase 3 and Phase 4, the Discharger shall submit proposed BMPs for residential, commercial, school and park areas of each phase. The proposed plans for each phase shall be submitted at an early stage in the planning process,

to allow for adequate review time and comment prior to making final design plans for the area. These plans shall be provided to the City of San Ramon, and the Contra Costa County Public Works Department for their review and comment, and as necessary to any other agency that has approval and/or long-term oversight responsibility for stormwater features for the Project. Grading for Phase 3 and Phase 4 shall not commence until the Executive Officer has made a determination that the proposed plan for stormwater treatment in each phase is acceptable.

8. The Discharger shall submit as-built reports within 60 days of the complete installation of the West Branch detention basin, proposed water quality ponds, and BMP swales. As-built reports shall be submitted for each phase of the Project, after all stormwater features have been constructed, and accepted by the Contra Costa County Public Works Department. As-built reports for water quality pond outfalls shall be submitted within 60 days of installation.
9. Not later than January 15, 2002, the Discharger shall submit, acceptable to the Executive Officer, a proposed plan for minimization of chemical application for parks and landscaping in common residential areas. This plan shall be provided to the City of San Ramon, or other entity responsible for future maintenance of these areas.
10. Not later than May 15, 2001, the Discharger shall submit, acceptable to the Executive Officer, a final SWPPP to address the Project's expected construction stage impacts.

Mitigation and Monitoring Plan

11. Not later than June 15, 2001, the Discharger shall submit, acceptable to the Executive Officer, a final MMP that addresses the proposed on-site mitigation elements. The final MMP shall include all of the proposed on-site mitigation elements including the pond reconstructions, pond creation, seasonal wetland creation, creek stabilization, restoration and enhancement, backwater channel and tributary creek channel creation, and other related work.
12. The final MMP shall include all elements in the revised MMP and revised performance criteria for evaluation of mitigation success. If reference sites are utilized in the performance criteria, then specific sites shall be proposed. If appropriate reference sites are not found, then the performance criteria shall be revised, to the satisfaction of the Executive Officer, to include more specific criteria for success.
13. If drought conditions are present during any of the mitigation establishment periods for the various phases of the project, and these conditions make it difficult to assess whether adequate hydrology exists for a particular mitigation feature (such as seasonal wetlands and backwater channels systems), then the mitigation monitoring period shall be extended accordingly.

14. The final MMP shall also include language that provides for Discharger review of mitigation for each phase prior to initiation of the next phase of development. Review shall determine relative success of previously installed mitigation features with respect to performance criteria. Problems shall be noted, and recommendations for any significant changes in mitigation for the next phase(s) shall be proposed by the Discharger in a report, acceptable to the Executive Officer, at least 120 days prior to construction of the next phase of development.
15. To reduce the potential impacts to water quality during enhancement and restoration of Alamo Creek and the West Branch, installation of the backwater channel system, and/or any other mitigation work, the Discharger will divert any flow around construction and/or restoration work within water bodies using a diversion channel, pipe, or other practices such that the water does not flow across the work areas and no equipment operates in areas of flowing or standing water. Any diversions shall be implemented in accordance with the California Department of Fish & Game creek bed alteration agreement for the project.
16. The Discharger shall submit as-built reports within 60 days of installation of the proposed mitigation for each phase of the project. Annual mitigation monitoring reports for all mitigation features shall be submitted for a minimum of five years. The duration of the mitigation-monitoring period for seasonal wetlands, emergent marsh, ponds, bank stabilization, and created creek tributaries shall be a minimum of five years. The mitigation-monitoring period for the backwater creek channel system shall be a minimum of ten years. The duration of the mitigation-monitoring period for riparian plantings will be established as part of the final MMP. The first annual report shall be submitted approximately one year after the preparation of the as-built report, and subsequent reports shall be submitted on the anniversary date of the first annual report submittal
17. The annual mitigation monitoring reports shall include assessment of all mitigation features with respect to performance criteria established in the final MMP. Reports shall include methods used, locations sampled, representative photographs, results of monitoring, trends, reference weather conditions, recommendations, and implemented actions. For necessary remedial actions not taken prior to submittal of the report, an implementation schedule shall be provided.
18. Mitigation for Phase 2 of the Project includes construction of 3.4 acres of seasonal wetlands, creation of several demonstration seeps, creation of 0.8 acres of backwater channel wetlands, creation of 2,575 linear feet of seasonal creek, creation of 2 (0.5 acres) ponds, restoration of 0.5 acres of Alamo Creek, and enhancement of 2.9 acres of the West Branch. Grading for Phase 2 is anticipated to begin in May 2001, and in order to minimize temporal impacts to the extent practicable, all mitigation features described above, with the exception of the restoration and enhancement work (riparian planting, and some bank stabilization work) will be constructed by October 15, 2001. The restoration and enhancement work that involves riparian planting along the creeks will require irrigation. As such, the planting will not take place until the water supply infrastructure has been installed, which will be at least two years after grading begins. All reasonable efforts will

