CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
JULIO CESAR PALMAZ AND	)	**Order No. R2-2011-0015**
AMALIA B. PALMAZ,	)	**for Administrative Civil Liability**
TRUSTEE OF THE	)	
AMALIA B. PALMAZ LIVING	)	
TRUST, AND CEDAR KNOLLS	)	**Settlement Agreement and**
VINEYARDS, INC.	)	**Stipulation for Order;**
	)	**Order**
	)	
	)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and among the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team ("Prosecution Team"), and Julio Cesar Palmaz and Amalia B. Palmaz, Trustee of the Amalia B. Palmaz Living Trust, and Cedar Knolls Vineyards, Inc. ("Settling Respondents") (collectively, the Prosecution Team and Settling Respondents are referred to as the "Parties") and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board"), or its Executive Officer under his delegated authority, for adoption as an order, by settlement, pursuant to Government Code section 11415.60, and pursuant to California Water Code section 13323(d) ("Order").

Section II: Recitals

1. The Settling Respondents own and/or operate 546 acres of land in unincorporated Napa County, east of the City of Napa, in the vicinity of Hagen Road and Monticello Road, in California (the "Property"). The Property's Napa County Assessor's Parcel Numbers (APNs) are 033-110-056-000, 033-110-058-000, 033-110-072-000, 033-110-062-000, 049-270-019-000, 049-320-015-000 and 049-270-020-000. The Property includes an area known as the 1400 Vineyard Area, which is approximately 14.2 acres. Activities on the Property have involved placing cave spoils into two wetlands and associated streams in the 1400 Vineyard Area and developing a vineyard on top of the filled area.

2. The Prosecution Team alleges that the Settling Respondents filled two wetlands and associated waters of the U.S., in the 1400 Vineyard Area with cave spoils without permits and developed the 1400 Vineyard Area without complying with applicable laws.

The Prosecution Team seeks to impose civil liability against the Settling Respondents for the unauthorized discharge into waters of the U.S. under California Water Code section 13385(a)(5) for violating Clean Water Act (CWA) section 301(a), which prohibits the discharge of any pollutant into waters of the United States except in compliance with the CWA.

3. For violations of CWA section 301, under California Water Code section 13385(c), the Regional Water Board may impose a liability of up to $10,000 each day for each violation, and assess $10 for each gallon of fill over 1,000 gallons that is not cleaned up. To facilitate settlement, the Prosecution Team seeks civil liabilities for the CWA section 301 violation for the last three years from the date of this Stipulation. The maximum statutory liability for that time under 13385(c) is $1,950,000.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation and Order to the Regional Water Board, or the Executive Officer under his delegated authority, for adoption pursuant to Government Code section 11415.60 and Water Code section 13323(d). The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the unauthorized discharge, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public as it involves the restoration of two specific areas of the 1400 Vineyard Area to maximize wetland character and function in these areas, mitigation for temporal losses, and the payment of a civil liability.

Section III: Stipulations

The Parties stipulate to the following:

5. **Administrative Civil Liability:** The Settling Respondents shall pay a civil liability of $1,927,000, which includes $55,000 for staff costs. Payment of $85,000 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board's, or the Executive Officer's, adoption of the Order. Of the full liability amount, $1,742,000 shall be suspended upon full and adequate completion of the work in the approved Restoration Work Plan required hereunder. The remaining $100,000 in liability shall be suspended upon the full and adequate completion of the work in the approved Temporal Loss Mitigation and Monitoring Work Plan required hereunder.

6. **Restoration Work Plan:** No later than 30 days following the Regional Water Board's, or the Executive Officer's, adoption of the Order, the Settling Respondents shall submit to the Assistant Executive Officer, as lead for the Prosecution Team, for approval a Restoration Work Plan proposal for corrective actions to reconstruct, revegetate, restore and remediate the two wetlands and associated waters that were disturbed in the 1400 Vineyard Area, including their values, functions, hydrology, and beneficial uses. The Restoration Work Plan shall be consistent in scope as the

"Conceptual Plan for Restoration and Mitigation of Wetlands" dated December 30, 2009, and prepared by AMEC. The following requirements apply to the Restoration Work Plan:

a. The Restoration Work Plan shall include success criteria and performance standards for assessing whether the corrective actions are achieving the intended habitat restoration goals, including identification and justification for targeted native plant species, reference sites, targeted soil and natural hydrologic conditions, and a self-monitoring program. Performance standards shall designate the final habitat success criteria, as well as annual performance criteria. These success criteria and performance standards are satisfactorily set forth and described in the Second Revised Proposed Performance Measures and Success Criteria and enclosures dated December 21, 2010 submitted by AMEC on behalf of the Settling Respondents and approved by the Prosecution Team on January 4, 2011. The December 21, 2010 submittal is attached as Exhibit 1 and incorporated herein by reference.

b. The Restoration Work Plan shall set forth a schedule to complete the work identified therein to accomplish the goals of the Plan as soon as is feasible. This schedule is included in Section 5.1 as Project Implementation Milestones in the December 21 AMEC submittal set forth in Exhibit 1. The schedule shall also include annual site inspections to be conducted by Settling Respondents and Water Board staff at times to be agreed upon and shall provide the opportunity for inspection, observation and discussion of the status of success and performance to date and performance planned in the upcoming period prior to the next annual site inspection. This time schedule may be revised from time to time by mutual written agreement of the Settling Respondents and Water Board staff. The Water Board staff will chronicle the progress of the work in the public file for this matter for the benefit of future staff and decision-makers.

c. The Assistant Executive Officer shall review the Restoration Work Plan and approve it or identify changes to it that are necessary for approval within 30 days of receiving the proposed plan. Settling Respondents shall have the option to request discussions with Water Board staff regarding any changes identified by the Assistant Executive Officer. If such discussions are requested, the discussions will occur prior to changes being made in the Restoration Work Plan. The Settling Respondents shall make all necessary changes for approval and resubmit the Restoration Work Plan within 30 days following the discussions, or if no discussions are requested, within 30 days of the changes identified by the Assistant Executive Officer. Implementation of the Restoration Work Plan shall commence on the approved plan within 30 days of approval pending receipt of permits where appropriate. The Settling Respondents shall complete the approved Restoration Work Plan's tasks and comply with its schedule.

d. Should the Settling Respondents fail to fully implement the approved Restoration Work Plan in accordance with the criteria, standards, specifications, and schedule specified therein, the suspended amount of $1,742,000, less the value of the percentage of Restoration Work Plan completed (which shall be determined by reference to the Project Implementation Milestones in the December 21 AMEC submittal, and their assigned weight relative to all the tasks set forth in the December 21 attached Weighted Percentage of RWP Completed),shall become due within 30 days of the determination of failure to the Cleanup and Abatement Account following discussions and appeal determinations, if any, as described herein. Upon such failure, the Assistant Executive Officer shall notify the Settling Respondents of the specific amount due to the Cleanup and Abatement Account. Prior to a determination of such failure, the Assistant Executive Officer shall provide notification to the Settling Respondents of the intent to make a failure determination, and the Settling Respondents shall have 14 days to request discussions with the Assistant Executive Officer regarding the alleged failure. If agreement cannot be reached in discussions between the Assistant Executive Officer and Settling Respondents, Settling Respondents shall have 30 days to file an appeal of the failure determination to the Executive Officer or the Board and shall have the right to seek any further administrative and judicial remedies provided by law relating to the failure determination.

e. If the Settling Respondents are prevented by events beyond its reasonable control from meeting work completion and report submittal schedule dates specified in the approved Restoration Work Plan, the Settling Respondents shall immediately notify the Assistant Executive Officer in writing with revised due dates. It is the intention of the Parties that in the event of such notification to the Assistant Executive Officer, revised time schedules shall be issued for the work completion and report submittal schedule dates consistent with the letter submitted by Christian Palmaz dated February 5, 2011 and approved by the Prosecution Team. This letter is attached as Exhibit 2 and is incorporated herein by reference. Any requested extensions of the time schedules or deadlines in the Restoration Work Plan will be approved in writing by the Assistant Executive Officer.

Upon completion of all the work described in the Restoration Work Plan, the Settling Respondents shall continue to comply with all applicable federal and state laws pertaining to any jurisdictional waters, including wetlands, on the Property.

