To:
Los Osos Enforcement Proceeding
California Regional Water Quality Control Board
Central Coast Region
895 AeroVista Place-Suite 101
San Luis Obispo, CA 93401
Att: Michael Thomas, Assistant Executive Officer

From:
John H. Mortara and Phyllis M. Mortara
2248 Inyo St.
Los Osos, CA 93402
November 14, 2006

Dear Michael Thomas,

First of all, we would like to say for the record that we are in favor of a wastewater treatment facility in Los Osos. We have always been in favor of a wastewater treatment facility in Los Osos. We would like to connect to a sewer system as soon as it becomes available. We believed, when we moved here in 1980, that a sewer was imminent. We were never notified, however, by the RWQCB that we were in a Prohibition Zone. We received our very first notice from the CCRWQCB in January 2006. This notice was sent by regular mail.

We would like to state for the record our objections as follows:

We object to a CDO on our property for many reasons. Inadequate notification. Completely unfair selection of just 45 individuals for CDO's. The immediate reduction in the fair market value of our home which equates to a disregard of the 5th Amendment of the U.S. Constitution about depriving people of their property without due process.

We object to the arbitrary enforcement date in our proposed CDO of January 1, 2010. This date is completely unrealistic for hooking up to a completed sewer system. It is impossible to achieve. Celeste Cantu, executive officer of the State Water Board, said in November of 2005 that a completion date of January 1, 2010 was unrealistic. It is now November of 2006, a year later, and we are at the same point (no beginning of a wastewater treatment plant).

immeasurably physically and emotionally. I, John, have been hospitalized three times since receipt of this proposed CDO. I know that my hospitalizations have been directly related to the stress of having been put on notice from the RWQCB. My condition has also created unnecessary stress on my wife, who has had to care and worry about me. I am 88 years old. My wife is 80. We have been looking at moving into a senior community but the CDO precludes our being unable to sell our property at market value. Particularly disturbing is that we have been told that mortgage lenders have been shying away from funding purchases of homes with CDO's.

We object to being told that we have only 15 minutes to present our evidence at our hearing when our homes, our health, our very well being is at stake. This is not due process. Refer to the 14th Amendment of the U.S. Constitution.

We object to being prosecuted without any individual evidence on our property. The burden of proof lies with the party claiming that another party is guilty of wrongdoing. Refer to California Evidence Code 520.

We believe a mail notification to all in the Prohibition Zone should be required to inform all property owners to have their septic tanks pumped and inspected. Accompanying this requirement a monitoring system of all septic tanks in the prohibition zone would help to control any existing septic tank problems until a sewer system is available.

We have secured Shaunna Sullivan as our legal representative on these matters. She has created a settlement agreement that we support and are willing to sign. We believe that this agreement is reasonable and something most, if not all, property owners in the Prohibition Zone would accept.

Please see our attached authorization and agreement that Ms. Sullivan has given us. We want this entered into our evidence. Hopefully the CCRWQCB and the community of Los Osos can get behind this agreement. We believe we our compliant with the RWQCB.
We also want to have our previous evidence for the April 28, 2006 hearing entered into the record with this current evidence. We also reserve our right to refer to the April 28, 2006 hearing in its entirety.

Sincerely,

John H. Mortara Phyllis M. Mortara

John H. Mortara and Phyllis M. Mortara

November 1, 2006

To: Regional Water Quality Control Board Staff, Prosecution Team and Board Members

The undersigned Los Osos resident(s) and recipient(s) of CDO hearing notices for alleged discharges of waste in the prohibition zone of Los Osos are willing to sign the attached proposed Agreement. If the attached Agreement is not accepted by the Regional Water Quality Control Board, I authorize Sullivan & Associates to apply for an extension of the hearing date as needed to permit good faith negotiations for resolution of this matter. I hereby authorize Shaunna Sullivan of Sullivan & Associates, a Law Corporation, to represent me in negotiations to settle the issues by agreement in lieu of a CDO.

