

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ORDER No. R2-2003-0031

WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR:

CHANG SU-O LIN (AKA JENNIFER LIN), HONG LIEN LIN (AKA FREDERIC LIN), AND  
HONG YAO LIN (AKA KEVIN LIN)

DUBLIN RANCH PROJECT, DUBLIN AND LIVERMORE, ALAMEDA COUNTY

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

1. Chang Su-O Lin, Hong Lien Lin, and Hong Yao Lin (hereinafter Discharger) propose to construct a mixed-use residential, commercial, and open space development on a 515-acre site in the City of Dublin (hereinafter Project). The Project consists of the following elements:
  - a. Approximately 2,730 residential units at varying densities on about 271 acres;
  - b. Approximately 2.3 million square feet of retail, office, and commercial uses on about 146 acres;
  - c. 58 acres of parks;
  - d. Dedication of 45 acres as open space; and,
  - e. Associated roads, utilities, and other infrastructure.
2. There are approximately 10.22 acres of jurisdictional waters of the United States, including creeks and wetlands, on the Project site. In addition, the site contains an unspecified amount of seasonal creeks that are waters of the State. The site's waters of the United States are comprised of:
  - a. Freshwater seasonal creeks: 5,548 linear feet (0.52 acres, which includes 0.04 acres of associated seasonal freshwater wetlands, such as seeps);
  - b. 0.92 acres of 1 freshwater pond;
  - c. 8.34 acres freshwater seasonal wetlands; and
  - d. 0.44 acres other wetlands.
3. The Project will result in the direct placement of approximately 20,300 cubic yards of fill into and/or other permanent disturbance of all of the 10.22 acres of jurisdictional waters of the United States, including wetlands, and other waters on the Project site.
4. Waters on the Project site serve as habitat for the federally-listed threatened California Red-Legged Frog (*Rana aurora draytonii*, hereinafter CRLF), and as habitat for the state listed species of special concern and federal candidate-for-listing California Tiger

Salamander (*Ambystoma californiense*, hereinafter CTS).

5. **Mitigation Plan:** To mitigate for its permanent fill of 8.78 acres of freshwater wetlands, including seeps, a 0.92 acre freshwater pond, and 5,548 linear feet of freshwater creeks, the Discharger will complete the mitigation proposed in its "Project Area Mitigation and Monitoring Plan, Dublin, California" (hereinafter Mitigation Plan), dated March 3, 2003, and prepared by H.T. Harvey & Associates, and the Mitigation Plan's associated documents. The Mitigation Plan is acceptable to the Board, with the required submittals and revisions listed in the Provisions. The proposed mitigation consists of the following:
- a. **On-site creek reconstruction.** Two creeks will be reconstructed on-site. One will be constructed with a length of approximately 754 feet (0.17 acres jurisdictional area); the other will be reconstructed with a length of approximately 3,584 linear feet (0.82 acres jurisdictional area). The creeks will connect at their upstream ends to existing created creeks in the Dublin Ranch Phase I project. At their downstream ends, they will discharge into underground culverts prior to discharge into Arroyo Mocho;
  - b. **Northern Drainage.** 245 acres of the Northern Drainage watershed will be placed under a conservation easement, and grazing will be managed in this area. This area includes approximately 8,441 linear feet of the Northern Drainage. The Discharger will rehabilitate a 0.08 acre CRLF pond, construct 3 new seasonal freshwater ponds (0.98 acres total) that will provide breeding habitat for CTS, and plant approximately 0.25 acres of the Northern Drainage watershed with willow. Additionally, the Discharger will complete other work as specified in the Mitigation Plan and, 90 days prior to the beginning of construction for the lower 7.43 acres of the Northern Drainage, will submit a restoration plan for the lower 7.43 acres of the Northern Drainage watershed above Tassajara Road, including the road crossing, provided however, that the Discharger will submit said plans not later than twelve months after the date of the issuance of this Order, and all work for the 7.43 acre-area, including the road crossing, shall be completed within 36 months of the date of issuance of this Order;
  - c. **Tassajara Creek.** 53 acres of Tassajara Creek and an adjacent creek buffer, including portions of its tributaries Northern Drainage, Moller Ranch Creek, and an intermittent freshwater seasonal drainage, will be placed under a conservation easement. This easement will be divided into two separate easements. Approximately 36 acres will be placed into a habitat conservation easement ("Tassajara Creek Management Zone"), and the remaining 17 acres will be placed into a conservation easement on which the placement of pedestrian pathways and stormwater controls is allowed. The Tassajara Creek mitigation area includes approximately 5,360 linear feet of Tassajara Creek and about 1,300 linear feet of the three tributaries. The Discharger will plant along floodplain terraces, and at least 1.25 acres of native riparian vegetation will become established in the riparian zone, and the dischargers will complete other actions as discussed in the Mitigation Plan. Grazing will be excluded from the entirety of the 53-acre conservation easement; and,