7. **Temporal Loss Mitigation and Monitoring Work Plan:** No later than 30 days following the Regional Board's, or the Executive Officer's, adoption of the Order the Settling Respondents shall submit for the Assistant Executive Officer's approval a Temporal Loss Mitigation and Monitoring Work Plan proposal to mitigate for the temporal loss of the values, functions, hydrology, and beneficial uses of wetlands

disturbed in the 1400 Vineyard Area during the course of their being filled by cave spoils. The Temporal Loss Mitigation and Monitoring Work Plan shall be consistent in scope with the Conceptual Temporal Loss Mitigation and Monitoring Plan submitted by Christian Palmaz dated February 3, 2011 and approved by the Prosecution Team. This February 3, 2011 submittal is attached as Exhibit 3 and incorporated herein by reference.

a. The Temporal Loss Mitigation and Monitoring Work Plan proposal shall include sufficient compensatory habitat to mitigate the temporal impacts associated with the loss of wetland acreage, including the wetlands' values, functions, hydrology, and beneficial uses as described in the February 3 submittal set forth in Exhibit 3.

b. The Temporal Loss Mitigation and Monitoring Work Plan shall set forth a schedule to complete the work identified therein to accomplish the goals of the Plan as soon as is feasible consistent with the time schedule described in the February 3 submittal set forth in Exhibit 3. This time schedule may be revised from time to time by mutual written agreement of the Settling Respondents and Water Board staff.

c. The Temporal Loss Mitigation and Monitoring Work Plan shall include success criteria and performance standards for assessing whether the actions are achieving intended habitat restoration goals, including identification and justification for targeted native plant species, reference sites, targeted soil and natural hydrologic conditions. Performance standards shall designate annual and final habitat success criteria. These success criteria and performance standards are described in the February 3 submittal set forth in Exhibit 3.

d. The Assistant Executive Officer shall review the Temporal Loss Mitigation and Monitoring Work Plan and approve it or identify changes to it that are necessary for approval within 30 days of receiving the proposed plan. Settling Respondents shall have the option to request discussions with Water Board staff regarding any changes identified by the Assistant Executive Officer. If such discussions are requested, the discussions will occur prior to changes being made in the Work Plan. The Settling Respondents shall make all necessary changes for approval and resubmit the Work Plan within 30 days following the discussions, or if no discussions are requested, within 30 days of the changes identified by the Assistant Executive Officer. Implementation of the Temporal Loss Mitigation and Monitoring Work Plan shall commence on the approved Plan as specified in Exhibit 3 and pending receipt of permits were appropriate. The Settling Respondents shall complete the approved Temporal Loss Mitigation and Monitoring Work Plan's tasks and comply with its schedule.

e. Should the Settling Respondents fail to fully implement the approved Temporal Loss Mitigation and Monitoring Work Plan in accordance with the criteria, standards, specifications, and schedule set forth therein, the suspended amount of $100,000, less the value of the percentage of Temporal Loss Mitigation and Monitoring Work Plan completed (which shall be determined by reference to the tasks, and their assigned weight relative to all the tasks, of the Temporal Loss Mitigation and Monitoring Work Plan, as described in the Cost Stipulations section of the February 3 submittal set forth in Exhibit 3), shall become due within 30 days of the determination of failure to the Cleanup and Abatement Account following discussions and appeal determinations, if any, as described herein. Upon such failure, the Assistant Executive Officer shall notify the Settling Respondents of the specific amount due to the Cleanup and Abatement Account. Prior to a determination of such failure, the Assistant Executive Officer shall provide notification to the Settling Respondents of the intent to make a failure determination, and the Settling Respondents shall have 14 days to request discussions with the Assistant Executive Officer regarding the alleged failure. If agreement cannot be reached in discussions between the Assistant Executive Officer and Settling Respondents, Settling Respondents shall have 30 days to file an appeal of the failure determination to the Executive Officer or the Board and shall have the right to seek any further administrative and judicial remedies as provided by law relating to the failure determination.

f. If the Settling Respondents are prevented by events beyond its reasonable control from meeting work completion and report submittal schedules dates specified in the approved Temporal Loss Mitigation and Monitoring Work Plan, the Settling Respondents shall immediately notify the Assistant Executive Officer in writing with revised due dates. It is the intention of the Parties that in the event of such notification to the Assistant Executive Officer, revised time schedules shall be issued for the work completion and report submittal schedule dates consistent with the letter submitted by Christian Palmaz dated February 5, 2011 and approved by the Prosecution Team. This letter is attached as Exhibit 2 and incorporated herein by reference. Any requested extensions of the time schedules or deadlines in the Temporal Loss Mitigation and Monitoring Work Plan will be approved in writing by Assistant Executive Officer.

8. **Enforcement Policy:** On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. In light of substantial negotiations having occurred prior to May 20, 2010, the Parties agree to the use of the Enforcement Policy adopted in 2002 for this Stipulation and Order.

9. **Water Code section 13385(e):** The Regional Water Board is required to consider the following factors in California Water Code section 13385(e) in approving the administrative civil liability set forth in Paragraph 5:

a. Nature, Circumstances, Extent, and Gravity of the Violation: The Settling Respondents filled two wetlands and other waters in the 1400 Vineyard Area without authorization. In so doing, they deposited a substantial amount of cave spoils into the wetlands. As set forth in the Regional Water Board's Basin Plan, wetlands and related habitats comprise some of the region's most valuable natural resources. Wetlands provide critical habitats for hundreds of species of fish, birds, and other wildlife; offer open space; and serve to enhance water quality through natural functions such as flood and erosion control, stream bank stabilization, and filtration and purification of water. The Regional Water Board has a no net loss wetlands policy.

b. Discharge Susceptibility to Cleanup or Abatement: It is practical to remove the fill in the two wetlands using current technology. It is anticipated that these areas can be restored, including their values, functions, hydrology, and beneficial uses.

c. Degree of Toxicity of Discharge: The toxicity of the cave spoils is unknown; however, filling the wetlands with the cave spoils has eliminated their values, functions, and beneficial uses.

d. Ability to Pay and Ability to Continue Business: The Settling Respondents own approximately 546 acres of land in unincorporated Napa County. The complete assets of the Settling Respondents are unknown; however, at a minimum, it is known that the Settling Respondents produce about 6,000 cases of cabernet wines and 1,000 cases of white wines each year, which sell from $32 to $150 a bottle in restaurants, stores and by mail order.

e. Voluntary Cleanup Efforts Undertaken: There have been no voluntary cleanup actions prior to this Stipulation. However, Settling Respondents' cooperative discussions with the Prosecution Team and this Stipulation and Order is evidence of the Settling Respondents' cooperation and intentions to resolve the violations and restore the areas described in the conceptual plan in the future.

f. Prior History of Violations: There is no prior history of Water Board enforcement against the Settling Respondents. However, the County of Napa and the California Department of Fish and Game have taken enforcement actions against the Settling Respondents for construction activities associated with the Palmaz vineyard and winery.

g. Degree of Culpability: The Settling Respondents are responsible for the cave spoil disposal activities into the areas described, including not obtaining and complying with all necessary permits.

h. Economic Benefit or Savings: The economic benefit for the unauthorized discharge is $30,000.

i. Other Matters that Justice May Require: Estimated costs in investigating the matter, preparing and reviewing documents, and other administrative costs are estimated at $55,000.

10. **Support for this Stipulation and Order and Waiver of Hearing:** The Parties agree to support the adoption of this Stipulation and Order by the Regional Water Board or its Executive Officer. Settling Respondents have been informed of the rights provided by CWC section 13323(b), and hereby waive its right to request a hearing before the Regional Water Board prior to the adoption of the Order.

11. **Effect of Stipulation and Order:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all known claims, violations or causes of action against the Settling Respondents as of the date the Parties sign this Stipulation based on the facts and violations alleged in this Stipulation and Order, the prohibitions, provisions and requirements of Cleanup and Abatement Order R2-2007-0019 and any and all other known violations with regard to the Property ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the Settling Respondents' full compliance with the terms of this Stipulation.

12. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondents do not admit that they have been or are in violation of the California Water Code, the CWA, Cleanup and Abatement Order R2-2007-0019 or any other federal, state, or local law or ordinance, provided, the Settling Respondents agree that in the event of any future enforcement actions by the Regional Water Board against the Settling Respondents, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with California Water Code section 13327, but in no event shall the settlement of this matter give rise to any inference of liability for the allegations set forth in this Stipulation and Order on the part of the Settling Respondents, its affiliates, officers, employees, contractors or agents.

13. **Covenant Not to Sue:** Except as provided in Paragraphs 6d and 7e above, the Settling Respondents covenant not to sue or pursue any administrative or civil claims(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 Covered Matters or the commencement and/or prosecution of this matter.

14. **Petition and Judicial Review:** Provided that this Stipulation and Order becomes final as stipulated and agreed by the Parties herein or by written modification as agreed to by the Parties, the Settling Respondents agree it will not petition the Regional Water Board's or Executive Officer's adoption of this Stipulation and Order to the State Board, or seek judicial review of adoption of this Stipulation and Order.