This authorization serves as my notice to the Regional Water Quality Control Board and its staff that Sullivan & Associates represents me and is authorized to act on my behalf with regard to all matters concerning settlement negotiations and extension requests. I/We request that all communications from the Regional Water Quality Control Board and its staff concerning the proposed enforcement action against the undersigned be directed to my attorney, Sullivan & Associates, 2238 Bayview Heights Drive, Suite C, Los Osos, California 93402.

William R. Moyle	1516 17th ST. Los Osos
Name	Address
Beverley DeWitt Moyle	1516 17th St Los Osos 93402
Name	Address
[illegible]	2248 Fresno St Los Osos Ca
Name	Address
[illegible]	312 MAR VISTA DR. L.O. 93402
Name	Address
[illegible]	2280 Fresno St.
Name	Address

November 1, 2006

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Mary C. Mason Name	1535 17th St, Los Osos, CA 93402 Address
General E. Mason Name	1535 17th St., Los Osos, CA 93402 Address
[illegible] Name	1660-14th st Los-osos-3340 Address
Lucienne [illegible] Name	1660-14th st Los-osos 9340 Address
Name	Address

November 1, 2006

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Name	Address
1001 Julie G. Miller	312 Mar Vista Dr.
1020 DUP Julie G. Miller	312 Mar Vista Dr.

November 1, 2006

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#1013 Carol Schulak	1115 15th St.
Name	Address
Name	Address
Name	Address
Name	Address
Name	Address

November 1, 2006

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Cinthea T. Coleman	1399-14th Street
Name	Address
Sally Adler	1546 8th St
Name	Address
Denis Adler	1546 8th St.
Name	Address
Name	Address
Name	Address

November 1, 2006

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[redacted]	[redacted]
Name	Address
	Los Osos, CA 93412
Name	Address
[redacted]	[redacted]
Name	Address
Name	Address

November 1, 2006

To: Regional Water Quality Control Board Staff, Prosecution Team and Board Members

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John H. Mortara	2248 INYO DR. Los Osos
Name	Address
Phyllis Mortara	2248 INYO DR, Los Osos
Name	Address
Name	Address
Name	Address
Name	Address

November 1, 2006

To: Regional Water Quality Control Board Staff, Prosecution Team and Board Members

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Charles E. Wilkinson Name	1273 12th ST, Los Osos, CA 93402 Address
Norma K. Wilkerson Name	1273 12th St, Los Osos CA 93402 Address
Dorothy H. Faulkner Name	567 Ash St. Los Osos, CA 93402 Address
Name	Address
Name	Address

November 1, 2006

To: Regional Water Quality Control Board Staff, Prosecution Team and Board Members

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[redacted]	[redacted]
Tim Rochte	1400 17th Street
Name	Address
Name	Address
Name	Address
Name	Address

Draft for Discussion purposes only
PRIVILEGED AND CONFIDENTIAL

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

SETTLEMENT AGREEMENT TO COMPLY WITH WORK PLAN OF PREVENTATIVE AND REMEDIAL MEASURES PURSUANT TO WATER CODE § 13300

Requiring

[OWNER NAMES]
OWNER AND OCCUPANT
[SITE ADDRESS], LOS OSOS, CALIFORNIA 93402
APN
SAN LUIS OBISPO COUNTY
TO SUBMIT TO A TIME SCHEDULE, WHICH SETS FORTH THE ACTIONS THAT THE DISCHARGER WILL TAKE TO ADDRESS ACTUAL OR THREATENED DISCHARGES OF WASTE IN VIOLATION OF A BASIN PLAN PROHIBITION PRESCRIBED BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION

This Agreement is entered into by and between _____ OWNER AND OCCUPANT, LOS OSOS, CALIFORNIA 93402, APN . hereinafter "Discharger," and the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION, hereinafter "Water Board."

WHEREAS, the parties stipulate and agree to the following:

RECITALS

1. own(s) and operate(s) an on-site wastewater treatment and disposal system (Septic System) at (Site) in Los Osos, California. The Site is a residence located within the prohibition area established by Resolution 83-13. The Septic System consists of a septic tank that discharges wastewater to an on-site subsurface

disposal facility. [redacted] is/are referred to in this Order as "Discharger."