- d. **Lin Livermore.** 394 acres of the Lin Livermore site, located approximately seven miles to the northeast of the Project site, in Livermore, will be placed under a conservation easement. Sixteen seasonal wetlands (22.61 acres) and a 3.17 acre CRLF pond will be created, and grazing will be managed on the site.
6. **Habitat Management Plans:** The Discharger has submitted Habitat Management Plans for the Northern Drainage, Tassajara Creek, and Lin Livermore conservation areas. These Plans are included as appendices to the Mitigation Plan, and describe how the lands are to be managed under the conservation easements. They are acceptable to the Board, with the revisions listed in the Provisions.
7. **Post-construction stormwater management:** The Discharger has submitted a “Revised Stormwater Management Plan for Dublin Ranch, City of Dublin, California” (hereinafter SWMP), prepared by Balance Hydrologics, and dated March 2003. This plan is acceptable to the Board, with the submittals and revisions listed in the Provisions. The plan includes the following measures to address the Project’s post-construction urban runoff impacts:
  - a. Construction of a regional water quality pond. The pond would capture and treat stormwater runoff from an area of approximately 708 acres. The pond’s water quality area will be at least 4.1 acres, which will be sufficient to treat 19.5 acre-feet of water with a target detention time of 48 hours, with volume provided for a minimum permanent pool, associated vegetation, and other design standards as set forth in the SWMP. The pond’s tributary area is comprised of:
    - i) 309 acres of the Project site;
    - ii) 254 acres of the Dublin Ranch Phase I project and Dublin Ranch Area A;
    - iii) The 92-acre Dublin Ranch Area G project; and,
    - iv) 53 acres of property adjacent to the western side of Dublin Ranch.
  - b. The Discharger will also implement site design measures, including “green parking lot” designs, source control measures, and treatment controls for many areas of the Project, as specified in the SWMP.
8. **Future Creek Crossings.** The Discharger intends to construct two or three bridges across creek conservation areas. These bridges will reduce the effective connectivity of the conservation area habitat, and this impact to the larger conservation areas has been considered as a part of the Discharger’s overall mitigation proposal. The expected crossings are comprised of: one double-span bridge or two single-span bridges across Tassajara Creek, associated with the Discharger’s expected future development of the land around the Tassajara Creek Conservation Area with residential uses; and, the Fallon Road crossing of the Northern Drainage. None of the bridge crossings is expected to result in the placement of fill into the creeks below ordinary high water. However, creek impacts during or associated with future bridge construction may occur, and this Order requires submittal of a ROWD for the future bridge construction projects.

California Environmental Quality Act (CEQA) analysis has not yet been completed for the anticipated crossings. Thus, this Order does not permit their construction, and future

permitting for their construction will be required. However, the Discharger has provided conceptual designs for the three crossings, and the Board anticipates that the crossings and any associated mitigation will be incorporated into the Mitigation Plan, as discussed in that Plan.