15. **Satisfaction of Stipulation and Order:** Upon the Settling Respondents' satisfaction of its obligations under this Stipulation and Order, the Prosecution Team shall request that the Regional Water Board or its Executive Officer shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Respondents under this Stipulation and Order.

16. **Compliance with Applicable Laws:** The Settling Respondents understand that compliance and payment of administrative civil liability in accordance with the terms of this Stipulation and Order are not a substitute for compliance with applicable laws, and that any new violations may subject them to further enforcement, including additional administrative civil liability.

17. **Public Notice:** The Parties agree that the procedure contemplated for public review and comment of this Stipulation and Order is lawful and adequate. The Settling Respondents understand that this Stipulation and Order must be noticed for a 30-day public review period prior to consideration by the Regional Water Board or the Executive Officer. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding this Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. The Parties agree that any and all changes to the Order made by the Executive Officer or the Regional Water Board must be agreed to in advance by the Parties.

18. **If this Stipulation and Order Does Not Take Effect:** In the event that the Stipulation and Order does not take effect because it is not approved by the Regional Water Board or the Executive Officer as agreed to by the Parties, or is vacated in whole or in part by the State Water Resources Control Board ("State 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 Stipulation and Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on this matter; and

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.

19. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its Executive Officer or the Assistant Executive Officer under the terms of this Stipulation and Order shall be communicated to the Settling Respondents 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 Settling Respondents of its obligation to obtain any final written approval required by this Stipulation and Order.

20. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes this Stipulation.

21. **Effective Date**: The effective date of this Stipulation shall be the date when all the Parties have executed this Stipulation; however, the obligations set forth in Paragraphs 5, 6, and 7 shall not be effective until Regional Water Board or its Executive Officer approves and adopts the Order agreed to by the Parties with this Stipulation.

22. **Severability:** Except as provided in Paragraph 18 above, the provisions of this Stipulation and Order are severable. Should any provision be found invalid the remainder shall remain in full force and effect.

23. **Counterpart Signatures:** This Stipulation 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.

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

25. **Modification:** This Stipulation and Order prior to adoption by the Board or Executive Officer can only be modified in writing by the Parties. The Order, once adopted by the Regional Water Board or the Executive Officer, is effective and final upon adoption under Water Code section 13323(d).

26. **Party Contacts for Communications related to Stipulation and Order:**

For the Prosecution Team: Dyan Whyte, Assistant Executive Officer

For the Settling Respondent: Christian Palmaz

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

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation as of the dates set forth below. It is so stipulated.

For Prosecution Team:

Date: February 17, 2011

By: Dyan C. Whyte
Dyan C. Whyte
Assistant Executive Officer

For Settling Respondents:

Date: 2/21/2011

By: _____
Amalia B. Palmaz

Order of the the California Regional Water Quality Control Board, San Francisco Bay Region

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS AND HAVING PROVIDED PUBLIC NOTICE OF THE STIPULATION AND THIS ORDER FOR 30 DAYS, THE EXECUTIVE OFFICER FINDS THAT:

28. This Order incorporates paragraphs 1-27 of the foregoing Stipulation and finds that the Stipulation is in the public interest.

29. Having considered the record, the Settling Respondents is subject to civil liability for the unauthorized discharge to wetlands and associated waters. In determining the amount of civil liability to be assessed, the Board has taken into consideration the factors described in California Water Code section 13385(e). The liability set forth in the Stipulation is reasonable based on these factors.

30. This Order is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations.

Pursuant to California Water Code sections 13323 and 13385, and California Government Code section 11415.60, **it is HEREBY ORDERED** that:

31. The Settling Respondents are assessed an administrative civil liability of $1,927,000, $85,000 of which is due within 30 days of the date that this Order is adopted by the Regional Water Board or by the Executive Officer. Of the remaining part of the full liability amount, (a) $1,742,000 shall be suspended upon Settling Respondents' completion of work in accordance with the approved Restoration Work Plan required under the Stipulation and (b) $100,000 shall be suspended upon Settling Respondents' completion of work in the approved Temporal Loss Mitigation and Monitoring Work Plan required under the Stipulation. Checks shall be made out to the State Water Resources Control Board Pollution Cleanup and Abatement Account and shall indicate on it the number of this Order, R2-2010-0015. Send payment to the Regional Water Board.

32. Full restoration and mitigation will be deemed complete upon Settling Respondent receiving a Satisfaction of Order from the Executive Officer for successful completion and implementation of the approved Restoration Work Plan and the Temporal Loss Mitigation and Monitoring Work Plan. Failure to complete the full restoration and mitigation in accordance with the approved Restoration Work Plan or the approved Temporal Loss Mitigation and Monitoring Work Plan as set forth in the

Stipulation shall result in the suspended liabilities becoming due as provided in the Stipulation.

33. Fulfillment of the Settling Respondent's obligations under the Stipulation and Order constitutes full and final satisfaction of any and all liability for each of the recitals and stipulations in the Stipulation as herein provided.

Digitally signed by
Bruce Wolfe
Date: 2011.04.06
16:36:35 -07'00'

Bruce H. Wolfe
Executive Officer

Exhibit 1

December 21, 2010

Project 0151680000

Ms. Dyan Whyte
Assistant Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Subject: Second Revised Proposed Performance Measures and Success Criteria
Palmaz Vineyards and Winery
Napa, California

Dear Ms. Whyte:

On behalf of Palmaz Vineyards and Winery, AMEC Geomatrix, Inc (AMEC) is pleased to submit this report entitled "Second Revised Proposed Performance Measures and Success Criteria," revising the "Revised Performance Measures and Success Criteria" (Success Criteria) dated December 10, 2010, based on further technical discussions with California Regional Water Quality Control Board (Water Board) staff. This document should be considered as a stand-alone document, in place of the December 10 document for Water Board review and approval. As discussed in the AMEC "Restoration Work Plan Status" report dated September 30 2010, the purpose of this Success Criteria report is to identify and outline the scope of the key components of the Restoration Work Plan (RWP), which would be required by the proposed "Settlement Agreement and Stipulation for Order" and "Order" (Settlement Agreements) currently under discussion with Water Board staff. Implementation of the progress monitoring program, reporting program, performance measures implemented during site restoration towards attaining the success criteria in this report is contingent upon finalization of the Settlement Agreements.

This Success Criteria report describes the following RWP components in detail:

- Reference Wetland and Upland Site
- Preliminary Planting Plan
- Monitoring and Reporting Plans
- Performance Measures
- Success Criteria

AMEC Geomatrix, Inc.
2101 Webster Street, 12th Floor
Oakland, California
USA 94612-3066
Tel (510) 663-4100
Fax (510) 663-4141
www.amecgeomatrixinc.com

AMEC Geomatrix

1.0 REFERENCE WETLAND AND REFERENCE UPLAND SITES

Based on our field review of potential feasible reference wetland sites and follow-up discussions with Water Board staff, a reference wetland has been determined and is located adjacent to the Palmaz 1400 Vineyard. However, the reference wetland will initially be used for the purpose of identifying the wetland plant species unique to the areas at, and near, the 1400 Vineyard. The proposed site to be used for the reference wetland is shown in Figure 1. Since the reference wetland is located adjacent to the Western Wetland Restoration Area site as described in the AMEC "Conceptual Plan for Restoration and Mitigation of Wetlands" (AMEC Conceptual Plan) dated December 30, 2009, it is our overall intent to increase wetland function and value within the Reference Wetland in addition to restoring the adjacent Western Wetland Restoration Area. As such, success criteria for the overall Western Wetland will be measured by restoration of both the existing and the currently filled wetland areas. Thus, the Western Restoration Area now includes the Reference Wetland Site in order to improve overall wetland function and values to a restored Western Wetland.

This existing wetland (Reference Wetland) was examined by AMEC wetland specialist Carla Scheidlinger, and by local botanist, Jake Ruygt, on September 28 2010. A plant species list was generated during the site visit and is shown in Table 1. This list is not expected to be complete, as there are plant species that are not identifiable or visible at this time of year. A repeat visit will be made in spring 2011 to complete the reference plant species list. AMEC and Mr. Ruygt have concluded that this Western Existing Wetlands area will serve as a suitable and feasible reference wetland site, limited to defining existing plant species.

Actions and performance measures to be implemented to increase wetland value and function within the Western (restored and Reference) Wetland area, and the Eastern restored wetland area, are included within this report. These two proposed restored wetland areas are limited to within the Eastern Wetland Restoration Area, and within, and adjacent to the Western Wetland Restoration Area (i.e., within the two restoration areas) described in the AMEC Conceptual Plan.

Since the two proposed restoration areas will contain wetland as well as supporting upland habitat, we have also proposed an upland habitat reference site. The proposed Reference Upland Site is also shown in Figure 1. The Reference Upland Site is located in the 1400 Vineyard area, adjacent to the Western Existing Wetlands (i.e., the above described Reference Wetland Site).