2. The Water Board contends the Site has no wastewater disposal facility other than the Septic System. Waste generated at the Site includes human waste and wastewater from toilets and from domestic activities such as bathing, laundry, dishwashing and disposal of garbage. This waste is discharged to the Septic System. The Water Board contends that liquid waste then discharges from the Septic System and eventually to ground water.

3. The Water Board's staff prosecution team has recommended enforcement actions in the form of Cease and Desist Orders pursuant to *Water Code* Section 13301 (hereinafter "CDO") be taken against the discharger, and others, randomly selected based on the requirements applicable to the Septic System set forth in the Water Quality Control Plan, Central Coast Basin (Basin Plan).

4. Discharger has entered into this Settlement Agreement with the Water Board, whereby Discharger cooperates and agrees to enter into this proposed work plan for preventative and remedial measures in lieu of a CDO or further enforcement action against Discharger. The Discharger and the Water Board are referred to collectively as "the Parties".

5. The Parties agree to waive any right to a hearing prior to execution of this Agreement, which agreement shall be binding on all Parties upon execution. The Executive Office of the Central Coast Regional Water Quality Control Board (hereinafter "Executive Officer") shall execute this document on behalf of the Water Board no less than sixty (60) days prior to conducting any evidentiary enforcement hearings concerning any Proposed CDOs against individual property owners.

6. Prior to the execution of this Agreement by any Party, this Agreement has been reviewed and approved by the Water Board and the Parties acknowledge that *Government Code* Section 11415.6 authorizes the terms of this Agreement.

7. The remedial and preventative actions set forth herein are proposed as interim measures for the protection of natural resources in the environment to be implemented and maintained by Discharger until a Community Wastewater Collection and Treatment Project is available for Dischargers hookup. Although the proposed CDOs require cessation of discharge no later than January 1, 2010 or 60 days after the availability of a Community Wastewater Collection and Treatment Plant, the Parties recognize that the Community Wastewater Project may not be complete or available for hookup by January 1, 2010.

8. The remedial actions set forth herein are being taken for the protection of natural resources and the environment and as such are exempt from the provisions of the

California Environmental Quality Act ("CEQA") *(Public Resources Code* Sections 15307, 15308, and 15321, Chapter 3, Division 6, Title 14, *California Code ofRegulations.* In addition, the Septic System is an existing facility and this Agreement allows no expansion of use beyond that previously existing so the actions required herein are exempt from the provisions of CEQA (Section 15301), Chapter 3, Division 6, Title 14, *California Code of Regulations.*

9. Given the unique nature of the proposed random enforcement action against owners of the individual disposal systems, and the legislative intent pursuant to *Water Code* § 13291.5 to assist private property owners with existing systems who incur costs as a result of the implementation of regulations, and the willingness of Discharger to enter into this Agreement without need for public hearing or introduction of evidence before the Water Board, the Discharger stipulates to all terms and conditions of the following proposed work plan of remedial or preventative measures set forth in this Agreement.

NOW THEREFORE, based upon this Agreement, the Parties agree and hereby stipulate to the following:

A. CESSATION OF DISCHARGE

1. Absent Water Board approval of an onsite system for discharge, Discharger shall cease all discharges from the Septic System no later than 60 days after the availability of the Discharger to discharge into a Community Wastewater Collection and Treatment System. No later than January 1, 2010, Discharger agrees to execute a statement that the Discharger agrees to (1) connect to the Community Wastewater Collection and Treatment System within 60 days after the Community Wastewater Collection and Treatment System becomes available to Discharger or (2) Discharger may provide a technical report including a proposed monitoring and reporting plan proposing an alternative method that limits or ceases discharges by the expected completion date of the Community Wastewater Collection and Treatment System. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in *Water Code* Section 13050(e). "Report of Waste Discharge" means a report that complies with *Water Code* section 13260 and if applicable, *Water Code* section 13376.