be made to complete the initial mitigation work by October 15, 2001. If delays in permitting by Contra Costa County result in mitigation installation delays, then the Discharger shall notify the Executive Officer, no later than September 15, 2001, of all circumstances relating to the delays, and include a proposal, acceptable to the Executive Officer, for additional mitigation appropriate to address the additional temporal impacts resulting from such delays. Providing that all reasonable efforts to acquire permits have been made, such delays will be considered as beyond the control of the Discharger.

19. The Discharger shall submit a letter, no later than May 1, 2001, documenting steps required to prepare for installation of the backwater channel system and northeast mitigation area wetlands. Status reports on achieving the necessary steps shall be submitted July 1, 2001, and September 1, 2001.
20. To minimize temporal impacts, mitigation for Phases 3 and 4 of the Project shall be constructed as soon as possible after grading begins for each phase. With the exception of riparian planting that requires irrigation (and associated bank stabilization work), the construction of proposed mitigation shall be completed within the same calendar year as impacts first occur, or at least no later than the end of the following calendar year (e.g., if impacts occur in June 2001, construction of mitigation for all impacts must be completed no later than December 31, 2002, or October 15, 2002, for any construction that requires erosion control).
21. If any changes are proposed within the creek corridors (including design of stormwater outfalls, detention basin diversion structure, backwater channel inlets and discharge points, and trail systems) as a result of County review of the Project, then the Discharger shall submit, for approval by the Executive Officer, all design plans for the proposed modifications, along with a detailed discussion of water quality impacts, future effects of proposed changes on creek channel integrity and stability, any fill amounts, and anticipated time schedule for implementation of the plans. Proposed mitigation for all anticipated additional permanent and temporal impacts shall be included. All impacts shall be considered together as a package, in order to ensure that proposed mitigation is appropriate for the additive impacts of the potential various changes in design.
22. Not later than December 1, 2001, the Discharger shall submit, acceptable to the Executive Officer, a final OSMP and conservation easement for the on site open space and mitigation areas. The final plan shall include monitoring and maintenance for the inlets for the backwater channel system, as provided for in the draft OSMP. The Executive Officer shall be provided an opportunity to review the final conservation easement for the open space and mitigation areas prior to recording of the easement.
23. Not later than July 1, 2001, the Discharger shall submit, acceptable to the Executive Officer, evidence of purchase, and dedication to the EBRPD of the offsite mitigation parcels (Dyer and Elworthy properties). Not later than December 1, 2001, the Discharger shall submit, acceptable to the Executive Officer, final OSMPs and conservation easements for the Dyer and Elworthy parcels. The final OSMPs shall include measures for protection

of all tributary creeks from cattle grazing impacts. These plans shall be developed to ensure that the land is managed in a manner that maximizes the habitat for CRLF, and other aquatic species present.