TABLE 1

SPECIES LIST FROM REFERENCE WETLAND SITE
SEPTEMBER 28, 2010

Common Name	Botanical Name	Status
Narrow-leaved mule ears	Wyethia angustifolia	Native
Narrow-leaf plantain	Plantago lanceolata	Non-native
Rose clover	Trifolium hirtum	Non-Native
California goldfields	Lasthenia californica	Native
Slender tarweed	Madia gracilis	Native
Hedgehog dogtail grass	Cynosurus echinatus	Non-native
Kellogg's yampah	Perideridia kelloggii	Native
Gairdner's yampah	Perideridia gairdneri	Native
Harding grass	Phalaris aquatica	Non-native
Soft brome	Bromus hordeaceus	Non-native (naturalized)
Pale flax	Linum angustifolium	Non-Native
Bentgrass	Agrostis patens	Native
Tall willow-herb	Epilobium brachycarpum	Native
Italian thistle	Carduus pycnocephalus	Non-native
Spreading rush	Juncus patens	Native
Brownheaded rush	Juncus phaeocephalus	Native
Indian paintbrush	Castelleja sp.	Native
Spreading hedge-parsley	Torilis arvensis	Non-native (naturalized)
Common velvet grass	Holcus lanatus	Non-native
Prickly lettuce	Lactuca serriola	Non-native

2.0 PRELIMINARY PLANTING PLAN

The Preliminary Planting Plan contained in this report describes the general approach to planting within the two restoration areas, for both wetland areas and upland areas. Restored wetland areas will consist of those specific locations where, after site preparation, evidence of historic wetland soil, hydrology and plants are confirmed by field visits from our qualified botanist and wetland specialist. Those field visits should be attended by Water Board staff in order to confirm those historic wetland environments. The remaining locations within the two restoration areas will primarily be planted with upland habitat plants and seeds in order to restore a balanced wetland/Chaparral ecosystem. This balanced ecosystem is especially the goal for the Eastern Wetland Restoration Area, as substantial upland areas currently exist adjacent to the Western Wetland Restoration Area (i.e., adjacent to the existing Reference Wetland Area to be enhanced).

During those post site preparation field visits, some sites within the two restoration areas, primarily within the Eastern Wetland Restoration Area, that appear to have been former upland habitat will be identified by our qualified botanist and wetland specialist as being potentially suitable for constructing additional wetland plant habitat areas; created primarily by adding sustainable hydric soil and wetland plants.

A Final Planting Plan will be prepared for each of the two restoration areas after site preparation is completed, incorporating:

- Locations where the historic wetland and upland areas are to be restored;
- Locations within the historic upland habitat areas where additional wetland habitat could be constructed;
- Soil import plan, irrigation plan, and plant species list designated for each sub-area.

The Final Planting Plan for the Western Restoration Area (first) and then the Eastern Restoration Area (one year later), to be submitted after site preparation and field inspections, will provide the actual restoration and soil preparation details, including plant and seed mix, within each of the two restoration areas.

2.1 Site Preparation

The activities necessary for removal of fill and for the restoration of the hydrological connectivity to the upper watershed areas (i.e., Western Watershed Area and Northwestern Watershed Area) will be implemented and completed as part of the physical restoration process. The required engineering and construction activities will be described in RWP. After vineyard areas are cleared of plants, soil borings will be used to assist in determining the extent of fill and the depth and existence of wetland soil under the fill. The RWP will detail the soil boring program, to be included as a site preparation activity.

The activities described herein are designed to both restore historic wetland areas that existed prior to the fill activities within the two AMEC Conceptual Plan designated restoration areas and to enhance wetland function and value within the Reference Wetland Site located adjacent to the Western Restoration Area. Additionally, where appropriate, efforts to enhance wetland functions and values will be taken within the two restoration (i.e., currently filled) areas by providing additional wetland habitat created in locations to be determined by our qualified wetland specialist. These constructed wetland areas will be accomplished by the introduction of additional soil and the associated stabilization of that soil into wetland habitat at some historic uplands habitat locations. These constructed wetland habitat areas will function as both new

wetland habitat and as water retention to enhance the functions of the restored wetland areas and adjacent Reference Wetland Site.

Before wetland and upland habitat within each of the two designated restoration areas are re-established, or the Reference Wetland is enhanced, the following additional pre-planting site preparation activities will take place:

- Harvest of seed from the Reference Wetland Site and the Reference Upland Site vegetation areas where possible. The seed amount will be amplified by greenhouse growing a percentage of harvested seeds or augmented from seed purchased commercially, if it can be documented that it was collected in the Napa Valley watershed. This seed collection will be accomplished by hand, or with the kind of seed harvest equipment employed by professional native seed collectors. The seed will be collected and sorted as to species, and all species maintained separately depending on the plant community in which it was harvested. Seed will be stored in a cool location, in vacuum-sealed containers. The current potential seed source information from within the Reference Wetland Site is contained in Table 1, as gathered during a site visit in September 2010. It is anticipated that additional plants will be identified, and seed collected, after the spring 2011 site visit.
- Evaluation of characteristics of the soils exposed by the removal of fill. Such characteristics will include soil depth, soil texture (sand, silt, and clay), and soil organic content, soil moisture holding capacity and soil distribution on the exposed restoration areas. If existing soil is judged by our qualified botanist or wetland specialist to be deficient in quantity or quality, additional soil may be imported or amended to improve the chances for naturally sustainable plant success. Furthermore, in order to maximize wetland functions and values, we will maximize wetland plant species diversity and density within the restored areas, and we will attempt to construct additional wetland habitat within the two restoration areas.
- Determination of appropriate interim wet weather soil stabilization activities, which may include the installation of Best Management Practices (BMPs) such as straw wattles, surface mulch, and/or silt fences. These erosion control activities will be implemented and maintained until a suitable cover is established within each of the two restoration areas in order to protect existing down slope wetland areas during wet weather season.
- Design and installation of a temporary irrigation system. The exact nature of the system cannot be determined until each of the two restoration areas are exposed by removal of fill. At this time, it is anticipated that the irrigation system will consist of a combination of sprinkler and drip systems that could be employed for 2 to 3 seasons.

- Historic regional wetland plants have been identified from past studies by our botanist and a list in included in Table 2. However, it is not currently known how many of these historic wetland plants (or seeds) formerly existed on the 1400 Vineyard and how many of these historic plants will be available for restoration planting. Those available will be included in the first Final Planting Plan (i.e., for the Western Wetland Restoration Area and Reference Wetland Site), after historic seed and plant sources are identified. Historic plants to be included within the Western and Reference Wetland locations (first) and then the Eastern Wetland Restoration Area, will be a part of each of the two Final Planting Plans. Use of historic plants will enhance the wetland value, where they survive.

- A reference grid will be established for each area where fill is removed, as well as within the Reference Wetland Site, as part of the soil boring program, to in order to provide a useful wetland soil location tool, and after seeding, to use to determine plant species diversity and plant cover success.

2.2 Planting

Historic wetland locations identified within each of the two restoration areas will be seeded with observed and available native plant seed from species typically found in seasonal wetlands of the area (Table 2). Wetland seeding will also be supplemented by local nursery-grown container stock of native plant seed material collected from the Reference Wetland Site and other suitable sites. The list shown in the table was developed from the species observed in the Reference Wetland Site during the September 2010 visit, and from species judged to be appropriate to the two restoration areas anticipated to be available as selected from the list provided by Jake Ruygt from his records of a site visits performed in 1992 to1993 (historic species). These historic species are included in the proposed seed mix with the intention to increase function and value of the restored wetland areas. This list may be further augmented, as will be described in the first Final Planting Plan, with species that may be observed when the Reference Wetland Site is re-visited in spring 2011. The final seed mix will focus on establishing native perennial cover.

