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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0033
FOR

MIKE BINGHAM
FIELDSTONE COMMUNITIES INC.
Morro Hills Villages C, D, E, G
Oceanside, San Diego County

The California Regional Water Quality Control Board, San Diego Region (hereinafter SDRWQCB), finds that:

1. Mike Bingham, Fieldstone Communities Inc. (hereinafter *dischargers*) owns and operates the Morro Hills Villages C, D, E, and G construction project. The project encompasses approximately 79.5 acres of the 422-acre Morro Hills Villages and Golf Course master planned community, which is located at the intersection of Douglas Drive and Vandegrift Blvd. in the City of Oceanside.

2. Storm water runoff from the Morro Hills site discharges to the City of Oceanside's Municipal Separate Storm Sewer System (MS4) and discharges to Pilgrim Creek, a tributary to the San Luis Rey River. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity.* The *dischargers* have coverage under Order No. 99-08-DWQ , were assigned WDID No. 937C321382 and have a Storm Water Pollution Prevention Plan.

3. Fieldstone Communities Villages C, D, E, and G have coverage under California Regional Water Quality Control Board, San Diego Region (SDRWQCB) Order No. 2001-184, *Waste Discharge Requirements and Section 401 Water Quality Certification for the Richland Calabasas, L.P. Morro Hills Villages and Golf Course Project, San Diego County.*

4. The Morro Hills Villages site is located in the Mission Hydrologic Subarea (903.11) of the San Luis Rey Hydrologic Unit (903.00) as described in the *Water Quality Control Plan, San Diego Basin (9), 1994* (hereafter Basin Plan). The Basin Plan designates the beneficial uses of Pilgrim Creek and it's tributaries as Agricultural Supply (AGR), Industrial Service Supply (IND), Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).

5. On November 16, 2004, December 31, 2004, and January 4, and 12, 2005, the *dischargers* had discharged sediment and sediment-laden water into the City of Oceanside's MS4 and to Pilgrim Creek, in violation of Order No. 99-08-DWQ. These

discharges have caused or threaten to cause a condition of pollution or nuisance and threaten to impair the beneficial uses of Pilgrim Creek and the San Luis Rey River.

6. As of November 16, 2004, the *dischargers* violated Order No. 99-08-DWQ by not implementing adequate erosion and sediment control Best Management Practices (BMPs) on a site wide basis , which resulted in the multiple discharges of sediment laden water to the City of Oceanside's MS4. The site lacked any erosion control BMPs in the Village G portion of the site, and there were inadequate or failing erosion control BMPs in Villages C & D. In addition, the Village G sediment control basins lacked the proper design and capacity to capture and treat the volume of runoff generated from prior significant storm events, which resulted in the pumping by the dischargers of unfiltered sediment laden water to the City of Oceanside MS4 on January 4, 2005.

7. The *dischargers* have discharged and threaten to continue discharging sediment and sediment-laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 1 and Order No. 2001-184 Prohibition A.1 by discharging waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050.

8. The *dischargers* have discharged and threaten to continue discharging sediment and sediment laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 14 by discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters.

9. Unless the *dischargers* immediately implement an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance in Pilgrim Creek and the San Luis Rey River.

10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and 13267 of Division 7 of the California Water Code, Mike Bingham, Fieldstone Communities Inc. (hereinafter *dischargers*) shall:

1. Immediately initiate efforts to abate the potential effects of threatened discharges of wastes into the City of Oceanside MS4 and Pilgrim Creek and take remedial action to cease discharging waste in violation of Order 99-08-DWQ, Order No. 2001-184 and the Basin Plan.

2. The *dischargers* shall immediately comply with all requirements of the State Board Construction Storm Water Permit No. 99-08-DWQ, by providing an effective and appropriate combination of sediment and erosion controls on all disturbed areas. Measures shall include, but not limited to, the following:

   a. The use of erosion control blankets on slopes to address the failure of past erosion control measures;
   b. The removal of sediment from basins to maintain its capacity;
   c. The installation of erosion & sediment control BMPs to stabilize finished housing pads that will remain idle for a period of more than 20 days during the rainy season;
   d. The implementation of a comprehensive maintenance program to ensure continued BMP effectiveness; and
   e. The development of a contingency plan to address the need for advanced filtration of any sediment laden water to be discharged to the City of Oceanside's MS4, or Waters of the State.

3. If at any time in the future, the capacity of the on-site sedimentation basins becomes overwhelmed, so that it becomes necessary to pump down the accumulated sediment laden runoff and discharge it off-site, the discharge shall be filtered with advanced treatment technologies (i.e. chitosan enhanced sand filtration) to the Best Available Technology Standard. The *dischargers* will notify the Regional Board prior to initiating the discharge.

4. **By February 15, 2005**, the *dischargers* shall submit a technical report documenting that the tasks in Directive 2 have been completed.

4. After each significant rainfall event, the *dischargers* shall conduct an immediate assessment of erosion and sediment control BMPs implemented on the project: This assessment shall:

   a. Identify the source of the silt and sediment;
   b. Repair or replace any BMP that has failed;
   c. Maintain any BMP that is not functioning properly due to lack of maintenance; and
   d. Evaluate whether additional or alternative BMPs should be implemented to prevent further discharges of sediment.

5. After each significant rainfall event, the *dischargers* shall submit a status report within 7 days, documenting the subject site's compliance with the General Construction Storm Water Permit and efforts to prevent further discharges and violations of the Basin Plan. Reports shall be submitted until the *dischargers*

demonstrate that the BMPs are effective in reducing sediment discharges from the subject site during rain events to the Best Available Technology Standard. The reports shall include and are not limited to:

a. Photo documentation of BMPs;
b. A narrative description of all actions, BMPs, inspections, and maintenance conducted at the subject site during the reporting period;
c. A description of all discharges during the reporting period including photos, estimated amount discharged, measures to prevent similar discharges and a plan to cleanup the discharge;
d. Site maps showing final slopes, temporary slopes, drainages, and BMP placement for the reporting period; and
e. Photocopies of all subject site inspections reports.

6. All reports submitted pursuant to this CAO shall include the following signed certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars ($5,000), but shall not be less than five hundred dollars ($500), for each day in which the cleanup and abatement order is violated.

JOHN H. ROBERTUS
Executive Officer

1/26/05
Date

JHR:rwm:cjm