9. **Financial Assurance:** The Discharger has submitted an estimate of the cost of creek and wetland mitigation implementation, intended to serve as an estimate for the provision of financial assurance adequate to ensure the success of the proposed mitigation. This Order requires the Discharger to submit its revised estimates and appropriate supporting information, to address the revised monitoring periods in the Mitigation Plan. The Discharge has submitted the final estimates, but not the supporting information. This Order requires the Discharger to submit, prior to the start of Project construction, a bond or other appropriate instrument of financial assurance, callable by the Board, in the amount of \$3,591,620, plus the additional amount necessary to cover the revised mitigation periods. The financial assurance amount may be stepped down upon the successful completion of a mitigation item (i.e., the Northern Drainage mitigation as a whole, Lin Livermore mitigation as a whole, etc.), as determined by the Executive Officer. In addition, the Discharger may propose to step down the financial assurance for certain items, like fencing, unlikely to fail once they have been appropriately constructed. A proposal to do so must be submitted, prior to the start of Project construction, with the required financial assurance instrument and proposal. The mitigation financial assurance estimates are:
- a. For the Northern Drainage mitigation, \$1,097,740;
  - b. For the Tassajara Creek mitigation, \$479,408;
  - c. For the Lin Livermore mitigation, \$1,001,340; and,
  - d. For the on-site creeks, \$1,013,132.
10. **Long-term Management:** The long-term management of the mitigation sites will be transferred to an appropriate land management group or agency, subject to the approval of the Executive Officer. The Center for Natural Lands Management (CNLM) is one such group that has expressed interest in serving as the land manager of the Northern Drainage, Tassajara Creek, and Lin Livermore conservation areas. The Discharger has submitted PAR analyses estimating the endowment amounts necessary for the appropriate management, in perpetuity, of the conservation areas. This Order requires the Discharger to work with a third party land manager accepted by the Board to finalize the determination of what amount of money is necessary for an endowment fund to adequately finance the monitoring and perpetual management and maintenance of the preserve and endangered species habitat protection areas, and to submit this determination to the Board, acceptable to the Executive Officer. The Discharger has presently estimated that an amount of \$963,525 is necessary, and this Order requires provision of at least this amount, or a greater amount, as determined through consultation with the accepted land manager. Under the present estimate, the \$963,525 is distributed as follows:
- a. For the Northern Drainage conservation area: \$452,083;
  - b. For the Tassajara Creek conservation area: \$186,794; and,

- c. For the Lin Livermore conservation area: \$324,648.
11. On September 21, 2000, the Discharger submitted an initial application for Water Quality Certification and Waste Discharge Requirements for the Project. That application was subsequently completed by additional submittals.
  12. 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 California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the project and its construction.
  13. 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). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law 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 groundwaters. This Order is in compliance with the Basin Plan.
  14. The subject wetlands, seasonal creeks, and other waters on the Project site are located in the South Bay Basin, and are tributary to Arroyo Mocho. Arroyo Mocho flows into the Arroyo de la Laguna, Alameda Creek, and thence to San Francisco Bay. The Northern Drainage and Tassajara Creek mitigation are tributary to Tassajara Creek, and thence to Arroyo Mocho. The Lin Livermore mitigation site is tributary to the Arroyo Las Positas, and thence to Arroyo Mocho. The Basin Plan does not explicitly identify beneficial uses for waters on the Project site. However, the Basin Plan states that “[t]he beneficial uses of any specifically identified waterbody generally apply to all of its tributaries.” The Arroyo de la Laguna and Alameda Creek have the following existing beneficial uses defined in the Basin Plan: 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. Additionally, waters on the Project site provide potential habitat for the preservation of rare and endangered species, including breeding and dispersal habitat for the federally listed threatened CRLF, and breeding habitat for the state-listed species of special concern CTS.
  15. 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.

16. 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.”
17. This Order applies to the temporary and permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in Finding 1. Construction of the project will result in the permanent placement of fill in and/or disturbance of 10.22 acres of jurisdictional waters, including freshwater seasonal wetlands, seeps, and creeks. The permanent impact of this fill on waters was identified as a potentially significant impact in the Environmental Impact Report (hereinafter EIR) and Negative Declarations certified for the Project.
18. The Discharger has submitted an Alternatives Analysis and supplemental information described in the Staff Report to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. Board and federal agency staff held extensive additional discussions with the Discharger regarding its Alternatives Analysis. The Board concurs with the conclusions of the Alternatives Analysis, as supplemented.
19. Discharges of storm water associated with construction activity will occur. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these 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).
20. Discharges of storm water associated with the post-construction operation and maintenance of the Project will occur following its completion. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of NPDES permit requirements. This includes complying with the requirements placed on the Project under NPDES Permit CAS0029831, the NPDES

Municipal Storm Water Permit that covers the City of Dublin. The Discharger has submitted a SWMP for its project that, together with the additional submittals required under this Order, is consistent with the requirements of NPDES Permit CAS0029831, Provision C.3, the permit provisions addressing new and redevelopment projects.