TABLE 2

PROPOSED SEED MIX AND NURSERY PLANTS FOR WETLAND AREAS

Common Name	Botanical Name	Annual or Perennial	Status (observed or historical)
Narrow-leaved mule ears	Wyethia angustifolia	Perennial	Observed
California goldfields	Lasthenia californica	Annual	Observed
Gairdner's yampah	Perideridia gairdneri	Perennial	Observed
Leafy bent grass	Agrostis pallens	Perennial	Observed
Brownheaded rush	Juncus phaeocephalus	Perennial	Observed
Slender tarweed	Madia gracilis	Annual	Observed
Tall willow-herb	Epilobium brachycarpum	Annual	Observed
Spreading rush	Juncus patens	Perennial	Observed
Indian paintbrush	Castelleja sp.	Perennial	Observed
Slender hairgrass	Deschampsia elongata	Perennial	historical
Howell's quillwort	Isoetes howellii	Perennial	historical
Bearded clover	Trifolium barbigerum	Annual	historical
Narrow-leaf onion	Allium amplectens	Perennial	historical
Davy's centaurium	Cenaturium davyi	Annual	historical
Summer primrose	Epilobium densiflorum	Annual	historical
Pansy monkeyflower	Mimulus angustatus	Annual	historical
Slender popcorn flower	Plagiobothrys tener	Annual	historical
Dwarf wooly heads	Psilocarphus brevissimus	Annual	historical
Water pygmy weed	Crassula aquatica	Annual	historical

Although the Final Planting Plans will provide the actual seed and plant mix and density, it is currently anticipated that wetland seed will be applied by hand at a cumulative rate of approximately 40 pounds per acre. The wetland seeding mix will be determined after the first year plant survey of the Reference Wetland Site has been conducted in spring 2011. The soil surface will be raked lightly and then tamped to provide better seed/soil contact. After seeding, rice straw will be applied to all seeded areas at a rate of approximately 3,000 pounds per acre to provide sterile mulch. Under appropriate hydrological conditions, the seeds will germinate and plants will grow and survive within the restored wetlands. An irrigation system will be provided for the first two to three years to augment rainfall if necessary to assure good germination and plant growth.

Seeding and nursery grown planting will also be performed for the upland locations within each of the two restoration areas. The species list will be developed in the Final Planting Plan for each of the two restoration areas, but is anticipated to include coyote brush, chamise, coast live oak, and Manzanita (Table 3). Seeding rate will be approximately 35 pounds per acre, with the species list and ratio of seed to be determined after a survey of the Reference Upland Site. Seed will be incorporated into the soil by raking and it will be lightly tamped in to assure good seed-soil contact.

TABLE 3

PROPOSED SEED MIX AND NURSERY PLANTS FOR UPLAND AREAS

Common Name	Botanical Name
Chamise	*Adenostoma fasciculatum*
Eastwood Manzanita	*Arctostaphylos glandulosa*
Hoary manzanita	*Arctostaphylos canescens*
Chaparral pea	*Pickeringia montana*
California coffeeberry	*Rhamnus crocea*
Napa ceonothus	*Ceanothus purpureus*
Coyotebush	*Baccharis pilularis*
Hairgrass	*Aira caryophyllea*
Soft brome	*Bromus hordeaceus*
Small-flowered needlegrass	*Nassella lepida*

As indicated, planting of local nursery-grown container stock of native plant material will supplement seeding for wetland and upland locations within the two restoration areas. Small plugs (approximately 1 inch in diameter and 3 inches deep) will be developed for selected wetland species, and container plants of approximately 1 gallon in size for selected woody upland species. It is suggested that plugs be installed on 1 to 2-foot centers throughout the wetland areas, at locations appropriate to the type of plant and its ecological requirements (saturated soil preference or marginal location preference). Container plants will be installed at approximately 4 to10-foot centers for the upland species. Detailed planting and seeding specifications will be developed by a qualified botanist and landscape architect in the field, and will be included with the Final Planting Plan for each of the two restoration areas, including those locations within historic upland areas where there is potential to construct and sustain additional wetland habitat and plants.

2.3 Hydrology and Irrigation

The existing drainage pipes within the two restoration areas (currently vineyard areas) will be removed and adjusted so that each natural hydrologic flow is discharged at the head of each of these two restoration areas. It is anticipated that for the first two to three years following planting, irrigation as appropriate will be used to enhance establishment of plants within the wetland and upland areas. This irrigation approach is based on the receipt of normal rainfall amount and frequency within the two restoration areas during the first two years; however, additional irrigation may be required after the first two years based on climatic or hydrologic conditions. Initial planting will be coordinated with rainfall received and irrigation will be provided by a temporary irrigation system as needed. Once plants have become established and are self-sufficient, normal rainfall and runoff from within the watersheds of the two restoration areas should provide the necessary hydrology for the wetland and upland plants to be sustainable. The Final Planting Plans for both the Western and Eastern Restoration Areas will contain a detailed estimate of the irrigation requirements for the two restoration areas.

3.0 MONITORING AND REPORTING PLANS

The monitoring program has two objectives; the first to drive the implementation of Performance Measures (Section 4), and the second objective to gather metrics to compare with the Success Criteria (Section 5). Following site preparation, hydrological system re-instatement, soil preparation, and planting activities within the two restoration areas and the Reference Wetland Site, to include wetland and their associated upland areas, the 5-year monitoring program will be conducted to determine whether these wetlands and upland areas have achieved the proposed hydrology, soil and plant success criteria and whether adjustments to the site design or implementation procedure are necessary during the early stages of the five year monitoring period. Vegetation, soil characteristics and hydrology will be monitored in the wetland areas. Vegetation only will be monitored in the upland areas. Assessment activities for the Reference Wetland Site has commenced with the September 2010 field visit, and will continue with a spring 2011 monitoring event, forming a base of observed plant and seed data, in addition to the input to the Preliminary Planting Plans discussed in this report. Monitoring for each of the two restoration areas will commence after site preparation and planting has occurred and will continue for a period of five years following completion of each initial planting of each of the two restoration areas, and not for less than a period of two years after any irrigation of re-vegetation plantings has ceased. An annual site visit, to include Water Board staff, will form the basis of these annual reports. Annual monitoring reports will be submitted evaluating the success of the restoration activities for each of the two restoration areas no later than August 1st of each year. Annual reports will specify the activities proposed for the following year, including additional planting, re-planting, non-native plant control activities, irrigation and any modifications to the hydrologic system. The proposed monitoring methods and metrics are discussed below.

3.1 Monitoring Methods

Hydrology, Soil Moisture and Vegetation will be monitored over the 5-year monitoring period described above to assess progress in the two restoration areas, and within the Reference Wetland Site. All monitoring will be performed by our qualified botanist with experience in wetland plant and soil moisture monitoring and upland plant monitoring, assisted by a landscape architect and hydrology engineering staff as appropriate. Methods for monitoring the performance of these areas with regards to the success criteria are described below.

3.1.1 Hydrology

Visual monitoring of the two restored hydrologic systems will occur during three rainfall runoff events during the first year, and once each subsequent year to occur during the initial seasonal rain events in order to assure that upper watershed areas are connected to the restoration areas and thence connected to the existing downstream existing wetland areas. Functioning of the hydrologic system connection pipes from the Northwestern Watershed Area to the Eastern Wetland Restoration Area, and from the Western Watershed Area to the Western Wetland Restoration Area will be periodically observed. A rainfall gauge will be monitored onsite, and photo stations will be established. Piezometers, to measure the water table, will be installed in several locations as detailed in the Final Planting Plans.

3.1.2 Soil

The soil within the restored and constructed wetland areas will be monitored for moisture saturation to measure soil condition during the rainy season to ensure that the sites are functioning as seasonal wetlands. Based on methodologies in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, the Reference Wetland Site and the restored and constructed wetland areas within the two AMEC Conceptual Plan restoration areas will be monitored periodically to monitor moisture content within the rooting depth. Periodic visits will determine the duration of saturation. Soil monitoring data will be collected at least twice a month for three consecutive months during the rainy season. Photographs will be taken from established photo points during the soil monitoring visits to document soil conditions within the Reference Wetland Site and the restored and constructed wetland areas.

3.1.3 Vegetation

Vegetation will be assessed in the Reference Wetland Site and the restored and constructed wetland areas, as well as in the restored upland areas each year during the five year monitoring period at the end of the rainy season when plant species are identifiable to the species level, typically in the spring (April-May). Native plant percent cover estimates and species occurrence and percent cover will be determined by a qualified biologist using quantitative sampling methods such as random sampling within the established sampling grid. Native plant

recruitment will be closely monitored. Photographs of the restored and constructed wetland areas and upland areas will be taken from established photo points during the vegetation monitoring visits to document vegetation conditions within the wetland and upland areas.

Results of the vegetation sampling will be used to determine plant establishment as the restored areas evolve and the Reference Wetland Site functions and values are maximized. Surveying for the presence of invasive non-native plant species will occur annually during the vegetation monitoring visit in the spring of each year. Control of invasive plants will occur , as described in the Performance Measures below, if these species reach densities that would negatively impact the wetland or upland ecosystem re-established within each of the two restoration areas and within the Reference Wetland Site.

3.1.4 Functionality as Wildlife Habitat Areas

As annual monitoring progresses, there will be a record of wildlife observations within each of the two restoration areas. The development of quantitative measures for wildlife use is not necessary, but general impressions of wildlife usage of these restoration areas will be reported.