2. The foregoing compliance dates may be revised by the Executive Officer provided there is reasonable progress in constructing a Community Wastewater Collection and Treatment System. Executive Officer shall extend the due date for compliance with any interim or reporting requirements for circumstances beyond the Discharger's reasonable control. In the event that the Regional Board or the Executive Officer issues any order to the County of San Luis Obispo or the Los Osos Community Services District which includes

a time schedule for the construction and operation of a Community Wastewater Collection and Treatment System (Time Schedule Order) which is intended to serve the Site, the Executive Officer will revise the compliance dates in this Agreement to be consistent with any compliance dates in such Time Schedule Order.

3. Consideration of Discharger's compliance status as "willing and cooperative" will be taken into account prior to considering any enforcement steps. Further, a designation of "most favored status" will apply to Discharger and if any Dischargers' work plans or lead agency's TSOs are negotiated to contain more favorable conditions those same shall be applicable to and incorporated in this Stipulated Agreement.

B. INTERIM COMPLIANCE REQUIREMENTS

By three months after the date of this Agreement, the Discharger shall (1) have the contents of the Septic System pumped or certify that the Septic System has been pumped within the previous three years, and (2) obtain a report by the County of San Luis Obispo or a septic tank pumper that either describes recommended repairs to the Septic System or states that no repairs are necessary. If the Discharger disagrees with any repair recommendation, the Discharger shall provide justification to the Executive Officer no later than four months after the date of this Order explaining why the repairs are not necessary. Unless Water Board staff agrees, in writing, that any recommended repair is not necessary, the Discharger shall provide documentation no later than the first day of the next full calendar month following 180 days after the execution of this Agreement by the Executive Officer, that the Discharger has complied with these pumping, inspection and repair requirements. The Executive Officer shall extend the due date for any requirement of this Agreement for circumstances beyond the Discharger's reasonable control.

C. PROVISIONS

1. All reports, receipts, notifications and other documents the Discharger submits pursuant to this Agreement shall be accompanied by a statement from the Discharger stating: "I certify under penalty of perjury that the attached documents were prepared at my request or under my supervision, and to the best of my knowledge are true, accurate and complete. I understand that there are significant penalties for providing false or incomplete information, including the possibility of criminal fines or imprisonment."

2. If more than one person or entity is a "Discharger" subject to this Agreement, compliance by any of those persons or entities with the submission requirements of this Agreement on behalf of those Dischargers constitutes compliance by all such Dischargers. Multiple submissions are not required. However, all named Dischargers are responsible for

compliance with all requirements of this Agreement, and will be subject to enforcement for any noncompliance. Arrangements among Dischargers as to how they will comply with the Agreement's requirements are not binding on the Water Board and do not protect any Discharger from enforcement actions.

3. Discharger shall inform any subsequent owner or occupant at the Site of this Agreement and provide a copy of this Agreement. For the purposes of this Agreement, the Discharger understands that he or she is liable for the use of the Septic System, while the Discharger owns the Site, including but not limited to use of the Septic System by any tenant or any other person occupying the site absent an intentional act of a third party, the effects of which third party actions could not have been prevented or avoided by the exercise of due care or foresight, pursuant to *Water Code* section 13350(e)(4).

4. The Discharger, if a property owner, shall notify the Water Board in writing of any transfer of ownership within 30 days following close of escrow or transfer of record title.

D. NOTIFICATIONS

All written submissions and notifications shall be provided to the parties as follows:

For the Water Board:

For Los Osos Water Board Team:

Any Party may change the designee or address for notifications but no such change is effective until it is actually received by the party sought to be charged with its contents.

E. MODIFICATIONS

This Agreement may be modified only upon written consent by the Parties hereto.