21. 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, prepared pursuant to the provisions of the General Permit, at least 60 days prior to the beginning of construction for the Project.
22. Discharges of ground water or other non-storm water during construction may be required. This Order considers such discharges covered by the General Permit, contingent on submittal of an acceptable discharge plan at least 30 days prior to such a discharge.
23. 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 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, that all environmental impacts have been identified and, with compliance with the conditions of this Order, will be mitigated to a level of insignificance. On May 10, 1993, the City of Dublin certified the Addendum and Final Environmental Impact Report for the Eastern Dublin General Plan Amendment and Specific Plan, which includes the Project. On November 18, 1997, the City of Dublin certified Negative Declarations for Dublin Ranch Areas A through E, and on February 15, 2000, for Dublin Ranch Areas F, G, and H, which include the Project area and/or areas associated with the Project and its mitigation.
24. On August 14, 2000, the U. S. Army Corps of Engineers (Corps) issued a Public Notice for a proposed Individual Permit for the Project (Corps File No. 25144S) pursuant to Section 404 of the Clean Water Act.
25. On July 1, 2002, the United States Fish and Wildlife Service (USFWS) issued a Biological Opinion for the Project (USFWS File No. 1-1-01-F-0208).
26. Pursuant to 23 CCR Sections 3857 and 3859, the Board is issuing WDRs and Water Quality Certification for the Project as described herein.
27. The Board has notified the Corps, City, U.S. Fish and Wildlife Service (USFWS), CDFG, and other interested agencies and persons of its intent to prescribe WDRs and Water Quality Certification for this discharge.
28. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

29. This Project file is maintained at the Board under File No. 2199.9439 and Site No. 02-01-C0508.

IT IS HEREBY ORDERED that Chang Su-O Lin (aka Jennifer Lin), Hong Lien Lin (aka Frederic Lin), and Hong Yao Lin (aka Kevin Lin)(hereinafter Discharger), 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 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 activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).
5. The discharge of decant water from active dredging or fill sites and dredged material 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 Project activities or 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.
8. The discharge of drilling muds to waters of the State, or where such muds could be discharged 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 and mitigation projects from applicable government agencies, including, but not limited to, CDFG, USFWS, City of Dublin, and Corps, for each Project component as applicable to that component, prior to the start of construction on that component.

Project Implementation Deadlines

3. No construction shall commence on any Project component until all required documents, reports, plans, and studies required in the Provisions associated with that component have been submitted to and found acceptable by the Executive Officer. For example, mass grading for the Project may begin, within the timelines of the related Provisions, when the required financial assurance documents, SWPPP, and other documents required in the Provisions have been accepted by the Executive Officer. In all cases where the Discharger is required to make a submittal acceptable to the Executive Officer, the Executive Officer may determine that construction may begin sooner than the specified number of days for the submittal prior to the beginning of construction.
4. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a Plan that includes all appropriate Mitigation Plan implementation details that are not presently included in the Mitigation Plan. This includes planting plans and details such as designs and construction drawings for in-stream structures, pond reconstructions, irrigation plans, and all other information, as appropriate. Upon the Executive Officer's determination that the Plan is acceptable, the Executive Officer may determine that construction may begin sooner than 60 days following submittal of the acceptable Plan.

A Plan for the following mitigation component may be submitted later than 60 days prior to the beginning of construction, but must be submitted within twelve months of the date of Board approval of this Order: the 7.43 acre mitigation area at the base of the Northern Drainage watershed above Tassajara Road, including the reconstruction of the road crossing.

A Plan for the proposed on-site creek reconstruction may be submitted later than 60 days prior to the beginning of construction, but shall be submitted no later than the time of on-site project design for adjacent urban development (i.e., residential and/or non-residential uses), and shall include a schedule for construction at the same time as or prior to grading for that adjacent development.

The Plan must include:

- a. Proposed channel designs and earthwork for all creeks, including appropriate longitudinal and cross sections and plan views;