3.1.5 Probability of Continued Habitat Progression

This qualitative monitoring will be conducted to document and understand the progression of the re-vegetation within the two restoration areas as the plant habitats mature. This information will be used as part of the final closure report of the restoration program, after the five years of monitoring is concluded on the last of the two restoration areas to finish monitoring, likely the Eastern Wetland Restoration Area.

4.0 PERFORMANCE MEASURES

There are several general performance measures that will be implemented to achieve optimum results within the two restoration areas as the Final Planting Plans are initiated and implemented, and revised annually as appropriate. The monitoring program (Section 3) will gather the necessary data to implement performance measures as discussed below. Adaptive management decisions to adjust performance activities will be made, at a minimum of yearly, through discussions with Water Board staff.

4.1 Soil Moisture and Hydrology

Soil moisture and water levels will be closely monitored in each of these two restoration areas and irrigation water applied as appropriate to maintain initial plant germination, survival and growth. As discussed in Section 2.3, irrigation may be used to supplement natural rainfall, especially during the first two years after implementation of the Final Planting Plan for each of the two restoration areas. The amount of irrigation will depend on the nature of the rainfall

events which occur during the early years after initial restoration planting as documented from the onsite rainfall gauge. Functioning of the hydrologic system connection pipes from the Northwestern Watershed Area to the Eastern Wetland Restoration Area, and from the Western Watershed Area to the Western Wetland Restoration Area will be closely monitored and adjusted as appropriate based on field conditions during the initial rainfall events.

4.2 Dominance of Native Vegetation

Currently the wetland and upland plant communities outside of the 1400 Vineyard support non-native grasses and it is anticipated that these grasses will invade the restoration areas. It will be the intent of the maintenance strategy, to be reviewed annually, and performance measures to control existing highly invasive non-native vegetation. New infestations of invasive and/or noxious plants occurring within the restoration areas during construction or during the 5-year maintenance and monitoring will be eradicated.

4.3 Survivorship

Our expectation for container plants is that a minimum of 80 percent survival at the end of the first year after planting, 75 percent survival the second year, 70 percent the third year, 60 percent the fourth year, and 50 percent the fifth year. Additional container plantings and re-plantings swill occur each of the first two years to supplement the plant development within the wetland and upland areas.

4.4 Diversity of Vegetation

Since the population dynamics in seasonal wetlands are very volatile, and recruitment, especially among annual species that are not present in the reference wetland or the reference upland, may not occur every year. In response to plant species data collected in the monitoring program, plant diversity within the wetland and upland areas will be closely followed as measured within the grid program. Additional observed and/or historical plantings may occur within the first three years of the wetland restoration, Reference Wetland Site, and upland areas in order to assist with wetland and upland species diversity.

5.0 SUCCESS CRITERIA

Success of the 1400 Vineyard wetland restoration project will be measured by several factors including meeting the project milestones; implementing the performance actions necessary to increase wetland functions and values in response to annual monitoring events and field visits as documented within the Annual Reports; and ultimately by meeting the hydrologic, soil, and plant metrics.

5.1 Project Implementation Milestones

As currently anticipated, the following represents project milestones, based on the attainment of required permits and approvals in a reasonable period of time:

1. August 2011 – Western Area completion of excavation and spoils disposal
2. September 2011 – Western Area hydrologic restoration completed
3. September 2011 – Western Area Final Planting Plan submitted
4. October 2011 – Western Area and Spoils Disposal Area storm water plans implemented
5. November 2011 – Western Area initial planting completed
6. July 2012 – Annual Inspection, Conference and Annual Report submitted for Year 1
7. August 2012 – Eastern Area completion of excavation and spoils disposal
8. September 2012 – Eastern Area hydrologic restoration completed
9. October 2012 – Eastern Area and Spoils Disposal Area storm water plans implemented
10. November 2012 – Eastern Area initial planting completed
11. July 2013 – Annual Inspection, Conference and Annual Report submitted for Year 2
12. July 2014 – Annual Inspection, Conference and Annual Report submitted for Year 3
13. July 2015 – Annual Inspection, Conference and Annual Report submitted for Year 4
14. July 2016 – Annual Inspection, Conference and Annual Report submitted for Year 5
15. July 2017 – Annual Inspection, Conference and Final Project Report submitted (Year 6)

Attached is a chart showing our "Weighted Percentage of RWP Completed" apportionment for each of the fifteen (15) Project Implementation Milestones described above.

5.2 Annual Site Inspections, Evaluations and Annual Report

As described in the Project Implementation Milestones (Section 5.1), an Annual Report will be submitted each year, completed by July 1, which will describe the following:

1. Progress (by percentage completed) towards full project implementation;
2. Summary of the results of the previous year's Monitoring Program (Section 3);
3. Summary of the previous year's implemented Performance Measures (Section 4);
4. A summary of the Annual Inspection and Field Conference with Water Board staff; and
5. Recommendations for additional actions designed to increase wetland values and functions to be implemented (e.g., re-planting, hydrologic modification, soil amendments, invasive species control, etc.).

5.3 Hydrologic, Soils, and Plant Goals

The success of the Palmaz 1400 Vineyard wetland restoration activities related to hydrology, soils and plants within the Eastern and Western Restoration Areas (including the Existing Reference Wetland Site) will be assessed by the Monitoring Program (Section 3) and adjusted by implementation of the Performance Measures (Section 4) through adaptive management discussions and agreements with Water Board staff. As previously discussed in Section 1 (Table 1), a baseline "species list" for the Reference Wetland Site and the Reference Upland site was completed in October 2010, and a follow-up field survey will occur in Spring 2011 to form a final baseline "species list" of **observed** native plants to be used to formulate the Final Planting Plans for wetland and upland planting. Similarly, as described in Section 2 (Table 2, "Proposed...Plants"), the "historic" plants identified from records of previous observations will be researched in order to determine their availability, and this availability will determine the amount of **historic** plants expected to be available to be planted for each of the Western and Eastern Areas. These lists will be updated as appropriate for the first 2 to 3 years after initial planting so as to bring all appropriate available plants to the two restoration areas.

Described below are the botanic goals for the restoration project, to be assessed as will be described on an ongoing basis within the Annual Reports, with performance measures adjusted each year, and to be specifically discussed within the Final Annual Report, currently anticipated to be submitted in July 2016. These goals rely upon botanical observations and records for both upland and wetland areas restored.

The following describes the goals for plants within each of the restoration areas for the 5-year period following initial planting:

- Invasive plants (CalEPPC "A, B and C" List) will not exceed five percent cover within each of the two restoration areas;
- The restored wetlands within each of the two restoration areas will meet the three Army Corps wetland criteria (Environmental Laboratory 1987, i.e., hydrology, soil and plants); and
- Native Plant goals for the Western and Eastern Restoration Areas shall be as follows:

TABLE 4

NATIVE PLANT GOALS

Year	Percent of Cover	Number Observed [1]	Number Greater Than 10 Percent Of Native Cover
1	20 [2]	15	5
2	50	14	4
3	60	13	3
4	80	12	3
5	80	10	3

Notes:
1. Based on survivorship estimates contained in Section 4.3.
2. Erosion control and top soil cover concerns outweigh native plant cover for first year.

Please contact either of the undersigned at AMEC to further discuss the status of these technical assumptions and submittal plans and schedules.

Sincerely yours,
AMEC Geomatrix, Inc.

Syed Rehan, PE
Senior Engineer
Direct Tel.: (510) 663-4196
E-mail: syed.rehan@amec.com