In the event that the Water Board enters into a subsequent agreement with any Discharger in the prohibition zone which is set forth on the Prohibition Boundary Map, Attachment A of Central Coast Water Board Resolution No. 83-13, *Revision and Amendment of Water Quality Control Plan by the Addition of a Prohibition of Waste Discharge from Individual Sewage Disposal Systems Within the Los Osos/BaywoodPark Area, San Luis Obispo County* which contains terms which are materially different from those in this Agreement and which may be applicable to the Site or Discharger, the Water Board shall notify the Discharger of such changed terms. The Discharger may request that

this Agreement be amended to include those terms, and upon such written request, the Water Board staff shall make those modifications and submit them for execution by the Executive Officer as a modification of the Agreement. This paragraph does not apply to terms in any subsequent agreement which are based on any unique personal circumstances applicable to the other Discharger.

F. REMEDIES FOR FAILURE TO COMPLY

This Agreement is entered into amongst the Parties voluntarily, pursuant to *Government Code* section 11415.60 and *California Water Code section* 13300. The Parties acknowledge that breach of this Agreement may result in formal enforcement actions by the Water Board, including but not limited to orders issued by the Executive Officer pursuant to *California Water Code* sections 13304 and 13350 and civil liability on a daily basis of up to $5,000 against the Discharger for each day a violation occurs. If, in the opinion of the Executive Officer, the Discharger fails to comply with any provision of this Agreement, then the Executive Officer may also apply to the Attorney General for judicial enforcement. The Parties agree that neither party is waiving any rights or defenses that they may have with regard to any future enforcement actions, penalties or any enforcement under the terms of this Agreement.

In taking or recommending any action to enforce the terms of this Agreement or in taking any action with regard to the enforcement of the Basin Plan Prohibition, the Water Board agrees that it will consider the cooperation of the Discharger in entering into this Agreement, as compared with any other discharger who has been issued a Cease and Desist Order or any adjudicated order, or who is recalcitrant or non-cooperative, as a factor in such action including the timing of such action, and the amount of any liability that should be imposed through such enforcement action. Other than such actions that may be required to respond to exigent circumstances requiring immediate emergency action, prior to the initiation of any formal action to enforce this Agreement or the Basin Plan Prohibition against the Discharger, the Water Board agrees that it will meet and confer with the Discharger or a group of other settling dischargers regarding such action, and the Parties will negotiate in good faith to try and resolve any proposed enforcement action. No negotiated resolution of any enforcement action is required or guaranteed by this provision.

The failure of the Water Board to enforce any provision of this Agreement shall neither be deemed a waiver of such provision nor in any way affect the validity of this Agreement. The failure of the Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of the Agreement or the Basin Plan. Nor oral advice, guidance, or suggestions or comments by employees or officials of any Party regarding matters covered by this Agreement shall be construed to relieve any Party

of its obligations required by this Agreement.

G. TERMINATION OF AGREEMENT

This Agreement shall terminate when the Discharger connects the Site to a Community Wastewater Collection and Treatment System, or otherwise permanently ceases all discharges from the Septic System or is no longer the owner of the Site provided the Discharger has complied with paragraphs C3 and C4, above.

H. AUTHORITY TO ENTER AGREEMENT

Each signatory to this Agreement certified that he or she is fully authorized by the Party that he or she presents to enter into this Agreement, and to execute it on behalf of the Party represented and to legally bind that party. Within not less than 60 days of transfer of title, the Water Board will allow the Discharges, successors or assigns an opportunity to enter into this Agreement.

I. COUNTERPART SIGNATURES

This Agreement may be executed by the Parties in counterpart, and when a copy is signed by the authorized representative of each Party, the Agreement shall be effective as if a single document were signed by all Parties.

I, Harvey C. Packard, Division Chief, do hereby certify the foregoing is a full, true, and correct copy of this Settlement Agreement to Comply with the Work Plan of Preventative and Remedial Measures Pursuant to *Water Code* Section 13300, adopted by the California Regional Water Quality Control Board, Central Coast Region, on _____, 2006.

_____
Division Chief

IT IS SO AGREED:

_____
Discharger

_____
Harvey C. Packard
On behalf of the Water Board

IT IS SO ORDERED:

Executive Officer Central Coast Water Quality Control Board	Date

Z:\Clientaj\CSD45\ProposedOrderCRWQCBrevised110706.wpd