- b. A detailed planting plan, including species lists, plant sizes and numbers, and planting designs relative to creek cross sections and plan views;
  - c. An irrigation plan for the mitigation areas, where irrigation is proposed;
  - d. A workplan for future submittals of specific details and plans for all creek sections that will be culverted, bridged, or otherwise crossed or immediately adjoined by roads, paths, or similar improvements;
  - e. A finalized financial assurances proposal with all appropriate detail on financial assurances being provided to ensure the establishment and success, in perpetuity, of the proposed mitigation;
  - f. An implementation schedule that provides for completion of construction of the proposed mitigation within 24 months of the Board's adoption of this Order, proposed timing for the reconstruction of the Tassajara Road crossing of the Northern Drainage to a bridge design as specified above, and estimated timing for the submittal of bridge crossing ROWDs for the Fallon Road/Northern Drainage and Tassajara Creek crossings. However, completion of construction of the Northern Drainage mitigation, except the 7.43 acre site and Tassajara Road Crossing, may be as late as 30 months following the Board's adoption of this Order. Completion of construction for the 7.43 acre site and Tassajara Road Crossing shall be no later than 36 months following the Board's adoption of this Order. The implementation schedule shall ensure the completion of the majority of work within the first 12 months following Board adoption of this Order;
  - g. Incorporation of H.T. Harvey & Associates' memo of March 12, 2003, into the Mitigation Plan's Performance Standards and Success Criteria;
  - h. Revised Grazing Plan/Habitat Management Plan language to reflect that the grazing regime in a conservation area may be altered during the grazing season, within the limits of the Plans, if it is clear that the expected performance standards will not be met;
  - i. Incorporation of the following success criteria for the success of CRLF and CTS, as per the Habitat Management Plans, into the Mitigation Plan:
    - i) CRLF: The proposed Northern Drainage and Lin Livermore mitigation sites shall each result in the creation and/or enhancement of habitat in which CRLF are breeding and of high-quality dispersal habitat for CRLF, and on which CRLF predators have been appropriately minimized. The proposed Tassajara Creek mitigation site shall result in high-quality habitat for the CRLF, in which CRLF are present and CRLF predators have been appropriately minimized.
    - ii) CTS: The proposed Northern Drainage mitigation sites shall result in the creation of habitat providing high-quality breeding, larval, and aestivation habitat; and,
  - j. All other information related to this Provision, Sections a-i, as appropriate.
5. As-built plans for the mitigation sites shall be prepared as per the Mitigation Plan, and submitted to the Board within 8 weeks of the completion of mitigation site construction.

6. Annual monitoring reports shall be submitted to the Board by December 31 of each monitoring year, as per the Mitigation Plan, and until the sites have met their performance standards and final success criteria and the Executive Officer has accepted a notice of mitigation completion for each site. Monitoring reports shall be prepared as described, and shall also include the proposed annual grazing and special-status species monitoring, including photographs, residual dry matter monitoring results, and all other information, as appropriate.
7. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, draft conservation easements for all mitigation areas, including finalized locations of the two easement zones on Tassajara Creek and the adjacent tributaries as more specifically set forth herein. Upon the Executive Officer's acceptance of the draft easements, the Executive Officer may determine that work may begin sooner than 60 days after submittal of acceptable easements. The drafts shall be finalized within ten months of the date of adoption of this Order and final executed easements, acceptable to the Executive Officer, shall be submitted within twelve months of the date of adoption of this Order.
  - a. The Tassajara Creek Conservation Area (TCCA) easements shall follow the stability analysis completed by Berlogar GeoTechnical Consultants, as reported in the Mitigation Plan, sufficient to provide that the boundary between the habitat conservation area ("Tassajara Creek Management Zone," or TCMZ) and the private conservation area is at or outside a stable setback from the banks of Tassajara Creek, Moller Ranch Creek, and the Northern Drainage. The private conservation area easement may allow the following uses in that area: a pedestrian trail; water quality features (e.g., vegetated swales or detention basins to treat stormwater runoff); and, the placement of fill into upland areas.
  - b. The construction of a pedestrian trail within the Northern Drainage Conservation Area shall be prohibited, except upon submittal, acceptable to the Executive Officer, of an acceptable trail design. Such a design shall minimize any encroachment into the Conservation Area. Where encroachment is necessary, it shall be limited to hill areas on the south side of the Northern Drainage (e.g., along the existing paved water tank access road, or at a similar elevation).
8. The Discharger shall submit a ROWD or ROWDs for each of its proposed bridge crossings of the conservation areas as discussed in the Findings, and receive appropriate review and action by the Board, prior to beginning construction of those projects.
9. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a SWMP implementation plan. The SWMP implementation plan shall include the following:
  - a. A work plan and schedule for the proposed submittal, acceptable to the Executive Officer, of final designs for the proposed regional water quality pond, and including a schedule for the pond's construction and completion, not less than 48 months after the beginning of Project construction, or after the development of at least 60 percent of the Project (streets and utilities in place and building pads

- graded), whichever occurs first. This shall also include a work plan and schedule for the submittal of an Operations and Maintenance (O&M) plan, as described in the SWMP, that addresses O&M for the regional pond and other BMPs;
- b. Submittal of finalized Storm Water Quality Deed Restrictions and proposed funding amounts under the Deed Restrictions, sufficient to ensure the appropriate O&M of the regional pond and other BMPs for their lifetime;
  - c. Provision for submittal to the Board of City of Dublin-approved post-construction Stormwater Management Plans for projects in the General Commercial, Commercial, and medium-high and high-density residential areas, within areas B, C, and H, at the time those projects are constructed.