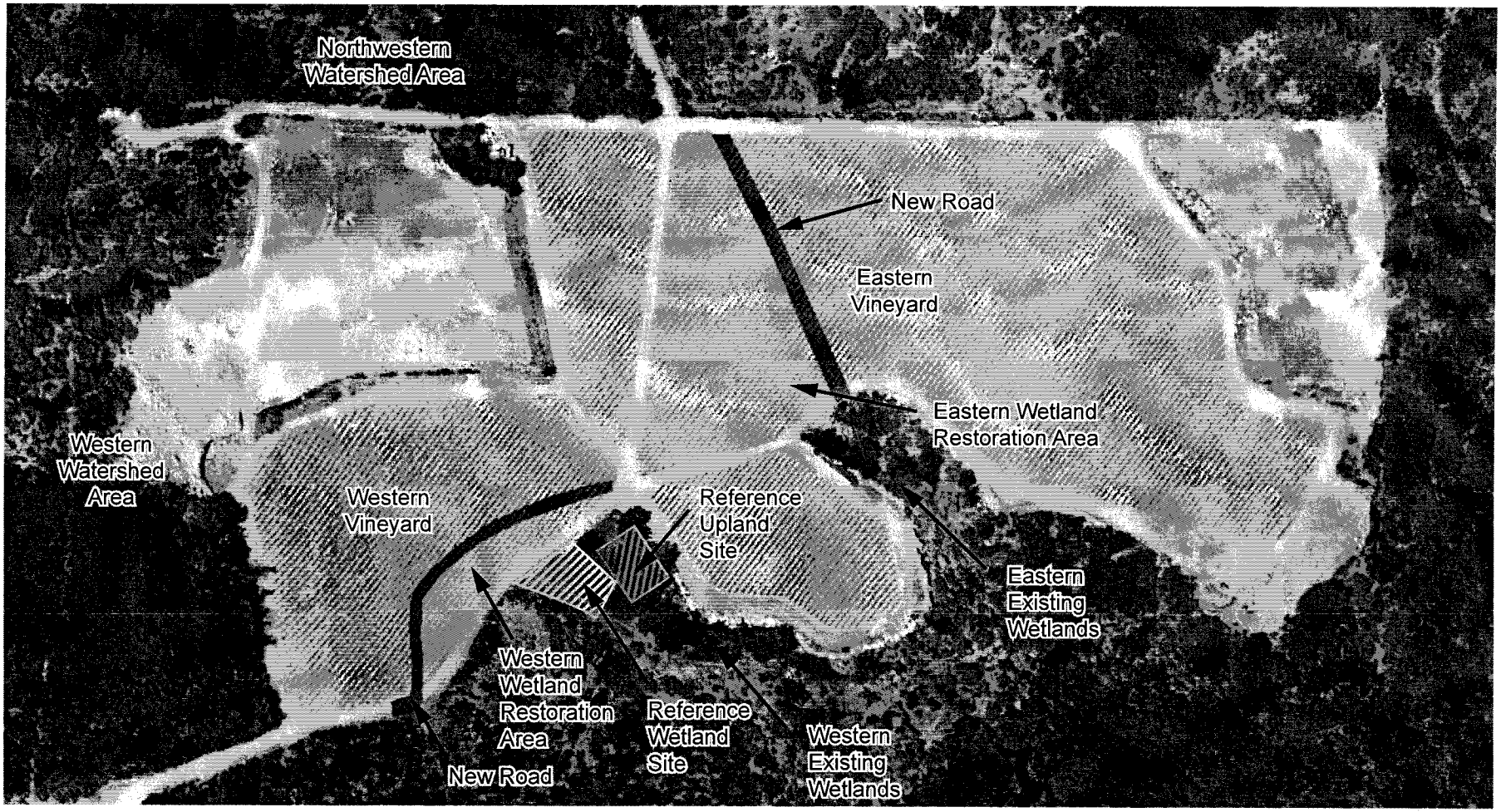
Lester Feldman
Principal Scientist
Direct Tel.: (510) 663-4240
E-mail: lester.feldman@amec.com

SR/LF/nji/bfw
X:\15000s\15168.000\4000\FinalLtr_122110\SuccessCriteria.docx

Enclosure: Figure 1 – Site Map
Attachment – Weighted Percentage of RWP Completed

cc: Fred Hetzel, California Regional Water Quality Control Board
William Hurley, California Regional Water Quality Control Board
Christian Palmaz, Palmaz Vineyards
Jake Ruygt, Botanist
Gary Grimm, Esq.
Carla Scheidlinger, AMEC

S:\15100\15168\15168.000\task_2\10_1012_sc_fig_01.ai



SITE MAP
Palmaz Winery and Vineyard
Napa, California

By:	Date: 10/12/2010	Project No. 15168.001
AMEC Geomatrix		Figure 1

WEIGHTED PERCENTAGE OF RWP COMPLETED

TASK COMPLETED	DESCRIPTION	TASK WEIGHTED PERCENTAGE	WEIGHTED PERCENTAGE OF RWP COMPLETED
TASK 1	Western area completion of excavation and spoils disposal	10%	10%
TASK 2	Western area hydrologic restoration completed	5%	15%
TASK 3	Western area final planting plan submitted	5%	20%
TASK 4	Western area and spoils disposal area storm water plans implemented	2%	22%
TASK 5	Western area initial planting completed	5%	27%
TASK 6	Annual monitoring, conference and annual report submitted for Year 1	3%	30%
TASK 7	Eastern area completion of excavation and spoils disposal	30%	60%
TASK 8	Eastern area hydrologic restoration completed	10%	70%
TASK 9	Eastern area and spoils disposal area storm water plans implemented	10%	80%
TASK 10	Eastern area initial planting completed	5%	85%
TASK 11	Annual monitoring, conference and annual report submitted for Year 2	3%	88%
TASK 12	Annual monitoring, conference and annual report submitted for Year 3	3%	91%
TASK 13	Annual monitoring, conference and annual report submitted for Year 4	3%	94%
TASK 14	Annual monitoring, conference and annual report submitted for Year 5	3%	97%
TASK 15	Annual monitoring, conference and Final Project Report submitted	3%	100%

Notes

1. The tasks and task description presented in the table are consistent with milestones identified in section 5.1 of "Second Revised Proposed Performance Measures and Success Criteria" submitted to RWQCB dated December 21 2010.
2. The weighted percentage is the percentage of the total RWP value ($1,742,000) presented in "Estimated Cost to Implement Conceptual Plan for Restoration and Mitigation of Wetlands" submitted to RWQCB dated March 31, 2010.

Exhibit 2

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com

Date 2/5/11

Ms. Dyan White
Assistant Executive Officer
SFB_RWQCB
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Palmaz Restoration Project Schedules

Dear Ms. White,

After beginning to create my own internal schedule for the upcoming wetland restoration project, I feel that the current verbiage found in current settlement documents may not sufficiently contemplate the consequences of regulatory delays beyond our control. I fear that we may have drafted such verbiage without sufficiently emphasizing the importance of having the proper time stipulated for each portion of this upcoming project. While we are directing all possible efforts to ensure that nothing delays the project, I believe that it would be prudent for the Water Board to acknowledge that a minimum work window for each element of the project (Western, Eastern, and Temporal restoration areas) is necessary. In the event that either the county or any other regulatory action keep us from being able to have the adequate time to properly initiate and secure the work required for each pertaining project portion, a delay in the start of such portion of the project will force us to postpone that portion to the following year and thus delay subsequent portions of the project accordingly.

As you know, the project is essentially broken up into three consecutive years of work with continued monitoring occurring in each area for the agreed upon length of time. The first year we will start with the Western Wetland Restoration area, removing fill in the defined area and depositing it in the defined deposition area. Erosion control and planting activities will commence that same year and by October 15th (the county deadline for any earth moving activities) the disturbed areas must be secured and readied for winter. The second year, we would move to the Eastern Wetland Restoration area and perform the same activities; remove fill, deposit, secure, and plant. The third year would be the Temporal Loss project as already defined. Continued monitoring and maintenance of all three of these areas continue until their monitoring period is completed.

My engineering team and I have determined that, as a bare minimum we will require a 4-month window within the county mandated April 15th - October 15th allowed earth moving

period to properly start and secure either of the three project areas (Western, Eastern, and Temporal restoration areas). While we fully intend to start the first portion (Western Restoration area) by June 15th, 2011, in the event this first portion of the project is delayed from starting by June 15th due to regulatory forces out of our control, the start of this portion should be delayed a year and subsequent sequential portions of the project should also be delayed to the following year accordingly. If you agree with this interpretation of the language of the proposed Settlement Agreement, I would like my legal counsel to reference this letter in amended settlement documents.

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com

Again, I can not reiterate how much we have "both feet in" on this project. I would hate to get caught in a situation where, because we were forced to start late, we ended up with an erosion control nightmare from an early wet winter. Doing this project the right way is the only option and we plan to execute it with perfection. I plan to keep you and your staff fully informed with our progress towards obtaining regulatory approvals in time to start the first portion by June 15th, 2011. I look forward to your response.

Sincerely yours,

Christian Palmaz
Palmaz Vineyards

CC: Fred Hetzel, Lester Feldman, and Gary Grimm

Exhibit 3

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com

Date 2/3/11

Ms. Dyan White
Assistant Executive Officer
SFB_RWQCB
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Conceptual Temporal Loss Mitigation and Monitoring Plan - Palmaz Vineyards and Winery

Dear Ms. White,

I would like to thank you and your team for your continued patience as we strive to refine the conceptual proposal regarding the Temporal Loss portion of our proposed settlement agreement. The following is a Conceptual Task Study for the Temporal Loss Mitigation and Monitoring Work prepared by myself with the help of Phillip G. Lowell, a registered professional forester (RPF #648) who knows our property very well from past projects. My goal was to try and create as much value added to the largest possible area for the agreed upon $100,000 project value. It is the intention that this Conceptual Plan will form the basis of the Temporal Loss Mitigation and Monitoring Work Plan required by Paragraph 7 of the draft Stipulation and proposed Order.