24. Not later than May 15, 2001, the Discharger shall submit, acceptable to the Executive Officer, proof of financial assurances adequate to ensure the construction and success of the proposed mitigation and other measures (e.g., wetland construction, creek enhancement, restoration, and stabilization, fencing, pond and pond dam maintenance, etc.). An \$8.8 million bond shall be posted by the Discharger to assure that adequate funds will be available to fund construction, establishment, monitoring, and success of the proposed wetland mitigation and other measures. If a bond is not posted, then security in the amount of \$8.8 million for the construction, establishment, monitoring, and success of the proposed mitigation shall be in an instrument acceptable to the Executive Officer (e.g., certificate of deposit, letter of credit, or other appropriate instrument) and callable by the Board and/or Executive Officer. This assurance fund shall not be released until mitigation has achieved success to the satisfaction of the Executive Officer.
25. Not later than June 15, 2001, the Discharger shall submit, acceptable to the Executive Officer, proof of financial assurance for preservation in perpetuity, and long term maintenance of the proposed mitigation and other measures.
26. Not later than July 1, 2001, the Discharger shall submit, acceptable to the Executive Officer, a proposed mechanism for providing post project monitoring and third party review of the construction and mitigation work. The amount of funding will be in an amount not to exceed \$30,000 per year. The money shall be made available on an annual basis until the project is complete, and success criteria for all mitigation have been met to the satisfaction of the Executive Officer.
27. Not later than July 1, 2001, the Discharger shall submit, for the entire project area, a final plan and schedule for implementation for fencing creeks, wetlands and water bodies on site, to protect them from further degradation due to cattle grazing impacts. This plan shall include specific plans for provision of water supplies for the cattle, with a time schedule for implementation. Fencing of creeks and water bodies, and water supply, shall be installed no later than one year after grading for Phase 2 begins.

Contingency Measures

28. If proposed mitigation does not achieve performance criteria after a reasonable portion of the monitoring period, even after remedial measures have been implemented, the Discharger shall initiate efforts to define alternative mitigation, either on-site, or offsite as necessary to accomplish the goals of the MMP.

Notice of Mitigation Completion

29. When the Discharger has determined that the mitigation has achieved the final success criteria specified in the final MMP approved by the Executive Officer, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a status report on the implementation of the long-term maintenance and management portion of the MMP. Also, separate notices may be submitted for the different portions of proposed mitigation. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of annual mitigation monitoring reports for its mitigation, or for that element of mitigation for which a notice was submitted, is no longer required.
30. Any changes to the final MMP and other final plans referenced in the Provisions must be approved in writing by the Executive Officer.

Other Provisions

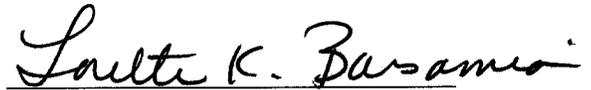
31. If any of the above-described submittals are not satisfactory to the Executive Officer, or acceptable resolution of problems related to the submittals is not achieved in a timely manner, then the Executive Officer may consider a recommendation to the Board that this Order be amended to prohibit further grading and impacts within creeks and water bodies on the Project site. Should the Executive Officer find any of the above described submittals are not satisfactory, the Discharger shall be notified by the Executive Officer in writing describing clearly and explicitly the nature of the non-compliance or non-responsiveness. After receipt of written notice, the Discharger shall have 60 days to remedy the violation. If the Discharger fails to remedy the violation in 60 days, or if the violation cannot be reasonably remedied within a 60-day period, and/or if the Discharger fails to continue with diligent efforts to remedy the violation, the Executive Officer may recommend to the Board that this Order be amended to prohibit further grading and impacts to jurisdictional waters on the site.
32. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.
33. The Discharger shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
34. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment be required from the Project site, where such discharges are not otherwise covered

by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.

35. The Discharger shall notify the Board in writing at least 30 days prior to actual start dates for mass grading, utility installation, and mitigation construction.
36. The Discharger shall fully comply with the engineering plans, specifications, and technical reports submitted with its application for water quality certification.
37. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
38. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
39. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
40. In accordance with CWC §13260, the Discharger shall file with the Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the wetland/waters of the State fill sites.
41. The Discharger shall maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
42. The Discharger shall permit the Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which water body fill or water body mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.

- d. Sampling of any discharge or surface water covered by this Order.
- 43. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
- 44. The Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Loretta K. Barsamian , Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on April 18, 2001.



Loretta K. Barsamian
Executive Officer