Board staff shall review the submitted SWMPs to determine whether appropriate design measures, source controls, and treatment measures, as described in the Project SWMP, have been included to the maximum extent practicable (MEP) in those projects. Should the Executive Officer determine that the Plans have failed to include those measures to the MEP, the Executive Officer shall notify the Discharger and the City of Dublin of this determination in writing. After such a notification, future sub-project specific SWMPs shall be submitted, acceptable to the Executive Officer, at least 60 days prior to the beginning of construction for each sub-project. Should a sub-project specific SWMP be unacceptable to the Executive Officer, then Board staff shall provide comments on the SWMP within 30 days of SWMP submittal. This process (i.e., required submittal of sub-project SWMPs, acceptable to the Executive Officer, prior to construction) shall continue until the City of Dublin has demonstrated, acceptable to the Executive Officer, that it has revised its review and approval process sufficient to ensure that appropriate BMPs will be included to the MEP in Dublin Ranch sub-projects.

10. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, proof of financial assurance adequate to ensure the success of the proposed creek and wetland mitigation as described in Finding 9. This may consist of a bond, certificate of deposit, or other instrument callable by the Board in the event of creek and/or wetland mitigation failure. This financial assurance shall be no less than \$3,591,620. Not later than one week before submitting its proof of financial assurance, the Discharger shall submit a report, acceptable to the Executive Officer, with the supporting information necessary to demonstrate that this amount includes that necessary to cover the revised mitigation periods, as revised in the Mitigation Plan. The Discharger may submit, acceptable to the Executive Officer, a proposal to "step down" the mitigation over time, as described in the Findings.
11. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a draft agreement with a third party appropriate to manage the conservation areas perpetuity. Upon the Executive Officer's acceptance of the draft agreement, the Executive Officer may determine that work may begin sooner than 60 days after submittal of the agreement. The draft shall be finalized within ten months of the date of adoption of this Order and a final executed agreement, acceptable to

the Executive Officer, shall be submitted within twelve months of the date of adoption of this Order. The finalized draft and final agreements shall include a determination regarding what amount of money is necessary for an endowment fund to adequately finance the monitoring and perpetual management and maintenance of the conservation areas. This amount shall be not less than \$963,525.

12. Not later than 60 days prior to the beginning of construction of any project component, the Discharger shall submit, acceptable to the Executive Officer, a SWPPP to address the Project's expected construction stage impacts.
13. Any changes to the final mitigation plans referenced in the Provisions must be approved in writing by the Executive Officer.

#### Notice of Mitigation Completion

14. When the Discharger has determined that an area of the mitigation (i.e., Northern Drainage, Tassajara Creek, Lin Livermore, On-site Creeks) has achieved the performance standards and final success criteria specified in the Mitigation Plan, 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 Mitigation Plan and a description of the status of the mitigation component that has been determined to be successful. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of annual mitigation monitoring reports for that mitigation component is no longer required.

#### Other Provisions

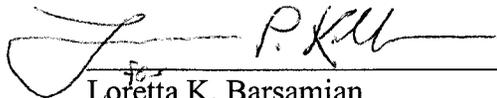
15. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.
16. The Discharger shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition 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.
17. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment or other non-storm water that has accumulated in utility trenches or other portions of the Project be required, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the Discharger's submittal of a discharge/treatment plan,

acceptable to the Executive Officer, at least 30 days prior to such a discharge.

18. The Discharger shall notify the Board in writing at least 30 days prior to actual start dates for each Project component (i.e., prior to the start of grading or other construction activity for any Project component, including the creek and wetland mitigation components).
19. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with its application for water quality certification and the completed report of waste discharge.
20. 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.
21. 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.
22. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
23. 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 area of wetland/waters of the United States to be filled.
24. The following standard conditions apply to this Order:
  - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC §13330 and 23 CCR §3867.
  - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR §3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- c. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR §3833 and owed by the discharger.
25. 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.
26. 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 wetland fill or wetland 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.
27. 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.
28. 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 16, 2003.

  
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Loretta K. Barsamian  
Executive Officer