Temporal Loss Mitigation Conceptual Plan

This work plan covers activities proposed for a portion of an area known as the 1200-foot block on the Palmaz Vineyards property, an area appurtenant to the 1400 Vineyard. It is located in the northwest quarter of section 29 T6N R3W MDB&M and predominately in Napa Assessor's parcel 033110058000 with a small portion in assessor's parcel 033110056000. The vineyard is 12.06 acres while the appurtenant work plan area, shown in the attached map, approximates 1.1 acres.

The objective of this work plan is to develop conservation and environmental improvement projects focused on improving and protecting existing watercourses and wildlife as related to the area.

Within the designated area, significant compensatory habitats will be provided, with emphasis on replacement of non-native and undesirable vegetation with superior native trees and shrubs that will favor desirable hydrologic conditions along the stream borders. Ancillary benefits of these key activities will include wildlife and riparian habitat improvement, water quality improvement, and soil loss prevention to cite just a few of the benefits.

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com

Vegetation Reestablishment

The area between the existing vineyard and the stream-bed currently includes non-native and undesirable vegetation. Clearing of the undesirable non-native vegetation will be done by hand so as to minimize soil erosion potential. Multiple passes and extensive handwork must be done to ensure proper eradication of undesirable vegetation making this a very high labor intensive task but necessary before planting. This will allow replanting with desirable species such as Coast Live Oak, California Bay, Alder, Willow, Wild Rose, Dogwood, etc., as necessary during the first two years after discussions between Water Board staff, Mr. Lowell, and myself.

It is estimated that this Temporal Loss Mitigation Plan would involve as many as 300 plants, depending on spacing and suitable planting space. Temporary irrigation systems will need to be installed to help establish plants and maintain them through 3 years of monitoring until they can survive on natural resources.

Estimated cost is $75,000.

Maintenance and Monitoring

A monitoring plan of 3 years will be established so as to help track and ensure a survival rate of 70% at the end of the 3 years. This will include replanting attempts as necessary. Weeding and controlling of undesirable vegetation will also need to continue during the monitoring period to help desirable vegetation take dominance. Results of the Monitoring Program will be discussed with Water Board staff on an annual basis for three years in conjunction with the Restoration Work Plan annual inspection and discussions, and will be included in the annual monitoring reports.

Estimated cost, $15,000.

Administration

Frequent administration and project management by consultants such as Phillip Lowell and others will be necessary for identifying and marking undesirable vegetation for removal, monitoring removal process, acquiring high quality planting stock, tracking planting progress, supervising replanting, calculating survival rates, preparing the Temporal Loss Mitigation Plan elements for the 3 year monitoring program, advising and working with local and state agencies as needed, and advising all other related issues to this project.

Estimated cost, $10,000.

Scheduling

This project will be set to start one year after the start of the Restoration Work Plan element known as the "Eastern Wetland Restoration" area. Monitoring activities will continue 3 years thereafter.

Cost Stipulations

Based on an estimated project value of $100,000, the following is the value associated with the completion of each of the following activities.

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com

First Year -- After the completion of the first year activities, which essentially includes the removal of undesirable vegetation and planting of the desirable vegetation, $77,500 of the $100,000 value will be assumed completed. This number includes the $75,000 cost of the Vegetation Reestablishment and $2,500, which is one quarter of the Administration cost representing one year of the four years total spent for the project. It is the intention that completion of the first year will accomplish a measured planting success rate of 70% survivability.

Second Year -- Upon completion of the second year, another $7,500 will be assumed completed. This number includes one third of the Maintenance and Monitoring cost which is $5,000 and another year of Administration cost at $2,500. Again, it is the intention that completion of the second year will accomplish a measured planting success rate of 70% survivability.

Third Year -- Upon completion of the third year, another $7,500 will be assumed completed. This is calculated the same way as in the second year. Again, it is the intention that completion of the third year will accomplish a measured planting success rate of 70% survivability.

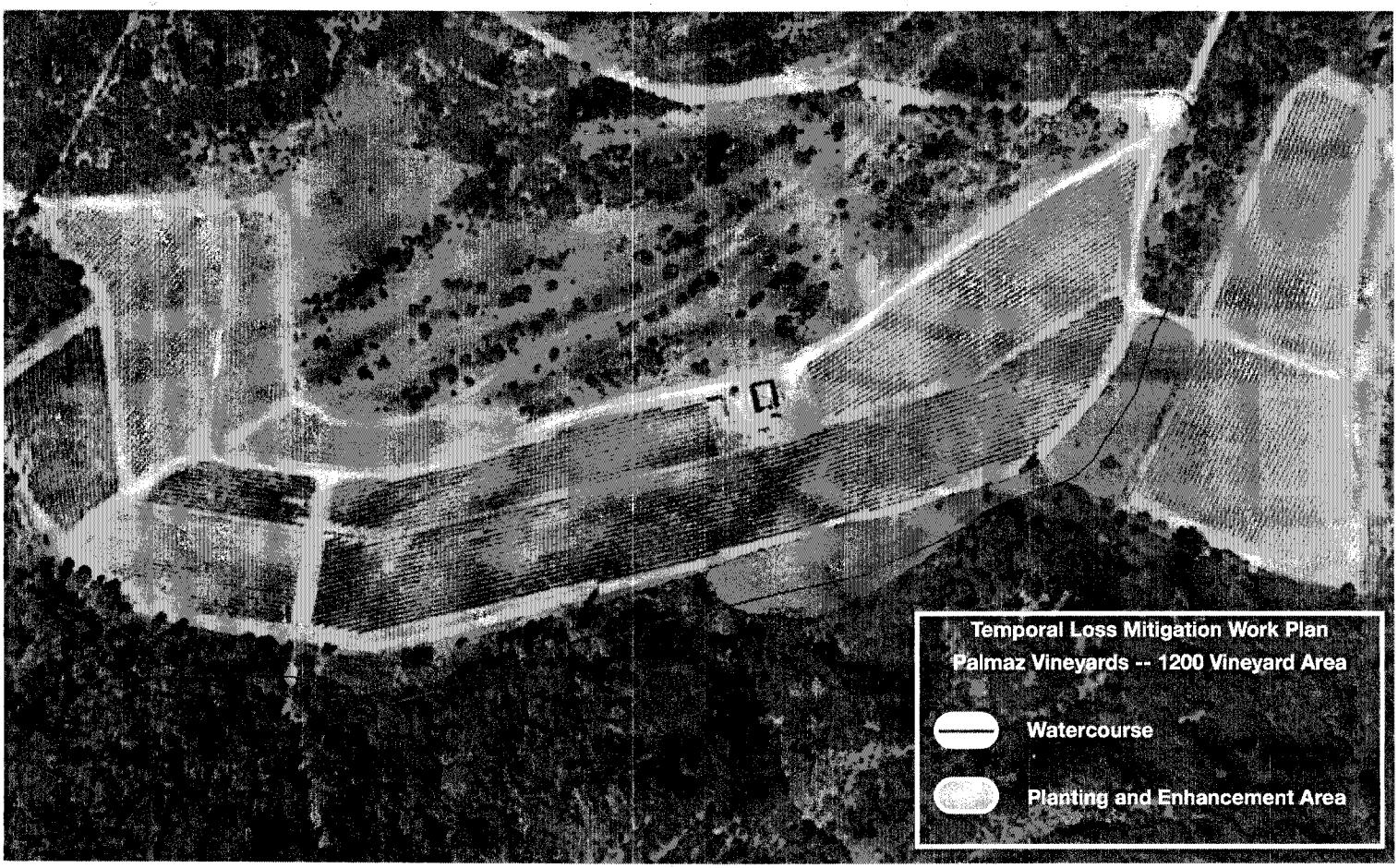
Fourth Year -- Upon completion of the fourth year, a final $7,500 will be assumed completed bringing the total value assumed completed to $100,000. As before, it is the intention that completion of the fourth year will accomplish a measured planting success rate of 70% survivability.

Upon successful completion of the fourth year, it will be assumed there are no liabilities remaining in the Temporal Loss Mitigation Project for purposes of Paragraph 7 of the draft Stipulation and proposed Order. Irrigation and monitoring activities will conclude at this point and nature will be allowed to take its course in the designated area.

This plan is the result of several on-the-ground reconnaissance surveys. The cost estimates are based on previous experience with this type of work on the Palmaz and other similar properties.

Below please find a map of the area roughly showing the above mentioned concepts in visual form.

Sincerely yours,

Christian Palmaz
Palmaz Vineyards

Palmaz Vineyards
Napa, CA 94558
T 707-287-7391
F 707-251-0849
christian@palmazvineyards.com
www.palmazvineyards.com